

## HEARING

### DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Ms Yashu Zhang</b>
<b>Heard on:</b>	<b>Monday, 02 November 2020</b>
<b>Location:</b>	<b>Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU</b>
<b>Committee:</b>	<b>Mrs Valerie Paterson (Chair) Mr Jonathan Beckerlegge (Accountant) Ms Samantha Lipkowska (Lay)</b>
<b>Legal Adviser:</b>	<b>Ms Valerie Charbit (Legal Adviser)</b>
<b>Persons present and capacity:</b>	<b>Ms Michelle Terry (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer)</b>
<b>Observers:</b>	<b>None</b>
<b>Summary</b>	<b>Allegation 1(a), 1(b), 1(c), 1(d)(i), 1(d)(ii), 1(d)(iv) 1(e)(i) found proved Ms Zhang removed from the student register</b>
<b>Costs:</b>	<b>Ms Zhang ordered to pay costs of £5,332.50</b>

#### ACCA



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## **SERVICE OF PAPERS**

1. The Committee convened to consider one allegation against Ms Zhang relating to her conduct in an examination.
2. The Committee had a bundle of papers numbering 1-66 and a service bundle numbering 1-14.

## **PROCEEDING IN ABSENCE**

3. The Committee determined that Ms Zhang had been served with the notice as required by the Complaints and Disciplinary Regulations 2014 (Amended 01 January 2020) (CDR). The relevant notice had been sent via a SharePoint electronic file to her registered email address as registered on ACCA's database 28 days before the hearing date. The email delivery receipt was provided to the Committee. The Committee noted that the Regulations did not require it to find that the notice was received by Ms Zhang. It was, therefore, satisfied that Ms Zhang had been properly served with Notice of Hearing in accordance with ACCA's CDR's.
4. The Committee was invited by Ms Terry on behalf of ACCA to proceed in Ms Zhang's absence on the basis that if the Committee adjourned the case there was no indication that she would attend in the future.
5. The Committee understood that it should only exercise its discretion to proceed in the absence of Ms Zhang with the utmost care and caution. The Committee noted that Ms Zhang had been offered a remote attendance by video link or telephone and an interpreter which she had not responded to.
6. The Committee decided to proceed in Ms Zhang's absence. She was not present, and she was unrepresented and her last engagement with ACCA was on 17 May 2020 by email. The delivery receipts of the notice and follow up emails contained in the service bundle indicated that Ms Zhang was aware of the hearing date and it was, therefore, likely that she had chosen not to attend the hearing and had voluntarily absented herself. The Committee determined

that accordingly she had waived her right to attend the hearing and it concluded that if it adjourned the hearing it was unlikely that she would attend any adjourned date. It, therefore, considered that it was in the public interest to proceed in her absence.

## **ALLEGATION**

7. Ms Zhang faced the following Allegation:

### Allegation 1

- (a) During a Financial Reporting examination on 05 December 2019, Ms Yashu Zhang was in possession of unauthorised materials which she had at her desk, contrary to Examination Regulation 4.
- (b) Ms Yashu Zhang used or in the alternative, intended to use the unauthorised materials above to gain an unfair advantage.
- (c) Further or in the alternative, on a date or dates unknown, Ms Yashu Zhang viewed on Weibo, a messaging service used widely in China, exam questions to enable her to prepare the answer to a specific question which she copied onto a note (being the unauthorised material referred to in Allegation 1 (a) above) which she took into the Financial Reporting examination on 05 December 2019.
- (d) Ms Yashu Zhang's conduct in respect of 1(a) -1(c) above was:
  - (i) Dishonest, in that she used or in the alternative intended to use the unauthorised materials which she had in her possession while the exam was in progress to gain an unfair advantage.
  - (ii) Further or in the alternative, dishonest, because in viewing the exam questions before the exam as alleged in Allegation 1 (c) above, she would gain an unfair advantage in the exam or alternatively.

(iii) Contrary to the Fundamental Principle of Integrity (2019) in that the conduct referred to in Allegations 1 (a) and (b) above and or (c) above demonstrates a failure to be straightforward and honest.

(iv) In respect of Allegation 1(c) above contrary to Exam Regulation 11 (2019)

(e) By reason of her conduct, Ms Yashu Zhang is:

(i) Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(d) above; or

(ii) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of 1(a) and or 1 (c) above.

