

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Yuxing Zha

Heard on: Wednesday, 16 September 2020

Location: Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU

Committee: Mr Andrew Popat (Chair)
Ms Rubinder Sukkersudha (Accountant)
Mr Geoffrey Baines (Lay)

Legal Adviser: Mr Andrew Granville-Stafford (Legal Adviser)

**Persons present
and capacity:** Ms Michelle Terry (ACCA Case Presenter)
Ms Nkechi Onwuachi (Hearings Officer)

Observers: Ms Hannah Drysdale (ACCA Staff)

Summary Allegations 1(a)(i), 1(b), 1(c)(i) and 1(d)(i) found proved
Removed from the student register

Costs: Pay cost to the ACCA in the sum £1,200.00

ACCA



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PRELIMINARY

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Mr Yuxing Zha. Mr Zha is a student member of ACCA, having been admitted to student membership on 31 December 2018, and is resident in China.
2. The Committee had before it a bundle of documents (95 pages), two tabled additional bundles (both 3 pages), two additional bundles (8 pages and 5 pages), a service bundle (12 pages), an email from ACCA to Mr Zha on 14 September 2020 regarding proposed amendment to the Allegation and a copy of the Case Management Form.
3. Mr Zha did not attend the hearing and was not represented.

PROCEEDING IN ABSENCE

4. Notice of this hearing was sent by email to Mr Zha's registered email address on 17 August 2020. ACCA relied on a delivery receipt showing the email had been delivered the same day. The notice set out the matters required by Regulation 10(1)(b) of the of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR').
5. The Committee was, therefore, satisfied that the requirements of Regulations 10(1) and 22(1) of the CDR as to service had been complied with.
6. On 17 August 2020, ACCA emailed Mr Zha stating, '*I would be grateful if you could please confirm receipt of these documents and confirm whether you wish to attend the hearing in person or via video/telephone and if you will require an interpreter.*'
7. On 19 August 2020, Mr Zha replied stating:

'In consideration of time differences which may cause practical inconvenience, and the fire wall on Chinese Internet may lead to difficulties in attending the hearing, I will not attend the hearing.'

8. ACCA replied asking him to explain more about the firewall difficulties. He replied on 01 September 2020 stating:

'As a matter of fact, it is really hard for me to attend the hearing online.'

'In 16th of September,2020, I will be in the dormitory of Central University of Finance and Economics as the fall semester will have started by then. What I should mention here is that Chinese government especially have tight control of the Internet in universities to make sure the legitimacy of the Communist won't be affected by foreign thoughts, which means the fire wall on campus Internet is very strong, adding to the difficulties of getting into connection to you.'

'Also, you should know that it is illegal to connect to outer Internet in China. Under the supervision on the campus Internet, once I was found linking to British Internet, legal issues may come for me.'

9. On 11 September 2020, ACCA replied asking whether he was happy for the hearing to proceed in his absence. Mr Zha emailed back the same day saying

'I am really sorry for that I am unable to participate in the hearing. However, I wonder is it possible to write a statement which can be read for or delivered to the panel before the hearing starts, in which I can express my standpoints?'

10. Mr Zha sent a written statement which started by stating:

'First of all, I must say sorry about my absence of the hearing. It is difficult for me to attend the hearing via Internet as in China, it is illegal to connect to outer Internet. The supervision is especially strict on campus. Connecting to outer Internet to attend the hearing may bring me legal issues.'

11. On 14 September 2020, Mr Zha sent an email to ACCA confirming he was content for the hearing to proceed without him.
12. Having satisfied itself that service had been effected in accordance with the Regulations, the Committee went on to consider whether to proceed in the absence of Mr Zha. The Committee bore in mind that the discretion to do so must be exercised with the utmost caution and having regard to fairness to the member.
13. The Committee bore strongly in mind that Mr Zha had confirmed two days prior to the hearing that he was content for the hearing to proceed without his attendance. Further, Mr Zha had provided a written statement for the Committee to take into account for consideration.
14. The Committee noted that Mr Zha had been informed in the Notice of Hearing that he could request an adjournment and no request had been made. He had been informed he could take part by telephone. In the circumstances, the Committee did not consider that it was likely that he would attend on a future occasion if the hearing did not go ahead today and, therefore, no useful purpose would be served by adjourning the hearing. The Committee, therefore, decided to proceed in Mr Zha's absence.

