

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

- In the matter of:** Miss Ya Juan Zhao
- Heard on:** Wednesday, 27 May 2020
- Location:** The hearing was conducted remotely by Skype due to the Covid-19 restrictions, via ACCA's Offices, 1-11 John Adam Street, London, WC2N 6AU
- Committee:** Mr Martin Winter (Chair)
Ms Wanda Rossiter (Accountant)
Ms Ilana Tessler (Lay)
- Legal Adviser:** Mr Richard Ferry-Swainson (Legal Adviser)
- Persons present
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)
Ms Rachael Davies (Hearings Officer)
Ms Anna Packowska (Assisting Hearings Officer)
- Observers:** Mr Antony Townsend (Appointments Board Observer)
- Summary:** **Facts and misconduct found proved, student removed from the Register, costs of £4,687.50 ordered.**

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PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

1. The Disciplinary Committee (“the Committee”) convened to consider an Allegation against Miss Zhao, who was not present or represented.
2. The papers before the Committee were in a bundle, numbered 1 to 66, and a costs schedule, numbered 1 to 6. The Committee was also provided with a Service Bundle, numbered 1 to 19.
3. Mr Jowett made an application to proceed in the absence of Miss Zhao.

SERVICE AND PROCEEDING IN ABSENCE

4. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Mr Jowett on behalf of ACCA, and also took into account the advice of the Legal Adviser.
5. Included within the service bundle was the Notice of Hearing dated 28 April 2020, thereby satisfying the 28-day notice requirement, which had been sent to Miss Zhao’s email address as it appears in the ACCA register. There is confirmation that the email was delivered. The Notice included details about the time, date and nature of the hearing, which would be held remotely due to the Covid-19 restrictions in place. The Notice also informed Miss Zhao of her right to attend the hearing, by Skype or by telephone, and to be represented, if she so wished. In addition, the Notice provided details about applying for an adjournment and the Committee’s power to proceed in Miss Zhao’s absence, if considered appropriate.
6. The Committee was satisfied that the Notice had been served in accordance with the Regulations, which require ACCA to prove that the documents were sent, not that they were received. Having so determined, the Committee then considered whether to proceed in Miss Zhao’s absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Miss Zhao, it should exercise that discretion with the utmost care and caution, particularly as Miss Zhao was unrepresented.

7. The Committee noted that Miss Zhao faced serious allegations of dishonesty and that there was a clear public interest in the matter being dealt with expeditiously. In an email dated 11 May 2020, Miss Zhao said *“This is Yajuan Zhao. I have no objection to the hearing taking place on 27 May 2020. Sorry to say that I will not attend the hearing, so no interpreter is required. Anyway I will accept the hearing result. Thank you so much for your patience and your precious time.”* In an email dated 12 May 2020, Miss Zhao added, *“It’s OK for the Committee to proceed in my absence. Thank you so much.”* In light of the indications she had given in these emails, the Committee concluded that Miss Zhao had voluntarily absented herself from the hearing and, thereby, waived her right to be present and to be represented at this hearing. The Committee considered that an adjournment would serve no useful purpose, because it seemed unlikely that Miss Zhao would attend on any other occasion.
8. In all the circumstances, the Committee decided that it was in the interests of justice that the matter should proceed, notwithstanding the absence of Miss Zhao. No adverse inference would be drawn from her non-attendance.

ALLEGATION/BRIEF BACKGROUND

9. Miss Zhao faced the following Allegation:

Allegation 1

- (a) During a Performance Management examination on 5 June 2019, Miss Ya Juan Zhao was in possession of:
- (i) unauthorised materials in the form of handwritten notes whilst at her exam desk, contrary to Examination Regulations 4 and/or 5.
- (b) Miss Ya Juan Zhao intended and attempted to use any or all of the items set out at 1(a) above to gain an unfair advantage.
- (c) Miss Ya Juan Zhao’s conduct in respect of 1(b) above was:

- (i) Dishonest, in that Miss Ya Juan Zhao intended and attempted to use any or all of the unauthorised materials which she had at her exam desk to gain an unfair advantage; in the alternative
- (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2019) in that such conduct is not straightforward and honest;

(d) By reason of her conduct, Miss Ya Juan Zhao is:

- (i) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; or
- (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) above.

