

## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Ms Danlei Zhao

**Heard on:** Wednesday, 15 September 2021

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

**Committee:** Ms Ilana Tessler (Chair),  
Ms Fiona MacNamara (Accountant),  
Mr Andy Skelton (Lay)

**Legal Adviser:** Mr Andrew Granville Stafford

**Persons present  
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)  
Miss Geraldine Murray (Hearings Officer)

**Observers:** None

**Summary:** Allegations 1(a)(i), 1(a)(ii), 1(b), 1(c)(i) and 1(d)(i) found  
proved.  
Removed from the student register; any application for  
re-admission to be considered by the Admissions &  
Licensing Committee.  
Costs of £4,500.

## **INTRODUCTION**

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Ms Danlei Zhao. Ms Zhao is a student member of ACCA, having been admitted to student membership on 25 January 2019, and is resident in China.
2. The Committee had before it a bundle of documents (pages 1 to 46), a tabled additional bundle (pages 1 to 9) and a service bundle (pages 1 to 29).
3. Ms Zhao did not attend the hearing and was not represented.

## **PROCEEDING IN ABSENCE**

4. The notice of hearing was sent by email to Ms Zhao from ACCA on 18 August 2021.
5. The Hearings Officer sent a further email to Ms Zhao on 01 September 2021 asking her to confirm whether she would be attending the hearing. Ms Zhao replied by email on 10 September 2021 saying:

*'I am very sorry that I just received your email after checking my mailbox. Due to some personal reasons, I cannot attend this hearing, and I do not want the committee to be held without my participation. As for my personal work arrangement, I am hesitant about whether to continue to take ACCA exam in the future, and may wish to suspend relevant arrangements such as exams.'*

6. The Hearings Officer sent an email to Ms Zhao on 10 September 2021 asking her to elaborate on the reasons she was not able to attend the hearing and to provide evidence in support if she was seeking an adjournment. Ms Zhao replied by email on 13 September 2021 stating:

*'As my personal work arrangement no longer requires me to obtain the ACCA qualification certificate, so ACCA no longer needs to provide me with any help or service. If necessary, I would like to apply for cancellation of ACCA student status. Meanwhile, I hope to suspend other ACCA-related arrangements.'*

7. The Hearings Officer sent a further email to Ms Zhao asking her, amongst other things, to confirm whether she was content for the Committee to proceed in her absence or whether she was seeking an adjournment. The Hearings Officer telephoned Ms Zhao on 14 September 2021, the day before the hearing. Ms Zhao told her that she no longer needs her ACCA qualification and, further, that she did not wish the hearing to go ahead. The Hearings Officer again reminded her that she could give consent to the hearing proceeding in her absence or she could apply for an adjournment. The Hearings Officer invited her to make any representations she wished to the Committee in writing. Ms Zhao emailed ACCA later the same day saying:

*'I have stated many times that I do not wish to hold hearings and cannot even attend the meeting, but if the committee insists on continuing, I cannot stop it, but it is difficult for me to cooperate in other ACCA-related matters. I personally don't want any subsequent association with the ACCA exam. There is no need to provide my financial ability as personal information. I personally do not want to pay any extra price. I hope that the committee will not pay any cost for me, nor do I need to make other efforts. Abandoning the exam is my final choice and decision for ACCA. In the end, the committee decides to delist or cancel the qualification of the student, but I will not pay an additional price for this.'*

8. The Committee was satisfied that the requirements of Regulations 10(1) and 22(5) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR') as to service had been complied with. The notice of hearing was sent 28 days prior to the date of the hearing and confirmation of delivery of the email serving the notice of hearing was contained in the Service Bundle. Ms Zhao is clearly aware of the hearing.
9. 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 Ms Zhao. The Committee bore in mind that the discretion to do so must be exercised with care and in light of the public interest in dealing with matters such as this fairly, economically and expeditiously.
10. The Committee did not consider either that Ms Zhao had actively sought an adjournment or that an adjournment would serve any useful purpose. She was

invited to make a formal application for an adjournment and to support it with any relevant information, but has not done so.