AMENDMENT

15. Ms Terry on behalf of ACCA applied to amend the allegations by adding the words '*in the alternative*' to Allegation 1(c)(i). This was to make it clear that the allegation of breaching the Fundamental Principle of Integrity was in the alternative to the allegation of dishonesty.
16. Mr Zha was informed of this proposed amendment by email sent by ACCA on 14 September 2020, two days prior to the hearing.
17. CDR 10(5) allows the Committee at any stage, upon the application of either party or its own motion, to amend the allegations (or add an allegation); provided that the relevant person is not prejudiced in the conduct of his defence.

18. The Committee was satisfied that no prejudice would be caused to Mr Zha by the amendment. It allowed the application.

ALLEGATIONS AND BRIEF BACKGROUND

19. The allegations against Mr Zha, as amended, were as follows:

Allegation 1

- (a) During a Financial Management examination on 07 June 2019, Mr Yuxing Zha was in possession of:
- (i) Unauthorised materials in the form of notes whilst at his exam desk, contrary to Examination Regulations 4 and/or 5.
- (b) Mr Yuxing Zha 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) Mr Yuxing Zha's conduct in respect of 1(b) above was:
- (i) Dishonest, in that he intended to use any or all of the unauthorised materials which he had at his exam desk to gain an unfair advantage; in the alternative
 - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2019);
- (d) By reason of his conduct, Mr Yuxing Zha 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) above.

20. On 07 June 2019, Mr Zha attended the Chaoyang examination centre in China to sit the Financial Management examination.

21. Prior to examinations, all candidates receive an attendance docket which contains ACCA's Examination Regulations and Examination Guidelines. Mr

Zha signed his attendance docket on 07 June 2019 to confirm he had read and understood the Examination Regulations. Those include the following:

Examination Regulation 4

'You are not allowed to take to your exam desk any books, notes or other materials (except those outlined in the guidelines below). These are known as 'unauthorised materials'.

Examination Regulation 5

'You are not allowed to possess, use, or intend/attempt to use, any unauthorised materials while the exam is in progress (whether at your desk or otherwise)'.

Examination Regulation 7(a)

'If you breach exam regulation 4 and/or 5 and the 'unauthorised materials' are relevant to the syllabus being examined, it will be assumed that you intended to use them to gain an unfair advantage in the exam. In any subsequent disciplinary proceedings, you will have to prove that you did not intend to use the unauthorised materials to gain an unfair advantage in the exam'.

22. Before all examinations, the Supervisor reads a set of announcements to the candidates. These include the following:

'Please remove all items, other than those listed on your attendance docket, from your desk now. Candidates found in possession of unauthorised materials are in breach of the examination regulations and their conduct will be reported to ACCA. If you attempt to gain an unfair advantage in the examination, you are likely to be removed from ACCA's student register following disciplinary proceedings.'

23. The examination commenced at 9am and was due to last three hours. ACCA's case is that at 10.35am an Invigilator supervising the exam, Ms A, found unauthorised materials in Mr Zha's possession.

24. ACCA relied on an SCRS1B Unauthorised Material report form prepared by Ms A. She says she found a small piece of paper, 5cm by 10cm approximately, with formulas on it on Mr Zha's desk. The notes were in his calculator cover, between the calculator itself and the cover. She says she believed the notes had been used by Mr Zha because she saw him trying to read the information on it when she patrolled near to his seat.
25. Ms A said in her report that she took the notes from Mr Zha and informed the Supervisor. She asked Mr Zha to continue with the exam and told him that he should complete a report after the exam finished.
26. Mr Zha completed an SCRS2B Unauthorised Material form at the exam centre on the day. He confirms he had unauthorised materials, which he described as 'A piece of note', in his possession and that they were relevant to the syllabus. He said:

'When preparing for the computer-based exams of ACCA, I often make notes to help me remember key information and formulas. These notes are written on small stickers to be carried with me everywhere. When I open the back cover of my calculator to use it in the exam, I found a note was sticked between my calculator and its cover, and it was placed there several weeks ago when I am using it. Bu in the last weeks, I have been using the calculator in my iPads and iPhones, which caused my forgetting about this note totally.' (sic)

27. He denied having any intention to use the notes to gain an unfair advantage and he said he had not used them in the exam. He stated:

'When I found the sticker in my calculator, I looked at it and thought about what to do with it. I didn't want it to be found, which may cause a lot of troubles. . . when thinking about what to do with my note, the officer found it. . .'

28. On 27 June 2019, an Examiner completed an Irregular Script Form (ISF). The examiner confirmed that the materials were relevant to the syllabus and the exam. The examiner said

'The material consists of short formula relating to working capital ratios, but the questions that were answered by the candidate did not needs these formulae.'

29. In an email sent to ACCA (date not legible) Mr Zha said:

'As I said in the report I handed in, the copies of notes were used to help me recited the formulas when I was preparing for the exam. After I finished my preparation for the exam, there were still some days before the exam to come, and I was busy with exams in my college, so I forgot to take these notes down. That is the reason why these notes remained attached to my calculator. I did not realize that these notes were still beneath the cover of my calculator until the exam started.'

30. On his Case Management Form ('CMF') Mr Zha admitted Allegation 1(a) and denied the other allegations.

31. Prior to the hearing Mr Zha sent a statement to ACCA (undated) in which he said:

'I never had the intention of gaining unfair advantages in exams, not only in ACCA, but also in any other exams. The note I took into the examination room is a terrible mistake by carelessness.'

DECISIONS ON ALLEGATIONS AND REASONS

32. The Committee considered the documents before it, the submissions of Ms Terry on behalf of ACCA and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard to be applied is proof on the balance of probabilities. However, where a student is found to be in possession of unauthorised material during an exam the burden is reversed, and the student is presumed to have intended to use the material to gain an unfair advantage unless the contrary is proved (Exam Regulation 7(a)).

Allegation 1(a)(i)

33. Mr Zha admitted Allegation 1(a)(i) in his response to the Case Management Form. It is clear from that Form and his other written submissions that Mr Zha accepted he had unauthorised material in his possession during the exam, which amounts to a breach of Exam Regulations 4 and 5, but he denied using or intending to use them.
34. In accordance with CDR 12(3)(c), the Committee found Allegation 1(a)(i) proved on the basis of that admission, namely that Mr Zha had unauthorised material in his possession during the examination in breach of Exam Regulations 4 and 5.

Allegation 1(b)

35. Mr Zha denied Allegation 1(b).
36. As Allegation 1(a)(i) had been proved, it had been established that Mr Zha was in possession of unauthorised materials during the exam. The evidence showed that the notes were relevant both to the syllabus and the particular examination he was sitting. Therefore, pursuant to Exam Regulation 7(a), the burden was on Mr Zha to prove that he did not intend to use the notes in question to gain an unfair advantage.
37. The Committee considered carefully the written submissions made for this hearing (second Tabled Additional Bundle) and during the course of the investigation by Mr Zha. He had consistently stated he did not intend to use the notes. He said that the notes were accidentally taken into the exam room because they were in his calculator cover and he forgot to take them out before entering the examination room.
38. The Committee considered it significant that, on his own account, Mr Zha accepted he realised he had the notes with him, and he did not immediately bring them to the attention of the Invigilator. The Supervisor's announcements at the start of the exam should have alerted his attention to the fact that he had them with him. Further, and significantly, there is evidence from the Invigilator that he was looking at these notes during the exam.

39. The Committee was satisfied that Mr Zha did intend to cheat. It was not satisfied he had discharged the burden on him under Exam Regulation 7(a).
40. The Committee, therefore, found Allegation 1(b) proved.