10. Miss Zhao first registered as an ACCA student on 01 August 2017. She had had no previous attempts at the Performance Management exam, but had previously passed the FR, FM, LW, FFA, FMA and FAB ACCA examinations.
11. Miss Zhao attended the British Council exam centre on 05 June 2019 in order to sit the Performance Management examination. The exam commenced at 2pm and was due to last for 3 hours 20 minutes.
12. All candidates for ACCA examinations are made aware of the Examination Regulations as follows:
 - Prior to an examination, all candidates receive an attendance docket which contains the ACCA guidelines and Regulations;
 - Before an examination commences the Supervisor's announcements draw candidates' attention to the regulations and guidelines outlined in the enclosures sent with the attendance docket. In particular, point 6 is a clear instruction to candidates to remove all unauthorised materials from their desks.
13. The exam centre Supervisor 1 stated in her SCRS1B form, completed on the day of the exam, that the unauthorised material was found in the student's

possession at “16.29.” Supervisor 1 confirmed that the unauthorised material consisted of *“a piece of yellow tissue, palm size, full of notes.”*

14. Supervisor 1 further confirmed that the unauthorised material was found *“by the keyboard”* by the Invigilator.
15. Supervisor 1 provided a detailed account of the incident in the SCRS1B form, asserting that *“Invigilator 1 found a candidate possessed unauthorised material and obtained it. I was informed. Invigilator 1 filled in SCR1B report and took down details. The candidate filled in a SCRS2B report after the test. I didn’t talk to the candidate directly ... I took a picture of the unauthorised material.”*
16. The SCRS1B form was signed and dated by Supervisor 1, and a tick is placed in the box confirming that the facts, as specified, were a true reflection of the incident which took place during the examination.
17. An SCRS1B form was also completed by exam centre Invigilator 1 on the day of the exam. Invigilator 1 stated that the student was *“in possession of unauthorised materials”* and that the unauthorised material was found in the student’s possession at “16.29.” Invigilator 1 confirmed that the unauthorised material consisted of *“one piece of yellow tissue about 10cm x 6cm, rectangle with writing on it.”* Invigilator 1 further confirmed that the unauthorised material was found *“beside her keyboard”*, and stated *“I believe the unauthorised materials have been used by her. I believe it is a prepared note. She was looking at it which was beside her keyboard when I found it.”*
18. Invigilator 1 provided a detailed account of the incident asserting that *“when I patrolled in the testroom and stood, I found candidate [ACCA NUMBER REDACTED], Zhao Ya Juan (seat no.75) pushed her keyboard a little and looked down at something beside her keyboard, then I stepped closer, found it was a pre-prepared note written on a piece of tissue paper (the time was about 16:29). She tried to hide it then squeezed it into the gap between the workstation and the wall.”* Invigilator 1 asserted that he *“let the candidate get it out of the gap and reported it to the Supervisor”* and that the candidate *“said it was not hers.”*

