

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

In the matter of:	Miss Zhaoqingzi Dong
Heard on:	Tuesday, 15 February 2022
Location:	Remotely using Microsoft Teams
Committee:	Mr Andrew Popat CBE (Chair) Ms Andrea White (Accountant) Ms Victoria Smith (Lay)
Legal Adviser:	Miss Juliet Gibbon
Persons present and capacity:	Mr Ben Jowett (ACCA Case Presenter) Ms Nikita Apostol (Hearings Officer)
Outcome:	Allegations 1(a), 1(b), 2(a) and 3(a) (misconduct) - found proved
Sanction:	Removal from the Student Register with immediate effect
Costs:	Ordered to pay a contribution to ACCA's costs in the sum of £1,000

PRELIMINARY

1. The Disciplinary Committee ("the Committee") convened to hear allegations of misconduct against Miss Zhaoqingzi Dong. The hearing was conducted remotely

through Microsoft Teams. The Committee had a bundle of papers, numbered pages 1 to 50, a service bundle, numbered pages 1 to 21 and two costs schedules.

2. Mr Ben Jowett represented ACCA. Miss Dong did not attend the hearing and was not represented.

SERVICE

3. Written notice of the hearing was sent by electronic mail ("email") to Miss Dong's registered email address on 18 January 2022 and she was also sent a password separately to access the document. The Committee had sight of the delivery notification stating that the email was delivered on 18 January 2022 at 16:07:51 hours. By virtue of Regulation 22(8)(b) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, as amended ("the Regulations"), the notice would have been deemed served on the same day. The Committee was, therefore, satisfied that ACCA had given the requisite 28 days' notice required under Regulation 10(1)(a) of the Regulations.
4. The Committee accepted the advice of the Legal Adviser. The Committee was satisfied that ACCA had given the requisite 28 days' notice required under Regulation 10(1)(a) of the Regulations. It was also satisfied that the email attaching the notice of hearing, to which Miss Dong had access, contained all the requisite information about the hearing in accordance with Regulation 10(1)(b) of the Regulations.
5. The Committee was satisfied that service had been effected in accordance with Regulations 10 and 22 of the Regulations.

APPLICATION TO PROCEED IN ABSENCE

6. Mr Jowett made an application to proceed in the absence of Miss Dong.

7. The Committee considered whether it should proceed in Miss Dong's absence. It accepted the advice of the Legal Adviser. The Committee bore in mind that whilst it had a discretion to conduct a hearing in the absence of the relevant person, it should exercise that discretion with the utmost care and caution. The Committee paid due regard to the factors set out in the cases of *Hayward & Others* [2001] 3 WLR 125 and *R v Jones* [2002] UKHL 5 and to the case of *The General Medical Council v Adeogba and Visvardis* [2016] EWCA Civ 162.
8. The Committee noted that in her email to ACCA on 26 November 2021, Miss Dong stated "*... I understand ACCA's concern for the public interest, but I have admitted and accepted the charges against me and have nothing else to say ... so personally didn't need to prove anything to myself at the hearing. Is there a need for a hearing in this case?*" (sic).
9. The Committee also noted that the Hearings Officer had written to Miss Dong by email on 01 and 08 February 2022, asking her to confirm if she would be attending the hearing. Miss Dong, however, failed to respond. Miss Dong was also telephoned by ACCA on three occasions on 11 February 2022 but without success. The link to the hearing had also been sent to Miss Dong.
10. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously. It noted that ACCA had made repeated attempts to contact her prior to the hearing. Miss Dong had not asked for an adjournment and given her recent non-engagement, the Committee was of the view that there was no evidence before it to suggest that an adjournment of today's hearing would result in her attendance on a future date.
11. Having balanced the public interest with Miss Dong's own interests, the Committee determined that it was fair, reasonable and in the public interest to proceed in the absence of Miss Dong.

ALLEGATIONS

Miss Zhaoqingzi Dong, a student of the Association of Chartered Certified Accountants ('ACCA'):

1. During a TX examination on 02 March 2021:
 - a. Was in possession of unauthorised material, namely printed notes (the 'Unauthorised Material'), contrary to Examination Regulation 4;
 - b. Used, or intended to use, the Unauthorised Material to gain an unfair advantage in the exam.
2. The conduct described in Allegation 1:
 - a. Was dishonest, in that Miss Dong intended by that conduct to gain an unfair advantage in her exam attempt; or in the alternative;
 - b. Demonstrated a failure to act with Integrity.
3. By reason of her conduct, Miss Dong is:
 - a. Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of the matters set out in Allegations 1 and/or 2 above; or
 - b. Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of Allegation 1.