Allegation 1(c)(i)

41. Mr Zha denied Allegation 1(c)(i), which alleged that his conduct in respect of 1(b) was dishonest.
42. The Committee considered the guidance of the Supreme Court in *Ivey v Genting Casinos (UK) Ltd*. It was satisfied that Mr Zha's intention was to gain an unfair advantage, and that this would be regarded as dishonest by the standards of ordinary and decent people.
43. Having found that Mr Zha intended to use the notes in the exam in order to cheat, the Committee was satisfied that his conduct was dishonest.
44. It, therefore, found Allegation 1(c)(i) proved.

Allegation 1(c)(ii)

45. As Allegation 1(d)(ii) was put in the alternative to Allegation 1(d)(i), there was no need for the Committee to consider it.

Allegation 1(d)(i)

46. The Committee was in no doubt that having revision notes into an exam and intending to use them to cheat was a serious falling short of the standards expected of a student accountant. Further, his conduct was dishonest and would be regarded as deplorable by fellow members of the profession. It plainly amounted to misconduct.
47. Accordingly, the Committee found Allegation 1(d)(i) proved.

Allegation 1(d)(ii)

48. As Allegation 1(d)(ii) was put in the alternative to Allegation 1(d)(i), there was no need for the Committee to consider it.

SANCTION AND REASONS

49. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour.
50. The Committee regarded the fact Mr Zha had engaged in a deliberate and planned dishonest act as an aggravating factor.
51. In mitigation, the Committee took into account that no previous disciplinary findings had been made against Mr Zha. He had engaged and co-operated with the process and has expressed remorse for his actions. He had, therefore, demonstrated some insight but that had to be weighed against the fact that he had denied intending to cheat in the exam.
52. Mr Zha told ACCA, when he replied to his Case Management Form, that he intended to rely on two testimonials from classmates. However, the Case Presenter confirmed that he had not sent these testimonials to ACCA.
53. Having found that Mr Zha's actions amounted to misconduct, taking no further action was clearly not appropriate. The Committee, therefore, considered the available sanctions in ascending order of seriousness.
54. The misconduct in this case was not minor. It was deliberate and dishonest. It would be inappropriate, given the nature of the conduct in question, to admonish or reprimand Mr Zha.
55. The Committee considered whether a severe reprimand would be an appropriate sanction. Considering the guidance in the GDS, the Committee decided this was not an appropriate and proportionate sanction. In particular his conduct was intentional and had caused harm to the reputation of the profession. Although he had apologised for his actions his insight was limited.
56. The Committee concluded that Mr Zha's actions in this case were fundamentally incompatible with being a member of a professional association. They constituted a serious departure from relevant standards. He had denied

his misconduct and he had behaved dishonestly by attempting to cheat in a professional examination. Having regard to the guidance in the GDS, the Committee concluded that the mitigation in this case did not justify any course other than removal from the student register.

57. Therefore, the Committee made an order under CDR 13(4)(c) of the Disciplinary Regulations removing Mr Zha from the student register.
58. The Committee did not consider that the public interest in this case required it to additionally make an order under CDR 13(4)(c) restricting Mr Zha's right to apply for readmission beyond the normal minimum period.

COSTS AND REASONS

59. ACCA applied for costs against Mr Zha in the sum of £5,814. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing.
60. Mr Zha had not submitted a statement of financial means form but the Committee noted he had expressed concern in his email correspondence with ACCA about his ability to pay a costs order. The Committee took into account the fact that he was a student and considered it was appropriate to reduce the sum in light of that.
61. The Committee ordered Mr Zha to pay ACCA's costs in the sum of £1,200.

EFFECTIVE DATE OF ORDER

62. The order will come into effect from the date of expiry of the appeal period, namely after 21 days from service of this written statement of the Committee's reasons for its decision, unless Mr Zha gives notice of appeal in accordance with the Appeal Regulations prior to that.

Mr Andrew Popat CBE
Chair
16 September 2020