19. The SCRS1B form has been signed and dated by Invigilator 1, and a tick is placed in the box confirming that the facts, as specified, were a true reflection of the incident which took place during the examination.
20. On the day of the examination, Miss Zhao completed an SCRS2B form in relation to the incident. She said she was present when the Supervisor's announcements were made, and she had read the examination regulations. She said that the unauthorised material consisted of "*paper*" which was found in her possession "*in the exam.*" When asked to confirm whether she accepted that the unauthorised materials were relevant to the syllabus being examined, Miss Zhao wrote, "*Yes.*"
21. Miss Zhao provided an explanation stating "*Time is limited so before the exam I take my personal paper into the F5 exam. But I didn't use it because I was busy in calculating the exam paper and have no enough time to see. I am v sorry for my behaviour.*" When asked the purpose for which she had the unauthorised materials in her possession, Miss Zhao wrote "*For copy if there is any use, but actually not.*"
22. In response to whether she used the unauthorised materials, Miss Zhao wrote "*no because I am really busy in my exam and time is limited. I am too nervous and scared so I didn't use it.*" When asked to confirm whether she attempted to use the unauthorised materials that were found in her possession, Miss Zhao confirmed "*no I am very nervous. I didn't dare to use it.*"
23. When asked whether she intended to use the unauthorised materials, Miss Zhao recorded "*No*" and she also wrote "*no*" in response to whether she intended to gain an unfair advantage from the unauthorised materials. Miss Zhao signed the form confirming that the facts, as specified, were a true reflection of the incident.
24. In the Examiner's irregular script report, the Examiner confirmed that the material was relevant to the syllabus and was relevant to the examination. On the question of whether the material had been used when the student was attempting the exam, the examiner stated "*YES*" and added "*Some of the wording to the student's answers to question 7880 in parts (b) and c(i) was*"

exactly the same wording used in the notes." The report was signed and dated 01 July 2019 by the Examiner.

25. On 03 July 2019, ACCA's Exam's Conduct Department wrote to Miss Zhao in relation to the irregularity that had occurred at the exam centre and requested a response from her.
26. On 08 July 2019, Miss Zhao provided a response giving an explanation of the unauthorised materials that were in her possession. She said *"In my Performance Measurement ACCA examination on 3 June 2019 the fact is that I have mistakenly brought in an unauthorised paper but I promise that I never use it because the examination time was so limited and I was so stressed that I even didn't have enough time to finish my examination answer let alone use the unauthorised paper. During the examination, I have paid (sic) all my attention on calculating (sic) and typing the exam results and put the unauthorised paper away (which was then discovered by the supervisor accidentally (sic)). To tell the truth, I am a very slow typist, I have always kept typing my last two subjective questions until the last second, and I still didn't finish my last question at last."*
27. Miss Zhao added *"I have always been ashamed of my wrong behaviour, even though I never use it. Knowing that no matter what I say, the fact can never be changed, I was really anxious and despaired in these days. ... I was so anxious and afraid of failure that I made wrong intention, although I didn't use it. I feel so sorry for all my troubles which have caused you."*
28. On 14 August 2019, ACCA's Investigation Department, via the Investigations Officer, wrote to Miss Zhao to advise her of the complaint which had been received and requested her comments in this regard.
29. On 15 August 2019, Miss Zhao provided an email response to the Investigations Officer in which the following is recorded:

"1. Do you accept that the enclosed copy of the handwritten notes were in your possession during the Performance Management CBE examination on 5 June 2019? Yes, I do.

2. Do you accept that the enclosed copy of handwritten notes consisted of unauthorised materials during the Performance Management CBE exam on 5 June 2019? Yes, I do. It was written by myself before the exam and was incorrectly brought into the examination room. I am so sorry for that and I promise that it will never happen again.

3. Do you accept the unauthorised materials were relevant to the syllabus or exam? Yes, I accept.

4. Did you intend to use the unauthorised materials during the exam? Yes, I do. I intended to use it but I dare not to do so. When I firstly try to open it, I was found by my supervisor (and I was so scared that I hid it into the gap). There isn't much examination time left at that time, so I choose to continue on my typing after giving the unauthorised paper to my supervisor.

5. Did you actually use the unauthorised materials during the exam? I just firstly move on my keyboard, try to use it but was found by my supervisor immediately (and I was so scared that I hid it into the gap). So I failed to open it and at last give it to my supervisor. I always feel guilty in these days for both my wrong intention and behavior. Sorry for I have cause you trouble, and thank you so much for all your patience and nice (sic)."

