

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	Miss Binbin Zhao
<b>Heard on:</b>	Thursday, 24 September 2020
<b>Location:</b>	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
<b>Committee:</b>	Ms Valerie Paterson (Chair), Ms Samantha Lipkowska (Lay), Mr Martin Davis (Accountant)
<b>Legal Adviser:</b>	Mr Andrew Granville Stafford
<b>Persons present and capacity:</b>	Ms Michelle Terry (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)
<b>Observers:</b>	None
<b>Summary:</b>	Allegations 1(a)(i), 1(a)(ii) and 1(b) found proved Excluded from the student register Any application for re-admission to be referred to the Admissions & Licensing Committee Costs of £1,000 imposed

#### ACCA



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## PRELIMINARY

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Ms Binbin Zhao. Ms Zhao is a student member of ACCA, having been admitted to student membership on 08 June 2018, and is resident in China.
2. The Committee had before it a bundle of documents (113 pages), an additional bundle (16 pages) and a service bundle (13 pages).
3. Ms Zhao did not attend the hearing and was not represented.

## PROCEEDING IN ABSENCE

4. Notice of this hearing was sent by email to Ms Zhao's registered email address on 27 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. Miss Zhao replied to the notice on 28 August 2020 saying *'Thank you very much for your letter, but I'm sorry to inform you that I can't attend the hearing, because I can't attend the hearing, so I don't want him to do it. If it can be stopped, it's better to stop it. I'm sorry for the trouble. [sic]'*
7. ACCA emailed Miss Zhao asking her whether she was requesting an adjournment. She replied on 04 September 2020 saying: *'Thank you very much for your letter. I hope to apply for postponing the hearing. The reason is that I am still in school and have no source of income, so I can't pay for the hearing. I hope to wait until next year to hold a hearing. This time is confirmed to be a bit long, but I do need time. Next year, I will enter the work after graduation, and I will have my own income, so that I can pay for the hearing fee Yes, so I very strongly hope that the hearing can be postpone. [sic]'*
8. There was a further exchange of emails the same day, with ACCA asking Miss Zhao to clarify whether she was seeking an adjournment. She replied: *'I'm very sorry for the trouble to you. After thinking about it, I decided not to postpone the hearing, even if I didn't attend. thank you! [sic]'*

9. Miss Zhao was informed on 09 September 2020 that unless she sought an adjournment the hearing would proceed in her absence. On 22 September 2020 she was asked to confirm she was content for the hearing to proceed in her absence. She replied the same day saying *'Thank you for your letter. I'm sure I won't attending the hearing [sic].'*
10. Having satisfied itself that service had been effected in accordance with the regulations, the Committee went on consider whether to proceed in the absence of Ms Zhao. The Committee bore in mind that the discretion to do so must be exercised with caution and having regard to fairness to the member.
11. The Committee took into account that Miss Zhao at one stage appeared to be asking for a postponement and was concerned with the potential costs involved. However, she had stated in clear terms that she was not going to attend the hearing. The Committee also had to take into account the public interest in the expeditious disposal of this allegation.
12. In all the circumstances, the Committee considered it was unlikely that Miss Zhao would attend on a future occasion if the hearing did not go ahead today and that no useful purpose would be served by adjourning the hearing. The Committee determined it was in the interests of justice to proceed in Miss Zhao's absence.

### **APPLICATION**

13. On her Case Management Form Miss Zhao applied for the hearing to be held in private. She gave the following reasons: *'because i think it refer to my privacy. it is my guilty mi[s]take. Now I regret that I shouldn't do that. so i hope to get [a]n opportunity to amend it [sic]'*
14. The application was opposed by Ms Terry on behalf of ACCA.
15. Regulation 11(1)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 gives the Committee a discretion to hear all or part of a case in private if it satisfied that the particular circumstances of the case outweigh the public interest in holding the hearing in public. In the Committee's view Miss Zhao had not provided any reason which outweighed the public interest in an open hearing, or which would justify holding the hearing in private. The Committee refused this application.

## ALLEGATIONS AND BRIEF BACKGROUND

16. The allegations against Ms Zhao were as follows:

### Allegation 1

(a) During a Taxation UK examination on 04 June 2019, Miss Binbin Zhao:

- (i) Used an unauthorised item, namely a mobile phone, contrary to Examination Regulation 6;
- (ii) Took photographs of questions on her exam paper using the mobile phone referred to in Allegation 1(a)(i) above.

(b) By reason of her conduct Miss Binbin 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) (i) and or 1 (a) (ii) above; or
- (ii) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of 1(a)(i) above.

17. On 06 June 2019, Ms Zhao attended an examination centre in China to sit the Taxation UK examination. She had previously passed the FA, AB, MA and LW ACCA examinations. She had not previously attempted the Taxation UK examination. The examination commenced at 9am and was due to last three hours.

