

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Ms Xian Zhang
Heard on:	Wednesday, 29 September 2021
Location:	Remotely via Microsoft Teams
Committee:	Mr Andrew Gell (Chair) Mr Martin Davis (Accountant) Mr Geoff Baines (Lay)
Legal Adviser:	Mr Iain Ross
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer) Mr Yali Quan (Interpreter)
Summary:	Removal from student register. Cost £500.00

1. The Committee heard an allegation of misconduct against Ms Xian Zhang. The hearing was conducted remotely through Microsoft Teams. Ms Terry appeared for ACCA. Ms Xian Zhang was present and assisted by a Mandarin interpreter

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but was not represented. The Committee had a main bundle of papers numbered pages 1 to 77, a memorandum and agenda of 1 page and a separate service bundle numbered pages 1 to 21.

2. **ALLEGATION / BRIEF BACKGROUND**

Ms Xian Zhang registered as a student member of ACCA on 01 December 2018. ACCA alleged that during a Taxation Examination on 07 July 2020, Ms Xian Zhang was in possession of unauthorised materials in the form of 2 sheets of notes which she had at her desk, underneath her calculator, which she intended to use in order to gain an unfair advantage.

Allegation 1

- (a) During a Taxation UK (TX UK) examination on 07 July 2020, Ms Xian Zhang was in possession of:
 - (i) unauthorised materials in the form of two handwritten notes, contrary to Examination Regulations 4.
- (b) Ms Xian Zhang intended to use one/ both notes set out at 1(a) above to gain an unfair advantage.
- (c) Ms Xian Zhang's conduct in respect of 1(b) above was:
 - (i) Dishonest, in that Ms Xian Zhang intended to use one/ both notes, being unauthorised materials 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 her conduct, Ms Xian 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 / ALLEGATION AND REASONS

3. ACCA did not call any live witnesses. It relied on statements and reports from witnesses involved in the examination process and information from Ms Xian Zhang herself. It was not disputed that Ms Xian Zhang attended the exam centre on 07 July 2020 to sit the Taxation examination. Ms Xian Zhang admitted the facts of Allegation 1 (a)(i) which the Committee found proved by virtue of her admission.
4. The evidence of the Exam Invigilator was that examination started at 09.00 am and was due to last for 3 hours and 20 minutes. The unauthorised material was found in Ms Zhang's possession at 12.00 pm and consisted of *"around 1/5 of A4 paper."* The Invigilator stated that, *"I noticed that Zhang Xian was going to finish her test in one minute, so I stood close to her in the aisle. When her computer popped up the ending window of her test, I came over to her and instructed her how to end the exam. When I took her scrap paper, she moved her calculator a bit and I witnessed that there was a piece of prepared notes"*.
5. When questioned by the exam supervisor, Ms Xian Zhang accepted that the written notes, which were at her desk, were her notes and that they were relevant to the exam. Ms Xian Zhang said that she had forgotten about the notes being with her and that she had not used them during the exam and did not intend to use the notes in order to gain an unfair advantage.
6. The examiner's irregular script report identified that the unauthorised material was relevant to the syllabus being examined. There was no evidence, however, that they were used in the examination.

7. The Committee took into account all of the circumstances and the account given by Ms Xian Zhang. The Committee concluded that Ms Xian Zhang had intentionally brought unauthorised materials into the exam to use if necessary. The Committee also found that by taking unauthorised materials, namely notes containing material which was relevant to the syllabus being examined to her exam desk which she concealed under her calculator, Ms Xian Zhang was in breach of Examination Regulations 4. It also found that the notes were relevant both to the syllabus and to the particular exam.
8. Examination Regulation 6 states 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 could not identify any plausible innocent reason for Ms Xian Zhang being in possession of these notes and was satisfied that she had not rebutted the presumption that she intended to use the unauthorised materials if she needed to, even though there was no direct evidence that she had actually done so. The Committee noted that Ms Zhang confirmed that the size of the notes fitted between the calculator and its cover without the need for them to be folded.
9. For these reasons, the Committee found it proved, on the balance of probabilities that Ms Xian Zhang intended to use the unauthorised materials in order to obtain an unfair advantage and found Allegation 1(b) proved.
10. On the basis of the findings already made, the Committee was satisfied that Ms Xian Zhang intended to cheat in the exam if the need arose. 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.
11. Having found that she acted dishonestly, the Committee had no doubt that Ms Xian Zhang'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

12. The Committee heard submissions from Ms Terry on behalf of ACCA and submissions from Ms Xian Zhang. The Committee received advice from the Legal Adviser and had regard to the Guidance for Disciplinary Sanctions.
13. The Committee noted that the matters found proved against Ms Xian Zhang were very serious. The Committee considered the aggravating factors to be that Ms Xian Zhang's misconduct was premeditated, intended for her own benefit and undermined the trust which the public have in ACCA. Her dishonest conduct was directly related to her student registration which she had held for a relatively short period at the time.
14. As mitigating factors, the Committee took into account that Ms Xian Zhang had co-operated with the investigation and made admissions as a result of which ACCA did not need to call live witness evidence. Ms Xian Zhang is also relatively inexperienced having only just embarked on her intended career.
15. However, the Committee was not satisfied that Ms Xian Zhang had demonstrated any meaningful insight into the seriousness of her actions, the potential impact on other students, the reputation of her intended profession and the damage caused to public confidence in ACCA's examination process.
16. 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.
17. 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 set out in the Sanctions Guidance.

18. 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 whilst some of the factors applicable to a Severe Reprimand were applicable in this case, it also noted Ms Xian Zhang’s lack of insight and remediation, the absence of testimonials and that this matter did not fall into the less serious category.

19. 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.”

20. 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 Ms Xian Zhang’s misconduct reached that high threshold.

21. 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 during which Ms Xian Zhang cannot re-apply for admission as a student member meaning that she can re-apply after 12 months subject to her application being referred to the Admissions and Licensing Committee.

DECISION ON COSTS AND REASONS

22. ACCA applied for costs in the sum of £5,757 which the Committee was satisfied was a reasonable amount. The Committee was provided with a statement of means which set out that Ms Xian Zhang has a monthly income of £150 and monthly expenses in the same amount. In her oral evidence, Ms Xian Zhang told the Committee that she relied on a monthly financial contribution from her family to meet her daily living costs.
23. The Committee took into account Ms Xian Zhang's engagement and her very limited ability to pay any costs order. It also took into account Ms Xian Zhang's young age and that she has only just embarked on her intended career. The Committee therefore reduced the costs award to take into account those factors. The Committee concluded that Ms Xian Zhang should pay a contribution to ACCA's costs in the sum of £500.
24. The Committee did not deem it necessary to make any immediate orders.

Mr Andrew Gell
Chair
29 September 2021