

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Penghui Zhang
Heard on:	Thursday, 18 November 2021
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU using Microsoft Teams
Committee:	Mrs Kathryn Douglas (Chair) Mr Peter Brown (Accountant) Mrs Diane Meikle (Lay)
Legal Adviser:	Mr Robin Havard (Legal Adviser)
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Ms Nikita Apostol (Hearings Officer)
Observers:	None
Summary	Removed from the student register
Costs:	£4,300.00

ACCA



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PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents: a hearing bundle (pages 1 to 56) and a service bundle (pages 1 to 25). The Committee had also considered legal advice which it had accepted.
2. The Committee had read the letter dated 21 October 2021 containing Notice of Hearing, sent on the same day by ACCA by email to Mr Zhang. It had noted the subsequent emails sent to Mr Zhang with the necessary link and password to enable Mr Zhang to gain access to the letter and the documents relating to this hearing.
3. The Committee was satisfied that such emails had been sent to his registered email address in accordance with Regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had noted that the emails had been delivered successfully. The emails and the documents to which Mr Zhang had access also contained the necessary information in accordance with CDR10.
4. Consequently, the Committee decided that there had been effective service of proceedings on Mr Zhang in accordance with CDR.

PROCEEDING IN ABSENCE

5. On 04 November 2021, in the absence of any response from Mr Zhang to the email of 21 October 2021, ACCA sent another email to him at the same email address asking him to respond and reminding him of the date of hearing. The email had been delivered successfully. However, Mr Zhang did not reply.
6. On 11 November 2021, ACCA sent a further email to Mr Zhang asking him if he intended to attend and, if not, whether he consented to the hearing proceeding in his absence. There was no reply.

7. On 15 November 2021, ACCA attempted to call Mr Zhang on the number he had provided, and which appeared on the register but there was no response, nor was there a facility enabling ACCA to leave a message. On the same day, a further email was sent by ACCA to Mr Zhang asking him to confirm whether he intended to attend or whether he was content for the matter to proceed in his absence.
8. By email of 15 November 2021, Mr Zhang wrote to ACCA saying, *"Thank you for your information. But I dont want to take part in this conference. So just tell me the final judgement after the conference ending"*. (sic).
9. Notwithstanding his email, on 16 November 2021, ACCA sent to Mr Zhang the link enabling him to join the hearing if he so wished. However, Mr Zhang had not joined the hearing today.
10. The Committee was satisfied that ACCA had done everything possible to engage Mr Zhang in the hearing, but he had made it clear that he had no intention of participating in the hearing, nor had he requested an adjournment.
11. The Committee found that Mr Zhang had received the emails from ACCA informing him of the hearing and giving him access to the documents containing the evidence on which ACCA relied in support of the allegations. The Committee concluded that, by his email of 15 November 2021, Mr Zhang had voluntarily absented himself from the hearing, which he could have joined by telephone or video link. He had therefore waived his right to attend.
12. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made. Finally, the Committee considered that it was in a position to reach proper findings of fact on the written evidence presented to it by ACCA, to include the written response provided by Mr Zhang following the examination.

13. The Committee ordered that the hearing should proceed in the absence of Mr Zhang.

ALLEGATIONS

Allegation 1

- (a) During a Financial Reporting (FR) examination on 16 July 2020, Mr Penghui Zhang was in possession of:
 - (i) Unauthorised materials in the form of two handwritten notes, contrary to Examination Regulations 4.
- (b) Mr Penghui Zhang intended and/or additionally attempted to use those either or both notes set out at 1(a) above to gain an unfair advantage.
- (c) Mr Penghui Zhang's conduct in respect of 1(b) above was:
 - (i) Dishonest, in that Mr Penghui Zhang intended and/or additionally attempted to use either or both the notes set out at 1(a) above to gain an unfair advantage; in the alternative
 - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2020) in that such conduct is not straightforward and honest.
- d) By reason of his conduct, Mr Penghui 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(c) above; or
 - (ii) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of 1(a)above.