## **BRIEF BACKGROUND**

8. Ms Yashu Zhang became registered as an ACCA student on 15 June 2018. On 05 December 2019, she attended the Financial Reporting exam (the exam) at the College of Management, Ocean University of China.

9. 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.

10. A script examiner noted that Ms Zhang used notes on a piece of paper during the examination which suggested that she had seen the exam question or answer in advance of the examination.
11. The Invigilator discovered the unauthorised materials approximately two hours after the exam had commenced on Ms Zhang's desk. The unauthorised material was a business card sized paper with some words and formulas on it. The Invigilator stated that she also saw Ms Zhang looking at the notes before they were taken from her desk while the exam was ongoing.
12. The Invigilator confirmed there was no record of Ms Zhang having arrived late so she would have heard the Supervisor's announcements prior to the exam. The script examiner states that *"the card contains answers for a specific question that this candidate obtained in the exam. Someone appears to have sat the exam, posted answers online and this candidate has taken them in with them. They have copied some of this word for word in their answer, writing an identical double entry to that on the card"*
13. Ms Zhang filled out a form SCRS 2B at the time of the incident in which she stated that she had arrived at the examination before the exam commenced and that she had read the examination attendance docket and the examination regulations. She said she was not present when the Supervisor's announcements were made. She said that saw the question on Weibo before the exam and so she used a small piece of paper to write down the answer. She said, *"I know it's a big mistake to go to Weibo to look at the question, but the paper was taken carelessly"*. She also said she found the paper in her coat. She put it on her desk, but she did not use it. She accepted gaining an unfair advantage from Weibo but denied gaining it through the use of the piece of paper.
14. ACCA examination department wrote to Ms Zhang requesting her comments in relation to this incident. Ms Zhang responded stating

*“...I took the exam in the afternoon in the noon, when the exam in the morning had ended, I went to the internet and realize the information about the exam and bring it into the exam in the afternoon. Now I have realized my mistake deeply and obey the decision of ACCA...”*

## **DECISION ON FACTS/ALLEGATIONS AND REASONS**

15. The Committee took into account the written submissions by ACCA and oral submissions by Ms Terry. It further took account of all that Ms Zhang had said in respect of these matters in two documents contained in its bundle, an email dated 17 May 2020 and a Form SCRS 2B. The Committee heard and accepted the advice of the Legal Adviser.
  
16. The Committee carefully examined all the written documents. It was satisfied on the basis of the evidence before it that Ms Zhang had taken into the examination a piece of paper on which she had written an answer. This was clearly unauthorised material which she had on her desk prior to its discovery by the Invigilator. It noted that rules for the examination were clearly set out on the examination docket and in ACCA’s exam regulations and in the Supervisor’s announcements. Although Ms Zhang stated that she was not present for the announcement, it was clear from the documents she had provided that she understood that she had taken into the exam unauthorised materials. The Committee found that she had acted with some element of pre-meditation by agreeing that she had used Weibo to look at an exam question and by writing down the answer. It was in no doubt that this amounted to an unfair advantage. It was not persuaded on the balance of probabilities that she had taken that piece of paper into the examination by mistake as it was found on her desk. It, therefore, found that by taking it into the exam she had gained an unfair advantage.
  
17. The Committee found the following facts in respect of Allegation 1:

- (i) That during a Financial Reporting examination on 05 December 2019, Ms Yashu Zhang was in possession of unauthorised materials which she had at her desk
- (ii) It was satisfied this was contrary to Examination Regulation 4 which provided *“you are not permitted during the exam to possess, use or attempt to use any written materials except those expressly permitted in the guidelines (below). These are known as unauthorised materials.”* It, therefore, found Ms Zhang had breached Regulation 4.

Accordingly, it found Allegation 1(a) proved.

- (iii) It preferred the evidence of the Invigilator that Ms Zhang had used the notes she had taken into the exam over her own initial assertion that she had not used the notes. The Committee considered that by taking such notes into an exam and placing them on the desk it was likely that it was to use them to gain an unfair advantage. Further it noted that the Invigilator stated that the answers given by Ms Zhang correlated with the notes found on her desk.

Accordingly, it found Allegation 1(b) proved.

- (iv) The Committee found on Ms Zhang’s admission that she had looked at Weibo to write an answer on the piece of paper which was an answer to a specific exam question. It also found that she had taken the note into the examination room and placed it on her desk in order to use it during the exam and that she intended to use it.

Accordingly, it found Allegation 1(c) proved.