18. Prior to examinations, all candidates receive an attendance docket which contains ACCA's Examination Regulations and Examination Guidelines. Ms Zhao signed her attendance docket on 5 June 2020 to confirm she had read and understood the Examination Regulations. Those include the following:

#### *Examination Regulation 6*

*You are not permitted to use a dictionary or an electronic translator of any kind or have on or at your desk a calculator which can store or display text. You are also not permitted to use mobile phones, electronic communication devices, camera, or any item with smart technology functionality and/or capable of taking photographic images in the examination hall. These are known as "unauthorised items" and are taken into the examination hall at the candidates own risk. ACCA*

*accepts no responsibility for their loss or damage. Such items must not be worn, or be placed on your desk, in pockets of clothing, in your bag or personal belongings, or be kept anywhere else on or about your person. If you bring a mobile phone, electronic communication device, or camera, or any item with smart technology functionality and/or capable of taking photographic images with you to your examination, you must declare this to the examination personnel upon entering the examination hall. You must switch the phone, or electronic communication device or camera off and disable any alarms or notifications. You must then follow the instructions given to you by the examination personnel.*

19. 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.'*

20. ACCA relied on a SCRS1B form completed on the day by the Exam Supervisor, Ms A.

21. Ms A states that at 11.20am she seized a mobile phone from Miss Zhao. Ms A says the mobile phone had been hidden in Miss Zhao's sleeve and she had seen her looking into her sleeve. Ms A took it from her although she states Miss Zhao tried to seize it back.

22. Miss Zhao completed a SCRS2B form at the exam centre. She accepted she had the mobile phone in the exam room. She stated, *'I want to take photos above exam, after the exam check the answer with classmates.'*

23. On Ms Zhao's mobile phone were photographs of the exam questions.

24. Miss Binbin Zhao also completed an SCRS2A form on the day of the exam. She was asked to provide an account of the incident. She wrote:

*'When I join the exam I get my mobile phone during the examination and I write the formula of taxation in my mobile. When I finished the exam, I forgot the formula so I want to look for the needed formula in my phone and get*

*found by teachers . . . I asked question for my friends I know its seriously I knew my errors . . . This is the first incident I'm regreted so I wish I can get forgive. I hope ACCA can give me another opportunity. I must promise not happen again.'* [sic]

25. The following day, when Miss Zhao attended the examination centre to sit her second paper, she was interviewed about the incident by Ms A. ACCA were provided with a transcript of the interview.
26. During the interview Miss Zhao admitted that she took photos of the exam questions during the exam. She said the purpose of doing so was to check her answers after the exam.
27. Miss Zhao insisted that she did not send the photos to anyone else. Ms A said she had noticed that there was a social media chatroom open on Miss Zhao's mobile when she seized it. Miss Zhao said that this opened automatically on her phone and denied it in any way related to sending photos to other people.
28. During the course of that interview Miss Zhao was asked to and did delete the photographs from her phone.
29. On 20 August 2019, ACCA's Investigation Department wrote to Miss Zhao to advise her of the complaint which had been received and requested her comments. She replied:

*'First I accept the enclosed photograph of the unauthorised item (mobile phone) and copies of notes consisting of unauthorised materials were in your possession during the Taxation UK exam on 4 June 2019. Second I accept the unauthorised item (mobile phone) and materials contained in the mobile phone were relevant to the syllabus or exam. but i didn't intend to use the unauthorised item (mobile phone) and unauthorised materials during the exam. I just want to check my answer reacting with the question after exams .it is convient to appraisal my exam result, but i didn't want to get any advantage for exam and i didn't let anyone see them except conducts in the exams that day. I didn't use the unauthorised item and materials during the exam. i didn't want to use those materials during exams to 11 get unauthorised result, I have realize my wrong, sorry for the excuse bringing to you.'* [sic]

30. On 26 February 2020, Miss Zhao returned her Case Management Form ('CMF') together with a statement which included the following:

*'I want to tell you the details of what happened at that time in detail about this case. I am very sorry for the violation. I admit to taking my cell phone into the exam room and taking photos of the exam questions. I feel guilty about my behavior, but it's not premeditated, it's just thought up before taking the exam. I didn't prepare very well for this exam. I felt that I couldn't pass the exam. So I wanted to take a picture of the exam with my mobile phone and leave it to go out to the exam room to check the answers with my classmates. According to the exam questions of this time, I speculated about the content of the next exam. Because I didn't want to go to the exam again and again, the exam cost was a little expensive. I hope to pass as soon as possible. With a fluke mentality, during the security check of entering the examination room, I thought that if the mobile phone was found, I would not take it in, and if I didn't find it, I would secretly take the test questions. Because in my primary school, high school, junior high school and even the university campus, our teachers all support us to get high marks in the exam by doing exercises in the previous exam, not so optimistic, I am a more attentive person, I seem to have been used to this way as a way to pass the exam with high scores. Because the ACCA official didn't give the true questions of the past years, I had this idea. I know that my behavior is a very immoral behavior, which is immoral for other examinees, but I still do it, now I think it is very regretful and self reproach.'* [sic]

31. On her CMF Miss Zhao ticked the box to confirm she admitted the facts of the Allegation.

#### **DECISIONS ON ALLEGATIONS AND REASONS**

32. The Committee considered the documents before it, the submissions of Mr Law 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.