DECISION ON FACTS, ALLEGATIONS AND REASONS

Allegation 1(a)(i)

14. In reaching its findings in respect of Allegations 1(a)(i) and 1(b), the Committee relied upon the written evidence provided by: Invigilators 1, 2 and 3; the Script Examiner, and, finally, the written account of Mr Zhang himself. The Committee also listened to legal advice, which it accepted.
15. On 02 October 2019, Mr Penghui Zhang first registered as an ACCA student. He had not attempted the Financial Reporting exam before. Indeed, he had not previously passed any ACCA examinations.
16. On 16 July 2020, Mr Zhang attended the C987/1 Nanjing exam centre to sit the Financial Reporting examination. The exam commenced at 1.30 p.m. and was due to last for 3 hours 20 minutes.
17. All candidates for ACCA examinations were made aware of the Examination Regulations in that, prior to an examination, all candidates received an attendance docket which contained the ACCA guidelines and Regulations.
18. In a SCRS1B form completed and signed on the day of the exam by Invigilator 1, it stated:

“During check in, we confirmed with the candidate that he didn’t have any materials with him... When the candidate came back from the toilet, Invigilator 3 resumed the test for him. Then I saw him pick up a piece of paper on the floor right behind the candidate’s chair. It was 2 pages (12cm x 18cm) and was folded neatly into a small size. Many notes were written on one side”.
19. When asked how they were first alerted to the student with the unauthorised material, Invigilator 1 stated:

“In less than one hour after the exam began, several candidates went to the toilet in turn. I told Invigilator 3 and Invigilator 2 we should keep a close eye on

these candidates, Right after that, we found the unauthorised material at 14.21. Then at 15.38, Invigilator 2 found a piece of tiny note in the candidate's hand".

20. Invigilator 1's account supported the accounts provided by Invigilators 2 and 3. Invigilator 1's account went on to say:

"when Invigilator 3 found the note on the floor, the candidate was ignorant of that".

and

"At 14.18 the candidate wanted to use the toilet. Invigilator 3 operate the candidate's computer for his unscheduled break. I accompanied him to the toilet. He stayed in the toilet for no more than 2 mins. Then I accompanied him back to the test room. When the candidate sat back, Invigilator 3 helped him resume his test. Then Invigilator 3 found the note on the floor right behind the candidate's chair. The candidate was ignorant of what had happened".

21. Invigilator 1 also confirmed that, *"the candidate admitted that the note belonged to him".*
22. In an SCRS1B form completed and signed by Invigilator 2, it stated that the unauthorised material, representing the second document, consisted of, *"a small piece of note"* that was found, *"in his left hand"*.
23. When asked how they were first alerted to the student with the unauthorised material, Invigilator 2 stated, *"He was kept watching after a piece of note was found behind his chair. When he had a toilet break at 14.21 I noticed some suspicious behaviors. He touched his pockets several times".* (sic).
24. Invigilator 2 confirmed Mr Zhang, *"was a bit upset when he was told to give his note to me"*.
25. Invigilator 2 wrote in his account that:

"A piece of note was found behind this candidate's chair after a toilet break. After this incident I kept watching him carefully. At 15.38 I found something was in his hand. I asked him to surrender it to me which was a rolled small piece of note". (sic).

26. Invigilator 2 further explained that he, *"asked him to give me what he held in his left hand which turned out to be a small piece of note"*.

27. Finally, in an SCRS1B form completed and signed by Invigilator 3, it was confirmed that, *"After candidate 4696375 returned from toilet, I found a piece of paper with notes behind the candidate's chair. It was 2 pages (12cmx18cm) and was folded into smaller size. The paper was not seen before"*.

28. When asked how they were first alerted to the student with the unauthorised material, Invigilator 3 stated:

"Shortly after the test began, many students went to toilet in turn. Invigilator 1 asked us to keep a close eye on the candidates. At 14.21, the unauthorised material was found. Then at 15.38 Invigilator 2 found another piece of tiny note in the candidate's hand".

29. Invigilator 3 confirmed that, *"the candidate admitted that the note belonged to him"*.

30. On the day of the examination, Mr Zhang completed an SCRS2B form in relation to the incident. He admitted that he was in possession of unauthorised material, confirming the material consisted of, *"a tiny tip about SOPL a large one about SOFP"*.

31. When asked whether he accepted that the unauthorised materials were relevant to the syllabus being examined, Mr Zhang wrote, *"the SOFP's is but the SOPL's not because there is not relevant tests in exam"*. (sic).

32. On the basis of the evidence of Invigilators 1, 2 and 3, together with the written admissions of Mr Zhang, the Committee was satisfied that Mr Zhang was in

possession of unauthorised materials in the form of two handwritten notes when he took part in a Financial Reporting exam on 16 July 2020. The Committee found that he had intentionally brought the two handwritten notes with him to the exam.

33. Consequently, the Committee found the facts of Allegation 1(a)(i) proved.

Allegation 1(b)

34. In the Examiner's irregular script report, which was unchallenged, the Examiner confirmed, and the Committee found, that the material was relevant to the syllabus and relevant to the examination.