DECISION ON FACTS/ALLEGATION AND REASONS

30. The Committee considered with care all the evidence presented and the submissions made by Mr Jowett. The Committee accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case, and to do so on the balance of probabilities.
31. Miss Zhao had sat a number of ACCA exams in the past, and so would have been familiar with what materials she could take into an exam. In addition, she would have been given clear instructions at the start of this exam about what material was prohibited during an exam, and she accepted as much in the SCRS2 form. Accordingly, the Committee was satisfied that Miss Zhao would have known what material she was not allowed to take into the exam.

32. The Committee noted that in the SCRS2 form, Miss Zhao had admitted taking the material into the exam and accepted that it was unauthorised. In light of this acceptance, and the unchallenged evidence of the Invigilator, the Committee found as a matter of fact that she had been in possession of the material seized.
33. The Examiner's evidence in relation to the PM exam was that the material he was shown was relevant to the syllabus and the particular exam, and furthermore, in his view, it had been used because "*Some of the wording to the student's answers to question 7880 in parts (b) and c(i) was exactly the same wording used in the notes.*" Miss Zhao agreed that the material was relevant to the syllabus and the exam she was sitting. In light of this evidence, together with the evidence of Miss Zhao's possession of the material during the exam, the Committee was satisfied that she was in possession of unauthorised material during the exam. The Committee decided, therefore, that Miss Zhao had breached Examination Regulation 5, which prohibits a candidate from taking unauthorised material to their desk. Accordingly, the Committee found Allegation 1(a)(i) proved.
34. By applying the assumption in Examination Regulation 7, the Committee was satisfied, on the evidence, that Miss Zhao at the very least intended, and had probably attempted, to use the unauthorised materials whilst the exam was in progress. (Indeed, the examiner believed she had actually used the notes to answer a question, however the Committee was not required to decide this specifically, since actual use was not alleged). The Committee reached its conclusion on the basis of the type and nature of the material Miss Zhao had taken into the exam, together with her behaviour, as described by the Invigilator, and her own admission that she did try to use the notes, but was seen by the Invigilator and so she attempted to hide them.
35. In the Committee's view, Miss Zhao had not discharged the burden of proving that she did not intend to use the material to gain an unfair advantage in the exam. She had accepted taking the material in and trying to use it. Whether she actually used it or not, her motive was plain, that is to say she wished to be able to refer to the notes to help her answer a question or questions in the exam. This would clearly have given her an unfair advantage over those

students who were not resorting to such behaviour. The Committee therefore found Allegation 1(b) proved.

36. The Committee then considered whether the behaviour was dishonest. The Committee could not envisage any circumstances where cheating, or intending to cheat, in an exam could be anything other than dishonest. It is done in order to gain an unfair advantage over other students and to assist the participant to pass the exam in circumstances where they might otherwise fail or get a lower mark. The Committee therefore found Allegation 1(c)(i) proved.
37. Having found Allegation 1(c)(i) proved it was not necessary for the Committee to consider Allegation 1(c)(ii), which was alleged in the alternative.
38. Cheating, or attempting to cheat, in an exam brings discredit on Miss Zhao, the Association, and the accountancy profession as a whole, and is clearly an act which falls seriously short of what is to be expected of student members. The Committee was in no doubt that it would be considered deplorable by other members of the profession, and that it amounted to misconduct. Accordingly, the Committee found Allegation 1(d)(i) proved.
39. Having found Allegation 1(d)(i) proved it was not necessary for the Committee to consider Allegation 1(d)(ii), which was alleged in the alternative.

SANCTION AND REASONS

40. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Jowett. Miss Zhao had not attended. However, in her various responses, she had provided some material which the Committee took into account when deciding the question of sanction. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA and had in mind the fact that the purpose of sanctions was not to punish Miss Zhao, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.

41. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
42. The Committee considered the following aggravating features: a degree of planning in producing a crib sheet on tissue paper to be used in an exam; a desperate initial denial and attempt to hide the note; undermining of the integrity of ACCA's examination process; conduct motivated by personal gain; potential for harm to the public by her passing an examination that she might otherwise not have passed, which meant she would not have been properly qualified had she evaded detection.
43. The Committee considered a number of mitigating factors. In her letter dated 08 July 2019, Miss Zhao said, "*... my family is not so rich faced with great economic pressure and expensive examination fees, it has been such a long time for me for the decision of studying ACCA. I was so anxious and afraid of failure that I make wrong intention , although I didn't use it. I feel so sorry for my troubles which have caused you.*" By the admissions she had made, Miss Zhao had shown some incremental and developing insight into her behaviour, although the Committee noted that she had initially tried to hide the note and denied that it was hers. Miss Zhao had expressed some remorse however it was not entirely clear what she was apologising for. Nevertheless, the Committee took this into account. The Committee also took account of the fact that Miss Zhao had no previous disciplinary record, in her short association with ACCA. The Committee also noted that Miss Zhao had been engaging with ACCA in a way expected of a member.
44. The Committee considered all the options available, from the least serious upwards. It noted that the Association provides specific guidance on the approach to be taken in cases of dishonesty. In Part E2 of the guidance, it states that dishonesty is said to be regarded as a particularly serious matter, even when it does not result in direct harm and/or loss, or is related to matters outside the professional sphere, because it undermines trust and confidence in the profession. The guidance states that the courts have consistently supported the approach to exclude members from their professions where there has been a lack of probity and honesty, and that only in exceptional circumstances should a finding of dishonesty result in a sanction other than striking off. The guidance also states that the public is entitled to expect a

high degree of probity from a professional who has undertaken to abide by a code of ethics. The reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances. *“It is a cornerstone of the public value which an accountant brings.”*

45. The Committee bore in mind these factors when considering whether there was anything remarkable or exceptional in Miss Zhao’s case that warranted anything other than removal from the student register. The Committee was of the view that there were no exceptional circumstances that would allow it to consider a lesser sanction and concluded that the only appropriate and proportionate sanction was removal from the student register. Intending to cheat in an accountancy exam in order to gain an unfair advantage, and a qualification upon which the public will rely, is very serious and fundamentally incompatible with being a student of ACCA.
46. The Committee acknowledged the impact this decision would have on Miss Zhao and thought it was unfortunate that she had decided to cheat after having successfully passed a number of ACCA exams. However, this intentional conduct was such a serious breach of bye-law 8 that no other sanction would adequately reflect the gravity of her offending behaviour. Honesty and integrity go to the heart of the profession. The Committee considered that a failure to remove a student from the register, who had created a crib sheet with the clear intention of cheating during one of her accountancy exams, would seriously undermine public confidence in the profession, and in ACCA as its regulator. In order to maintain public confidence and uphold proper standards in the profession, it was necessary to send out a clear message that this sort of behaviour would not be tolerated.
47. The Committee, therefore, ordered that Miss Zhao be removed from the student register.

COSTS AND REASONS

48. ACCA applied for costs in the sum of £5,137.50. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were generally appropriate and reasonable, except for the estimates for the

Case Presenter and Hearings Officer for today's hearing which, in the event, took less than a full day. Although there is reference in her responses to financial difficulties, Miss Zhao did not provide any specific details of her means, nor did she provide any representations about the costs requested by ACCA; there was, therefore, no evidential basis upon which the Committee could make any reduction on that ground.

49. In light of its observations above, the Committee reduced the amount requested to reflect the actual costs more likely to have been incurred and made an order in the sum of £4,687.50.

EFFECTIVE DATE OF ORDER

50. This order will have effect at the expiry of the appeal period, or at the conclusion of any appeal if one is made.

Mr Martin Winter
Chair
27 May 2020