11. The Committee considered, given the content of her email and telephone exchanges with the Hearings Officer, that she is not likely to attend a hearing on a future date if the case were adjourned. Therefore, given the serious nature of the allegations, the Committee determined that it was in the public interest to proceed in the absence of Ms Zhao.

## **ALLEGATIONS AND BRIEF BACKGROUND**

12. The allegations against Ms Zhao are as follows:

### Allegation 1

- (a) During a Financial Reporting (FR) examination on 10 September 2020, Ms Danlei Zhao used or attempted to use during the course of the exam:
  - (i) an unauthorised item, namely a mobile phone, contrary to Examination Regulation 5;
  - (ii) unauthorised materials in the form of notes which were stored and or displayed and or otherwise accessible on the mobile phone referred to in Allegation 1(a)(i), contrary to Examination Regulation 4.
- (b) Ms Danlei Zhao by reason of the above matters gained or attempted to gain an unfair advantage in the exam.
- (c) Ms Danlei Zhao's conduct in respect of 1(b) above was:
  - (i) Dishonest, in that Ms Danlei Zhao gained or attempted to gain by improper means an unfair advantage in the exam; 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 her conduct, Ms Danlei Zhao is:

- (i) Guilty of misconduct pursuant to bye-law 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 bye-law 8(a)(iii), in respect of 1(a) above.

13. In support of those allegations, ACCA relied on the following.

14. On 10 September 2020, Ms Zhao attended an examination centre in Qingdao, China, to sit the Financial Reporting examination. She had previously attempted this examination unsuccessfully on two occasions. The exam commenced at 18:00pm and was due to last for 3 hours 20 minutes.

15. Prior to examinations, all candidates receive an attendance docket which contains ACCA's Examination Regulations and Examination Guidelines. These include the following regulations:

*'4. 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'.*

*5. You are not permitted to use or attempt to use during the course of the exam any communication, photographic or electronic device other than an electronic calculator (where permitted). These are known as 'unauthorised items'.*

*6. If you breach Exam Regulation 4 and the 'unauthorised materials' are relevant to the syllabus being examined, and or you use or attempt to use any unauthorised item or items in breach of Regulation 5 above it will be assumed that you intended to use it or them to gain an unfair advantage in the exam. In any subsequent disciplinary proceedings, you will have to prove that you did not breach Regulations 4 and/or 5 to gain an unfair advantage in the exam.'*

16. ACCA's case was that the examination supervisor, Ms A, found Ms Zhao to be in possession of a mobile phone at 18.32pm. Ms A completed an SCRS1B form

in which she described the circumstances in which the phone was found as follows:

*‘ . . . when supervisor patrolled [sic], the candidate was found to have phone on . . . The candidate was found to be using phone and the phone screen displayed “F7 format” with information seemingly related to exam. . . The phone was found on the candidate’s lap.’*

17. When asked whether she believed the unauthorised material had been used, Ms A wrote *‘The candidate was found to be using phone when supervisor patrolled by her and found the phone screen was shining with light.’*

18. When asked how she was first alerted to the student with the unauthorised material, Ms A stated *‘When the candidate was found to be using phone, the first warning was issued and asked the candidate to hand in phone.’*

19. Ms A further stated in the SCRS1B form *‘When the candidate was found, she focused on using phone, and when supervisor came close to her and she wanted to hide the phone.’*

20. Ms A concluded the form by describing the incident as follows:

*‘At 18.32, when supervisor was patrolling, the candidate 45/0519, name Zhao Danlei was using phone, and phone was on, and also the screen displayed “F7 format table” with information seemingly related to exam.’*

21. On the day of the examination, Ms Zhao completed an SCRS2B form in relation to the incident. She stated in the form that she had the mobile phone in her pocket and that it was found at 18.30pm by the supervisor.