- (v) The Committee found that by viewing the examination question before the exam and then taking a note into the examination room which was the question and answer, Ms Zhang must have known that what she was doing was cheating and that by doing so she would be gaining an unfair advantage over other students. The Committee noted that Ms

Zhang apologised for her conduct and it found it likely that she must, therefore, have known at the time that her conduct was dishonest.

- (vi) The Committee had no difficulty in finding that cheating or seeking to cheat would be considered dishonest behaviour by the ordinary standards of ordinary decent people. It was further satisfied that Ms Zhang had gained an unfair advantage because the evidence of the Invigilator had noticed that Ms Zhang had used the notes in her answers to the exam questions.

Accordingly, the Committee found Allegation 1(d)(i) and 1(d)(ii) proved.

- (vii) The Committee also found a breach of exam regulation 11 which stated "*you must not seek to gain an unfair advantage in the exam*" (whether by breaching an exam regulation or otherwise).

Accordingly, the Committee found Allegation 1(d)(iv) proved.

18. Having found Allegation 1(d)(ii) proved the Committee noted that 1(d)(iii) was an alternative to 1(d)(ii) so it did not determine that part of the Allegation.
19. The Committee went on to consider whether the dishonest conduct it had found proved amounted to misconduct; in particular it considered whether Allegation 1(a)-(d) amounted to misconduct.
20. In the Committee's judgment honesty was a fundamental tenet for the accountancy profession. It was, therefore, essential that student accountants were trustworthy and honest. By cheating in an accountancy exam, Ms Zhang had brought the accountancy profession into disrepute and she had damaged the reputation of ACCA as well as herself. Cheating undermined the reputation of ACCA because students were expected to achieve a level of proficiency in order to pass their exams which they would not do by cheating. The Committee, therefore, found that the conduct it had found proved amounted to misconduct.

21. Accordingly, it found Allegation 1(e)(i) proved. It, therefore, did not consider Allegation 1(e)(ii) which was an alternative to 1(e)(i).

### **SANCTION AND REASONS**

22. The Committee took into account the Guidance for Disciplinary Sanctions (1 January 2019) (GDS) when determining the proportionate sanction.
23. The Committee found the following mitigating factors, Ms Zhang had no previous disciplinary findings against her, and this was an isolated incident. She had also expressed some regret regarding her actions on that day. However, the Committee was concerned that she had not fully engaged with the disciplinary process and there was no evidence of any remediation.
24. The Committee found no aggravating factors in this case.
25. The Committee first considered whether the sanctions of 'no further action' or 'admonishment' were sufficient sanctions. It concluded that the matters found proved were too serious because they encompassed both dishonesty and misconduct for either of these sanctions.
26. The Committee next considered whether a sanction of a 'reprimand' or 'severe reprimand' was a sufficient sanction. It noted that that this was deliberate conduct and that Ms Zhang had shown that she had limited insight into her conduct and that she had shown no remediation. The Committee, therefore, considered that the conduct found proved was too serious for either sanction to be appropriate in this case. Further, it decided that a 'severe reprimand' would be insufficient for a case involving both deliberate dishonesty and misconduct.
27. The Committee, therefore, decided that Ms Zhang should be excluded from the student register for such serious conduct. Cheating or intending to cheat in an accountancy exam is a very serious breach of professional behaviour for a student to have committed.

28. The Committee had regard to paragraph E2.2 in the GDS which states *“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”*. The Committee further noted the conduct found proved has an adverse effect on the public and that it was a breach of trust.
29. The Committee also took into account the GDS which stated that the sanction of removal from the register is likely to be appropriate when the behaviour is fundamentally incompatible with being a member. It concluded that Ms Zhang’s misconduct reached that threshold.

#### **COSTS AND REASONS**

30. The Committee decided that Ms Zhang had not reduced costs by engaging with ACCA or making unequivocal admissions. Since it had no financial information about Ms Zhang it was unable to reduce the costs simply on the basis that she was a student member.
31. The Committee was, however, unsure about one entry in the costs schedule on the 07 May 2020, which Ms Terry could not expand upon. It, therefore, decided that it was just and reasonable to order Ms Zhang to pay costs to ACCA of £5,332.50.

#### **EFFECTIVE DATE OF ORDER**

32. The Committee decided that the effective date of order was at the conclusion of the appeal period.

**Mrs Valerie Paterson**  
**Chair**  
**02 November 2020**