

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

### **REASONS FOR DECISION**

<b>In the matter of:</b>	<b>Miss Mengxi Zhao</b>
<b>Heard on:</b>	<b>Wednesday, 02 September 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>Ms Ilana Tessler (Chair) Mr David Horne (Accountant) Mr George Tranter (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Iain Ross</b>
<b>Persons Present And Capacity:</b>	<b>Mr Phillip Law (ACCA Case Presenter) Mr Jonathan Lionel (Hearings Officer)</b>
<b>Observers:</b>	<b>None</b>
<b>Summary:</b>	<b>Student removed from student register Costs payable to ACCA of £5000.00</b>

#### **ACCA**



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1. The Committee heard an allegation of misconduct against Miss Mengxi Zhao. The hearing was conducted remotely through Skype for Business (Audio only) so as to comply with the COVID 19 Regulations. Mr Law appeared for ACCA. Miss Mengxi Zhao was not present and was not represented. The Committee had a main bundle of papers numbered pages 1 to 108, a schedule of anonymity consisting of 1 page and a separate service bundle numbered pages 1 to 14.

## **PRELIMINARY APPLICATIONS**

### **SERVICE OF PAPERS/PROCEEDING IN ABSENCE**

2. The Committee heard that notice of this hearing was sent to Miss Zhao by email on 03 August 2020. The Committee was satisfied that the notice contained the required information and had been sent more than 28 days in advance of the hearing as required by the Regulations. Accordingly, the Committee was satisfied that notice of the hearing had been properly served.
3. Mr Law applied for the hearing to proceed in Miss Zhao's absence. He informed the Committee that Miss Zhao had engaged with ACCA until April 2020 and had provided her account of the facts in the Case Management Form which she had returned. Mr Law submitted that Miss Zhao appeared to have voluntarily absented herself and had not applied for the hearing to be adjourned.
4. The Committee considered whether to proceed in the absence of Miss Zhao with the utmost care and caution. It noted that Miss Zhao had provided no reason for her non-attendance and has not applied for the hearing to be adjourned. She appeared to have absented herself and had not indicated a willingness to attend any adjourned hearing. Taking into account the public interest in the hearing proceeding expeditiously, the Committee decided to proceed in Miss Zhao's absence.

### **PRIVATE HEARING**

5. Mr Law drew the Committee's attention to Miss Zhao's comment in her Case

Management Form that she would like the hearing to be held in private to avoid others knowing about her case. Having considered the relevant Regulation and the Legal Adviser's advice, the Committee concluded that Miss Zhao had not raised any matters which displaced the public interest in hearings being conducted in public. The Committee decided that the hearing would continue in public.

### **ALLEGATION / BRIEF BACKGROUND**

6. Miss Mengxi Zhao registered as a student member of ACCA on 16 January 2019. ACCA alleged that during a Financial Reporting Examination on 06 June 2019, Miss Mengxi Zhao was in possession of unauthorised materials in the form of notes under her keyboard, which she intended to use in order to gain an unfair advantage.

#### **Allegation 1**

- (a) During a Financial Reporting examination on 06 June 2019, Miss Mengxi Zhao was in possession of unauthorised materials in the form of notes under her keyboard, contrary to Examination Regulations 4 and/or 5.
- (b) Miss Mengxi Zhao intended to use any or all of the items set out at 1(a) above to gain an unfair advantage, contrary to Examination Regulation 7a;
- (c) Miss Mengxi Zhao's conduct in respect of 1(b) above was:
  - (i) Dishonest, in that Miss Mengxi Zhao intended to use any or all of the unauthorised materials which she had under her keyboard to gain an unfair advantage; or in the alternative
  - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2019);
- (d) By reason of his conduct, Miss Mengxi Zhao 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(c) above; or
- (ii) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of 1(a) (i) above.

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

7. ACCA did not call any witnesses save for Witness 2 who was on standby. It relied on statements and reports from three witnesses involved in the examination process and information from Miss Zhao herself. It was not disputed that Miss Zhao attended the exam centre on 06 June 2019 to sit the Financial Reporting examination. Miss Zhao admitted the facts of Allegation 1 a) in the Case Management Form which the Committee found proved by virtue of her admission.
8. The evidence of Witness 1 (Exam Invigilator) and Witness 2 (Supervisor), was that Miss Zhao had been acting suspiciously by looking around herself during the examination. At approximately 11:30 AM, Witness 1 found that Miss Zhao had a note containing written material which was hidden underneath her keyboard.
9. When questioned by Witness 2, Miss Zhao accepted that the written notes found underneath her keyboard were her notes. Miss Zhao stated that she had found these notes inside her calculator and brought them into the examination accidentally. She had placed them underneath her keyboard so as not to look as if she were cheating. Miss Zhao denied using the material unfairly, and also said that she had arrived late to the exam and that her calculator was not checked prior to the exam taking place. The evidence of Witness 2 was that she was responsible for checking calculators before the exam.
10. In the Examiner's Irregular Script Report, the Examiner confirmed that the material was relevant to the syllabus and to that particular examination.