22. In answer to the question whether she accepted that the unauthorised materials were relevant to syllabus being examined, Ms Zhao replied *‘No, there is any relevant documents or answers in it (sic).’* She further stated *‘It is not contact with wifi and not open the Internet. There is any documents relevant to the exam (sic).’*

23. Ms Zhao further wrote in the form:

*'It's the only one material and I don't have private area to put it (sic).'*

*'I don't used the material that it is have any answer and information which is effective to the exam (sic).'*

24. When asked to confirm whether she attempted to use the unauthorised materials that were found in her possession, Ms Zhao stated *'I have a option to use it but have not do that (sic).'*
25. Ms Zhao therefore denied intending to use the phone or intending to gain an unfair advantage from having it in her possession.
26. ACCA relied on a report signed by an examiner and dated 02 October 2020. The examiner stated that the material found within the phone was both relevant to the syllabus and to the FR exam. In answer to the question whether the candidate had used the materials in the exam, the examiner said 'Possibly'. The examiner added the following comments:

*'The notes are very relevant to Q1D 8492 and contained a comprehensive set of notes regarding the consolidation of a SFP (being asked in this question). If the candidate answered this question before the time the mobile phone was found then they would certainly have benefited from the picture in the attached PDF.'*

27. On 07 October 2020, ACCA's Exam's Conduct Department wrote to Ms Zhao in relation to the irregularity that had occurred at the exam centre and requested a response from her. Ms Zhao did not reply.
28. On 10 November 2020, ACCA's Investigation Department wrote to Ms Zhao to advise her that the complaint was being investigated and requested her comments. Again, Ms Zhao did not reply.

## **DECISIONS ON ALLEGATIONS AND REASONS**

29. The Committee considered the documents before it, the submissions of Mr Jowett 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 6).

**Allegation 1(a)(i)**

30. The Committee had regard to the statement of the supervisor, Ms A, who found the mobile phone in Ms Zhao's possession. The Committee also noted that Ms Zhao, in her completed SCRS2B form, did not dispute that she had her mobile phone in her possession during the exam. The Committee was satisfied that Ms Zhao was in possession of the phone during the exam, and further that it was an unauthorised item as defined by Exam Regulation 5.
31. The Committee therefore had to consider whether, as alleged in Allegation 1(a)(i), she used or attempted to use the phone.
32. The evidence of Ms A, which the Committee accepted, was that she found the mobile phone on Ms Zhao's lap. It was shining, which shows that Ms Zhao had switched it on. The Committee also noted that, when the supervisor found her with the phone, Ms Zhao attempted to hide it. The Committee was provided with a screenshot of the phone screen. The evidence of the examiner shows that the notes on the phone were relevant not only to syllabus but the particular questions that Ms Zhao was answering in the exam.
33. In light of the above evidence, the Committee did not accept Ms Zhao's assertion that she had no intention of using her phone in the exam. The Committee was satisfied that Ms Zhao either used her phone or was attempting to do so when she was caught by the supervisor. Therefore, it found Allegation 1(a)(i) proved.

**Allegation 1(a)(ii)**

34. Having found that Ms Zhao used or attempted to use her phone in the exam, the issue for the Committee to consider on Allegation 1(a)(ii) was whether unauthorised materials in the form of notes were stored and or displayed or otherwise accessible on the phone, in contravention of Exam Regulation 4.



35. The Committee again considered the evidence referred to in paragraph 32 above. It was satisfied on the basis of the examiner's report that the notes displayed on the screen of the phone, when found by the supervisor, were relevant to the FR exam that Ms Zhao was sitting. These are clearly unauthorised materials, as defined by Exam Regulation 4.
36. The Committee was therefore satisfied Allegation 1(a)(ii) was proved.

#### **Allegation 1(b)**

37. The Committee went on to consider whether Ms Zhao's intention in using or attempting to access the notes on her phone amounted to gaining or attempting to gain an unfair advantage, as alleged in Allegation 1(b).
38. Given the relevance of the notes on the phone screen, the Committee was satisfied that the only possible explanation for Ms Zhao's actions was attempting to cheat in her exam. Further, having been found in possession of unauthorised materials in the form of notes which were relevant to the exam, the burden was on Ms Zhao to prove that she had no intention of using it. For the reasons already given, the Committee was satisfied that she was using the phone when the supervisor spotted it.
39. The Committee was therefore satisfied that Ms Zhao was using her phone to gain, or to attempt to gain, an unfair advantage. Accordingly, it found Allegation 1(b) proved.