BACKGROUND

12. Miss Dong first registered as a student with ACCA on 17 April 2019.

13. Miss Dong attended the C837 Beijing examination centre on 02 March 2021 in order to sit the TX examination. This commenced at 9.00 am and was due to last for three hours. Miss Dong had arrived at the examination centre at 8.30 am and had heard the Examination Supervisor's announcements.
14. All candidates for ACCA examinations are made aware of the Examination Regulations as follows:
 - a. Prior to an examination all candidates receive an attendance docket which contains the ACCA guidelines and the Examination Regulations.
 - b. Before an examination commences the Examination Supervisor's announcements draw candidates' attention to the regulations and guidelines outlined in the attendance docket. Regulation 4 provides that a candidate is not permitted to possess, use or attempt to use any notes, books or other written materials and Regulation 6(a), warns candidates that if they are in possession of such 'unauthorised materials' in the examination then it will be assumed that they attended to use them to gain an unfair advantage in the examination unless they prove otherwise.
15. The examination centre Invigilator, Invigilator A, stated on the SCRS 1B form, completed on the day of the examination, that *"when I collect students docket, I found the edge of the note paper appeared under the scrap paper. I asked the student to remove the scrap paper and show me what it is. The student did and I found it was a note with printed text numbers and formulas etc. I obtained the note paper from the student and asked the other invigilator to witness. I asked the student what's this? She didn't say anything"*.
16. The other examination centre Invigilator, Invigilator B, also completed an SCRS 1B on the day of the examination on which it is stated *"the other invigilator found a note on the student's table and she told me about the incident. I read the note and noticed some printed texts and formulas on the paper. I went to report the incident to the supervisor"*.

17. Miss Dong completed a SCRS 2B form on the day of the examination, in which she stated that she had accidentally been in possession of the unauthorised materials during the examination. She stated: *“When I start to the exam. I inadvertently find the one paper which I prepare to note for the exam. I realize I forget to take it to my bags and I put it on my desk”*. Miss Dong further stated: *“I am not intention to take the note to the exam ... and I am not see what the note’s content in the exam”* (sic). Miss Dong subsequently stated: *“I forget this note in my pocket ... and put it on the desk”* (sic).
18. The unauthorised materials consisted of a sheet of paper with notes on it. In the Examiner’s Irregular Script Report, the Examiner stated that the sheet was relevant to the syllabus and may be relevant to the examination and that the notes may have been used in the examination.
19. On 07 April 2021, Miss Dong was informed by ACCA that her conduct during the examination was being referred to the Professional Conduct Department. She replied by email to *‘the Examiner’* on 07 April 2021 stating: *“First of all, I sincerely apologize to you! I want to sincerely and face my heart to apologize and be responsible for the unqualified behaviour of this exam. The note found by the invigilator today is what I usually use to review and recite the knowledge of tax collection and management, and I carry it with me every day for review. This test is very important to me. It is the third time that I re-take the TX test... When I came to the test center in the morning, I was a little late in order to have more review. I was also anxious because I was afraid that I would be late for the test. I forgot that I still have this note in my pocket ... When I was taking the exam, I searched for toilet paper and suddenly found this note. I didn’t know what to do for a while, so I immediately put it under the draft paper ... There was only one question. After I chose the answer, I was a little guilty and uncertain. I quietly flipped a corner of my drafting paper and looked at the note to determine whether my answer was correct. At this time, I have not realized the seriousness of the matter, so I really should pay the price for what I did. After that, I continued to take the exam and no more*

looked up the note. Until the invigilator came to receive the admission ticket, the information leaked out, and was immediately taken away. At that time, I felt that the sky is falling, I really didn't know what to do, and I had a fluke in my heart that I might not pursue too much ... I wrote in the note that I did not read the information ... After leaving the examination room, the more I thought about it, the more I felt that my approach was going further and further on the wrong road. I realised that I couldn't add mistakes to it so there was such an email. I do not beg you to forgive my mistakes. I know that I have made an unforgivable mistake as an ACCA student, but I hope to face myself and ACCA honestly. I accept all the consequences" (sic).