11. The Committee found that the explanation given by Miss Zhao lacked credibility and was not true. The Committee did not accept her evidence; the notes were found underneath her keyboard which was a deliberate course of action on Miss Zhao's part.
12. The Committee concluded that Miss Zhao had intentionally brought unauthorised materials into the exam. The Committee also found that by taking unauthorised materials, namely notes containing formulae relating to relevant topics to her exam desk and keeping them with her during most of the exam, Miss Zhao was in breach of Examination Regulations 4 and 5. It also found that the notes were relevant both to the syllabus and to the particular exam.
13. Examination Regulations 7(a) and (b) state that where such breaches have taken place it is assumed that the student intended to use the materials or item to gain an unfair advantage in the exam unless the student proves that she did not intend to use the unauthorised materials or item to gain such an unfair advantage. The Committee was satisfied that Miss Zhao had not rebutted the presumption and had intended to use the unauthorised materials, even though there was no direct evidence that she had actually done so.
14. The Committee found it proved, on the balance of probabilities that Miss Zhao intended to use the unauthorised materials in order to obtain an unfair advantage. The Committee found Allegation 1(b) proved in its entirety.
15. On the basis of the findings already made, the Committee was satisfied that Miss Zhao intended to cheat in the exam. It was quite satisfied that intending to cheat amounted to dishonest behaviour. Accordingly, the Committee found Allegation 1(c)(i) proved and did not consider the alternative.
16. Having found that she acted dishonestly, the Committee had no doubt that Miss Zhao's conduct amounted to misconduct. Cheating/intending to cheat in exams is one of the most serious breaches of professional behaviour that a student can commit. The Committee, therefore, found Allegation 1(d)(i) proved and did not consider the alternative.

## **DECISION ON SANCTION AND REASONS**

17. The Committee heard submissions from Mr Law on behalf of ACCA. The Committee received advice from the Legal Adviser and had regard to the Guidance for Disciplinary Sanctions.
18. The Committee noted that the matters found proved against Miss Zhao were very serious. The Committee considered the aggravating factors to be that Miss Zhao's misconduct was premeditated, intended for her own benefit and undermined the trust which the public rightly have in ACCA. Her dishonest conduct was directly related to her student registration which was only in its third month of existence at the time. There is also evidence that Miss Zhao was struggling with that module and would, therefore, benefit by cheating.
19. As mitigating factors, the Committee took into account that Miss Zhao had engaged with the investigation until April 2020 and had admitted Allegation 1a). Miss Zhao is also of previous good character.
20. The Committee was not satisfied that Miss Zhao had demonstrated any meaningful insight and remorse, nor had she explained why she had attempted to cheat in an examination at a very early stage of her intended career.
21. The Committee considered each available sanction in ascending order of seriousness, having concluded that taking no further action was not appropriate. The Committee also considered that issuing an admonishment or a reprimand would not be sufficient or proportionate given the gravity of the matters proved.
22. The Committee carefully considered whether a Severe Reprimand would be sufficient and proportionate or whether removal from the Student Register was required and had careful regard to the factors applicable to each of these sanctions as set out in the Sanctions Guidance.
23. The Committee had particular regard to C4.2 of the Indicative Sanctions Guidance which states, "*having considered the general principles and factors*

*set out above, the Committee must decide whether a Severe Reprimand (on its own or combined with any other order it could impose) is sufficient, it should stop at this point and impose this sanction".* The Committee considered that most of the factors applicable to a Severe Reprimand were not applicable in this case particularly, the lack of insight and remediation, lack of relevant testimonials and Miss Zhao's limited cooperation.

24. The Committee considered the other orders which it could impose in combination with a Severe Reprimand and concluded that such a course of action would not be appropriate or sufficient to protect the public interest. The Committee had regard to E 2.2 of the Guidance for Disciplinary Sanctions 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."*

25. The Committee was mindful that the Sanction of Removal from the student register is the most serious sanction which could be imposed. The Committee also took into account the guidance that this sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a member. The Committee was satisfied that Miss Zhao's misconduct reached that high threshold.
26. For all of the above reasons, the Committee concluded that the only appropriate and proportionate sanction was removal from the student register. The Committee did not deem it necessary to impose any minimum period before which Miss Zhao cannot re-apply for admission as a student member.

#### **DECISION ON COSTS AND REASONS**

27. ACCA applied for costs in the sum of £5,733.00. The Committee was not provided with a statement of means or any information as to Miss Zhao's

means. The Committee took into account that the hearing of this matter took less time than anticipated and concluded that Miss Zhao should pay a contribution to ACCA's costs in the sum of £5,000.00.

28. The Committee did not deem it necessary to make any immediate orders.

**Ms Ilana Tessler**  
**Chair**  
**02 September 2020**