#### Allegation 1(a)(i)

33. Ms Zhao admitted Allegation 1(a)(i) in her CMF. She had consistently admitted having a mobile phone in the examination room during the examination. In accordance with CDR 12(3)(c), the Committee found Allegation 1(a)(i) it proved on the basis of Ms Zhao's admission.

Allegation 1(a)(ii)

34. Ms Zhao admitted Allegation 1(a)(ii). She had on several occasions accepted that she had taken photos of the examination questions during the examination. In accordance with CDR 12(3)(c), the Committee found Allegation 1(a)(i) it proved on the basis of admission.

Allegation 1(b)(i)

35. Ms Zhao accepted in her CMF that she had committed misconduct. However, in accordance with CDR 12(3)(c), it remained a matter for the Committee to determine whether ACCA had satisfied if her actions amounted to misconduct for the purposes of byelaw 8(a)(i).
36. Ms Zhao was clearly aware that bringing a mobile phone into an examination room and taking pictures of the questions was a breach of the Examination Regulations. What is more it was a serious breach. The Committee was in no doubt that these actions brings discredit to Ms Zhao, the Association and the profession. It would undoubtedly be regarded as deplorable by members of the profession. Ms Zhao's conduct plainly amounted to misconduct.
37. Accordingly, the Committee found Allegation 1(b)(i) proved.

Allegation 1(b)(ii)

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

**SANCTION AND REASONS**

39. 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.
40. The Committee regarded the following as aggravating factors. A fundamental requirement of the profession is that the integrity of the examination system is observed, and Miss Zhao's misconduct undermines that. It damages the perception of the qualification system in the eyes of the public.



41. In mitigation, the Committee took into account that no previous disciplinary findings had been made against Ms Zhao. She had engaged with the process and had apologised for her actions.
42. Having found that Ms Zhao'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.
43. It would be inappropriate, given the nature of the conduct in question, to admonish or reprimand Ms Zhao. Her actions were a serious departure from proper and acceptable standards, and neither would meet the public interest in this matter.
44. The Committee considered whether a severe reprimand would be an appropriate sanction. The Committee considered that this was an intentional breach of the Examination Regulations. Considering the guidance in the GDS, the Committee decided this would not adequately mark the seriousness of the misconduct.
45. The Committee concluded that Ms Zhao's actions in this case were incompatible with continued membership of a professional association. They constituted a serious departure from relevant professional standards. Further, undermining the exam process is unfair to other candidates and damages the reputation of the profession. As stated above, Miss Zhao's actions compromise the integrity of the examination system. The public need to be assured that the examination process is rigorous and fair and that it ensures only those who are properly trained and qualified can become accountants.
46. Having regard to the guidance in the GDS, the Committee concluded that the only appropriate and proportionate sanction was removal from the student register.
47. Therefore, the Committee made an order under CDR 13(4)(c) of the Disciplinary Regulations removing Ms Zhao from the student register.
48. 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 Ms Zhao's right to apply for readmission beyond the normal minimum period. In forming that view, it bore in mind Miss Zhao's age and the fact this was a single incident, albeit a serious one.

49. The Committee directed that, pursuant to CDR 13(10), that any future application by Miss Zhao for re-admission to the student register be referred to the Admissions and Licensing Committee.

### **COSTS AND REASONS**

50. ACCA applied for costs against Ms Zhao in the sum of £5,570.50. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing. Ms Terry accepted that some reduction on the hearing costs may be appropriate to reflect the fact that the hearing had not taken a full day.
51. The Committee considered that in principle an order for costs should be made in ACCA's favour. The Committee considered that the costs claimed were appropriate and reasonable.
52. Ms Zhao had stated in correspondence that her means are limited, and she is financially reliant on her mother. She had not completed a financial means form. However, the Committee accepted she has very limited ability to pay and that it should reduce the costs award accordingly.
53. The Committee ordered Ms Zhao to pay ACCA's costs in the sum of £1,000.

### **EFFECTIVE DATE OF ORDER**

54. 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 Ms Zhao gives notice of appeal in accordance with the Appeal Regulations prior to that.

**Ms Valerie Paterson**  
**Chair**  
**23 September 2020**