20. On 25 June 2021, ACCA asked for further comments in relation to the incident. Miss Dong replied by email on 04 June 2021 stating: *"First of all, I would like to clarify that I did not bring the unauthorized materials into the examination room for the purpose of gaining an unfair advantage on the way to the examination room. Instead, I took the paper and recited its contents every day before entering the examination room. I forgot to take it out in the morning and did not know that the paper was in my pocket. Secondly, when I found a note in my pocket, I was very flurried. I didn't know what to do. I thought I would take the initiative to tell the invigilator that I might be disqualified. My biggest mistake was to finish all the questions after there is fluke psychology, wanted to verify the note on the recited contents is correct, so I opened the draft paper to see a note, at this time I was completely in violation of the examination discipline provisions. I should also pay the price. However, I hope you can give me another chance. After that exam, I deeply realized my mistake. It was not my original intention to take the materials into the examination room and peep at them" (sic).*
21. On 14 July 2021, Miss Dong wrote the following to ACCA: *"Hello, teachers. It has been four months since the exam in March. During the time, I never regret my stupid actions and ideas during the exam. B: Yes I broke the rules of the exam by unwittingly taking the material into the examination room. I am a dishonest*

candidate. After all, it is a fact that I brought the materials with me, and it is also a fact that the materials are related to the content of the exam ...”.

ACCA SUBMISSIONS

22. Mr Jowett informed the Committee that the following Examination Regulations were relevant in this case:

- a. Regulation 4, that provides *‘You are not permitted during the exam to possess, use or attempt to use, any notes, books or other written materials except those expressly permitted in the guidelines below. These are known as ‘unauthorised materials’; and*
- b. Regulation 6(a), that provides *‘If you breach exam regulation 4 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’.*

23. Mr Jowett submitted the following:

- a. Miss Dong is a registered student with ACCA and is, therefore, bound by the bye-laws and regulations.
- b. Miss Dong was aware of the relevant Examination Regulations both from the Examination Docket and from the Supervisor’s announcements at the commencement of the examination.
- c. Miss Dong admitted both at the time and in subsequent correspondence with ACCA that she had been in possession of unauthorised materials in the form of written notes on the piece of paper that was found on her desk by Invigilator A.

- d. Miss Dong had not informed the Invigilator that she had revision notes in her possession.
- e. Miss Dong has subsequently admitted that her written notes on the piece of paper were relevant to the syllabus being examined and that she had used them to check an answer in the examination.
- f. As the unauthorised materials were relevant to the syllabus, the reverse burden under Examination Regulation 6(a) applied and the Committee should assume that Miss Dong intended to use the unauthorised materials to gain an unfair advantage in the examination unless she proved otherwise.
- g. Miss Dong had not discharged that burden.

24. Mr Jowett further submitted that:

- a. Miss Dong's conduct was dishonest both objectively and subjectively, in accordance with the test set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*.
- b. Miss Dong's actions in attempting to gain an unfair advantage in the examination undermined the examination process and ACCA's reputation as a provider of examinations.
- c. Miss Dong's dishonest conduct fell far short of the conduct expected of professional accountants and those training to become accountants and that misconduct, as defined by bye-law 8(c) and the case of *Roylance v GMC (No 2) [2000] 1 AC 311*, was clearly made out.

DECISION AND REASONS

25. The Committee carefully considered the documentary evidence before it and the oral submissions made by Mr Jowett. The Committee accepted the advice of the Legal Adviser.
26. The Committee bore in mind that the burden of proving a factual allegation in dispute rests on ACCA and the standard of proof is the balance of probabilities. In this case, however, the burden would be reversed under Examination Regulation 6(a) in relation to Allegation 1b if the Committee was satisfied that Miss Dong had been in possession of unauthorised materials during the examination that were relevant to the syllabus for the TX examination.

ALLEGATION 1a - PROVED

27. The Committee accepted the evidence of the two Invigilators, as stated in their SCRS 1B forms, that confirmed Miss Dong had been in possession of unauthorised materials at her examination desk. The Committee also noted the admissions made by Miss Dong, both on the SCRS 2B form signed by her on the day of the examination and in her subsequent emails to ACCA, that she had taken unauthorised materials to her examination desk. The unauthorised materials were revision notes on a single piece of paper that Miss Dong stated had been taken into the examination room inadvertently.
28. The Committee was satisfied that Miss Dong was in possession of unauthorised material during the examination and, therefore, found Allegation 1a proved.

ALLEGATION 1b - PROVED

29. The Committee was satisfied, on the evidence of the Examiner, as stated in the Examiner's Irregular Script Report, that the written notes were relevant to the syllabus for the TX examination that Miss Dong was sitting on 02 March 2021. It

noted that Miss Dong had also admitted that the unauthorised materials were relevant to the examination syllabus.