35. In the circumstances, and in accordance with Examination Regulation 6, the burden rested with Mr Zhang to prove to the Committee, on the balance of probabilities, that he had not breached Examination Regulation 4 in order to gain an unfair advantage in the exam.

36. Before considering the explanations put forward by Mr Zhang, the Committee had considered the written accounts provided by the Examiner and Invigilators 1, 2 and 3.

37. In response to whether the notes had been used, the Examiner has stated "Possible", providing further comments as follows:

"These are revision notes for group accounts, particularly the consolidates SFP. These show a layout of the workings for how to approach the question. The student has received a consolidated SFP so these would be helpful. When searching for the question, it appears the student has made an extremely poor attempt at the question and scored a very low mark so they have not done well. I'm not sure they've been able to use this, or at least not use it well".

38. The report had been signed by the Examiner and was dated 18 July 2020.

39. When asked whether he believed the unauthorised material had been used, Invigilator 1 stated, *"I believe the candidate probably used the unauthorised material. Before he went to the toilet, there was no unauthorised material on the floor. When he sat back, Invigilator 3 found it on the floor right behind his chair. We didn't have solid evidence to prove he had used it"*.
40. When asked whether the unauthorised material was believed to have been used, Invigilator 2 stated, *"He held the note in his hand in the test session"*.
41. As for Invigilator 3 he said, *"I believe the candidate probably used the unauthorised material. During the second face check, and when we distributed the scrap paper, I didn't see the piece of paper which with many coloured characters, was very clear to see. I saw the paper immediately after he came back from toilet. But we didn't have solid evidence"*.
42. When confirming why he had taken the unauthorised materials into the exam, Mr Zhang admitted that *"I am afraid I cannot remember for the formula for SOFP and SOPL, I write a syllabus to help me to recognise it in the exam"*. (sic).
43. In response to whether he used the unauthorised materials, Mr Zhang stated, *"No I don't. the relevanted one is founded by the invigilators. I haven't chance to use it. The other is irrelevant so it is useless"*. (sic).
44. He also wrote, *"the relevant one is lost when I came into the exam, I don't know where it is until the invigilators give me. The other one has no relationship with the test content I swear. I don't use the only one in my hand because there is no relevant tests in exam"*. (sic).
45. When asked to confirm whether he attempted to use the unauthorised materials that were found in his possession, Mr Zhang has confirmed, *"I attempt to use the relevant one but I have no intends with the other one"*. (sic).
46. Later in the same form and in answer to effectively the same question, he stated, *"Yes I take this because I want to pass the FR examination. I want to achieve the score but I lost it"*. (sic).

47. When asked whether he intended to gain an unfair advantage from the unauthorised materials, Mr Zhang has stated, "Yes." Mr Zhang concluded by stating, *"Yes. I attempt to use unauthorised material in this exam but I don't use them because various reasons"*. (sic). Mr Zhang had signed the form confirming that the facts as specified were a true reflection of the incident.
48. On 24 July 2020, ACCA's Exams Conduct Department wrote to Mr Zhang in relation to the exam centre irregularity that had occurred and requested a response from him. Mr Zhang did not provide a response.
49. On 21 September 2020, ACCA's Investigations Officer, wrote to Mr Zhang to advise him of the complaint which had been received and requested his comments in this regard. Mr Zhang did not provide a response.
50. However, the Committee considered the comments made by Mr Zhang in an email of 11 June 2021 to be relevant. This email was sent in response to the email from ACCA informing him that the matter had been referred to a Disciplinary Committee and invited him to return a Case Management Form.
51. In this email, Mr Zhang stated:

"I have noticed you said that a so called "case management form" has been sent to me for sometime. But I have not any memory about the CMF. I have just check my postbox and found nothing in my historic record.

Could you tell me when did you send it to me, what should I express in the CMF.

After all, I must say, the previous illegal activities is a negligence rather than a cheat. I promise I gonna maintain the ethics of an accountant. Hardworking and honest.

I wish you have a good day."(sic).

52. Based on its findings of fact, and also on the responses provided by Mr Zhang himself, the Committee found that Mr Zhang had failed to establish that he had not taken the unauthorised material into the exam in order to gain an unfair advantage.
53. Indeed, the Committee found that he had intended to use both notes as set out in Allegation 1(a)(i) to gain an unfair advantage. He accepted, and the Committee found, that he also attempted to use one of the notes which he stated was relevant to one of the questions. He had stated that the information he had included on the other note was not relevant. Even if that were so, the Committee considered it was appropriate to infer from Mr Zhang's written accounts that he would have attempted to use the second note if he considered it would have assisted him in the examination.
54. Consequently, the Committee found Allegation 1(b) proved.