#### **Allegation 1(c)(i)**

40. Ms Zhao was well aware of ACCA's Exam Regulations. She had received an exam docket setting out the regulations and she had previously sat at least four ACCA exams, including her two previous attempts at the FR paper. The Committee was in no doubt that Ms Zhao was aware she was breaching the Exam Regulations by bringing her phone in the exam and by using it to cheat. That conclusion was, in the Committee's view, borne out by the fact when the supervisor found her with the phone on her lap, she attempted to hide it.
41. The Committee was satisfied that bringing a phone into an exam room with the intent to gain an unfair disadvantage would be regarded as dishonest by

ordinary and reasonable members of the public, and further that Ms Zhao herself knew she was acting dishonestly.

42. The Committee therefore found that Ms Zhao's conduct as set out at Allegation 1(b) was dishonest and it found Allegation 1(c)(i) proved.

#### **Allegation 1(c)(ii)**

43. As Allegation 1(c)(ii) was an alternative to Allegation 1(c)(i), there was no need for the Committee to consider it.

#### **Allegation 1(d)(i)**

44. Bringing a phone into an exam in order to cheat clearly brings discredit to Ms Zhao, the Association and the profession of accountancy. It would no doubt be regarded a deplorable conduct by members of the profession. It was a serious departure from the standards of conduct expected of a student member of the Association.

45. Therefore, the Committee was satisfied that Ms Zhao's actions amounted to misconduct and found Allegation 1(d)(i) proved.

#### **Allegation 1(d)(ii)**

46. Having found Allegation 1(d)(i) proved, there was no need for the Committee to consider the alternative in Allegation 1(d)(ii).

### **SANCTION AND REASONS**

47. 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. 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.

48. The Committee considered the following to be aggravating factors. Ms Zhao had made no admissions as to the allegations and, indeed, had claimed not to be using the phone. There had been little meaningful engagement with the investigation or the disciplinary process. Her actions were clearly planned and premeditated, in that she took a phone into her exam in order to cheat. Such conduct undermines the integrity of the exam process and may have resulted in her passing an exam that she otherwise would not have done.
49. Apart from the fact Ms Zhao has no previous disciplinary record, the Committee could find no mitigating factors.
50. The Committee considered that neither an admonishment, reprimand or severe reprimand would be a sufficient sanction in this case, in light in particular of the following factors. Ms Zhao's actions were not only a very serious departure from proper and acceptable standards, but were deliberate. There is obvious potential for harm to the public interest where students cheat and as a result pass exams that they should not have passed. There has been no expression of regret or apology from Ms Zhao. A finding of dishonesty on the basis of cheating in an exam is clearly at the upper end of the scale of misconduct.
51. The Committee concluded that Ms Zhao's actions constituted such a serious departure from the standards expected of a member that any order which allowed Ms Zhao to retain her student membership of ACCA could not possibly be justified.
52. Therefore, the Committee made an order under CDR 13(4)(c) of the Disciplinary Regulations removing Ms Zhao from the student register.
53. 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. However, in order to protect the public, the Committee directed pursuant to CDR 13(10) that any application for re-admission to the student register must be referred to the Admissions & Licensing Committee.

## **COSTS AND REASONS**

54. ACCA applied for costs against Ms Zhao in the sum of £5,308.50. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing.
55. The Committee had no information about Ms Zhao's financial circumstances. Although she had been invited to provide evidence as to her means she had not done so.
56. The Committee found that there was no reason in principle not to make an order for costs in ACCA's favour. Nor did it consider that the costs incurred in the investigation were unreasonable in amount. However, it considered that some adjustment should be made principally to reflect the fact that the hearing had not lasted a full day.
57. In the circumstances, the Committee ordered Ms Zhao to pay ACCA's costs in the sum of £4,500.

## **EFFECTIVE DATE OF ORDER**

58. 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 Ilana Tessler**  
**Chair**  
**15 September 2021**