Allegation 1(c)(i)

55. The Committee relied upon its findings of fact under Allegations 1(a)(i) and (b) above.
56. The Committee found that Mr Zhang knew that he was not entitled to take unauthorised materials into an exam and that he knew it was wrong to intend to use, or attempt to use, such materials to gain an unfair advantage.
57. In respect of the facts of Allegation 1(b), the Committee was satisfied that, by the standards of ordinary decent people, such conduct would be considered to be dishonest.
58. Consequently, the Committee found Allegation 1(c)(i) proved.

Allegation 1(c)(ii)

59. On the basis that this allegation was pleaded in the alternative to Allegation 1(c)(i), the Committee made no finding in respect of it.

Allegation 1(d)(i)

60. Taking account of its findings that Mr Zhang had acted dishonestly, the Committee was satisfied that Mr Zhang was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Mr Zhang, the Association and the accountancy profession.
61. The Committee found Allegation 1(d)(i) proved.

Allegation 1(d)(ii)

62. On the basis that this allegation was pleaded in the alternative to Allegation 1(d)(i), the Committee made no finding in respect of it.

SANCTION AND REASONS

63. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had also listened to legal advice from the Legal Adviser which it accepted.
64. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
65. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
66. The Committee considered whether any mitigating or aggravating factors featured in this case.

67. The Committee accepted that there were no previous findings against Mr Zhang. However, the Committee took into consideration the fact that this was the first exam taken by Mr Zhang.
68. The Committee had no information regarding the personal circumstances of Mr Zhang, nor had it been provided with any testimonials or references as to Mr Zhang's character.
69. The Committee noted that Mr Zhang had engaged with the process to the extent that he had completed the form on the day of the exam and had made some admissions with regard to his conduct. In the email of 11 June 2021, he had also referred to "*illegal activities*", but he went on to refer to his actions being, "*negligence rather than cheat*". The Committee was not satisfied that Mr Zhang had real insight into the seriousness of his conduct nor had he expressed any remorse.
70. As for aggravating features, on the basis of the findings, it had been established that Mr Zhang's behaviour had been dishonest. The steps Mr Zhang had taken involved a level of determination and premeditation. The Committee was entirely satisfied that his behaviour would undermine the reputation of ACCA and the profession.
71. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
72. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
73. Mr Zhang had been found to have acted dishonestly in his conduct. The Committee was also concerned that, based on its findings, the objective of his dishonest conduct was to gain an unfair advantage over students who had approached their exams in an honest way. He may have passed the examination when he was not competent to do so. Therefore, this was conduct

on Mr Zhang's part which could have led to him achieving a level of success to which he was not entitled, and which was not merited. In this way, he could present a future risk to the public. Furthermore, taking account of Mr Zhang's responses to the allegations, the Committee was satisfied that there was a risk of repetition of such conduct. It was also conduct which was fundamentally incompatible with being a student member of ACCA.

74. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Mr Zhang from the student register but could find none.
75. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Zhang shall be removed from the student register.

COSTS AND REASONS

76. The Committee had been provided with a detailed breakdown of costs schedule (pages 1 and 2) and a simple costs schedule (page 1) relating to ACCA's claim for costs.
77. The Committee concluded that ACCA was entitled to be awarded costs against Mr Zhang, all allegations, including dishonesty, having been found proved. The amount of costs for which ACCA applied was £5,379.50. The Committee did not consider that the claim was unreasonable, but the hearing had taken less time than estimated.
78. Mr Zhang had not provided ACCA with any documentary evidence of his means. In the correspondence sent to him, Mr Zhang was warned at the outset of the importance of providing details of his financial circumstances. Furthermore, he was made aware of ACCA's intention to apply for costs.
79. In the absence of any information from Mr Zhang, the Committee approached its assessment on the basis that he was able to pay any amount of costs awarded against him.

80. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £4,300.00.

EFFECTIVE DATE OF ORDER

81. The Committee had considered whether the order should have immediate effect. However, taking account of Mr Zhang's removal from the student register, the fact that the Committee considered he would only present a future risk had his conduct remained undetected, and the fact that ACCA had not applied to the Committee for the order to take immediate effect, the Committee did not consider it was in the interests of the public to make such an order.
82. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mrs Kate Douglas
Chair
18 November 2021