30. The reverse burden under Examination Regulation 6(a) therefore applied and it was for Miss Dong to prove that she had not intended to use the notes to gain an unfair advantage in the examination.
31. The Committee noted that following the examination, Miss Dong had sent emails to ACCA in which she admitted that she had used the unauthorised materials to check an answer. The Committee was satisfied, on the basis of Miss Dong's own admissions, that she had used the unauthorised materials to gain an unfair advantage in the examination. Miss Dong had not, therefore, proved that she had not intended to use the notes to gain an unfair advantage in the examination. Accordingly, the Committee found 1b proved.

ALLEGATION 2a - PROVED

32. The Committee went on to consider whether Miss Dong's conduct had been dishonest. It was satisfied that this was premeditated conduct on the part of Miss Dong. She had either deliberately taken written notes into an examination with the intention of using them in the examination to gain an unfair advantage in the examination or she had inadvertently taken the unauthorised materials into the examination and then used them to gain an unfair advantage in the examination.
33. The Committee was satisfied that Miss Dong would have known that cheating in a professional examination was dishonest. The Committee was also satisfied that Miss Dong's conduct in using the unauthorised materials to cheat in the examination would be considered dishonest by the standards of ordinary decent people. Accordingly, the Committee found her actions to be dishonest and, therefore, found Allegation 2a proved. The Committee did not go on to consider the alternative charge set out in Allegation 2b.

ALLEGATION 3a - MISCONDUCT FOUND

34. The Committee determined that Miss Dong's dishonest conduct, in 'cheating' in an ACCA professional examination, in order to gain an unfair advantage in the examination, fell far below the standards expected of an ACCA student. In the Committee's determination, Miss Dong's dishonest conduct undermined the integrity of ACCA's examination process and had brought discredit to her, the Association, and the accountancy profession. The Committee was satisfied that Miss Dong's dishonest conduct clearly amounted to misconduct. The Committee, having found Allegation 3a proved, did not go on to consider the alternative charge set out in Allegation 3b.

SANCTION AND REASONS

35. Mr Jowett informed the Committee that there were no previous disciplinary findings against Miss Dong.
36. The Committee accepted the advice of the Legal Adviser who referred it to Regulation 13(4) of the CDR and to ACCA's Guidance for Disciplinary Sanctions. In considering what sanction, if any, to impose the Committee bore in mind the principle of proportionality and the need to balance the public interest against Miss Dong's own interests. The purpose of any sanction was not meant to be punitive but was to protect members of the public, maintain public confidence in the profession and ACCA and to declare and uphold proper standards of conduct and behaviour.
37. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case. The Committee considered the following to be mitigating features:

- a. Miss Dong had admitted to having unauthorised materials at her desk on the day of the examination.
 - b. Miss Dong had, at an early stage in the proceedings, admitted to using the unauthorised materials to cheat in the examination.
 - c. Miss Dong had expressed remorse and apologised for her actions.
 - d. Miss Dong had no previous disciplinary findings against her.
38. The Committee considered the following to be aggravating features:
 - a. Miss Dong had initially denied that she had used the unauthorised materials in the examination.
39. The Committee considered each available sanction in ascending order of seriousness, having concluded that taking no further action was not appropriate due to the seriousness of the dishonest conduct. The Committee also considered that issuing an admonishment or a reprimand would not be sufficient or proportionate, given the gravity of the matters proved, and would not protect the public interest.
40. The Committee carefully considered whether a severe reprimand would be sufficient and proportionate, or whether removal from the Student Register was required. It had careful regard to the factors applicable to each of these sanctions as set out in the Sanctions Guidance. The Committee considered that most of the factors applicable to a severe reprimand were not applicable in this case. The Committee concluded that a severe reprimand would not be appropriate or sufficient to protect the public interest.
41. The Committee had regard to paragraph 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”.

42. The Committee was mindful that the sanction of removal from the student register was the most serious sanction that could be imposed. The Committee took into account the guidance that this sanction was likely to be appropriate when the behaviour of the student was fundamentally incompatible with being a registered student of ACCA. The Committee was satisfied that Miss Dong’s dishonest conduct in cheating in a professional examination had reached that high threshold. The Committee had heard no mitigation from Miss Dong to warrant anything other than removal from the student register.
43. For the above reasons, the Committee concluded that the appropriate and proportionate sanction was removal from the student register.
44. The Committee did not deem it necessary to impose a specified period before which Miss Dong can make an application for readmission as a student member.

EFFECTIVE DATE

45. The Committee has determined that the dishonest misconduct in this case was so serious as to warrant a sanction of removal from the student register. In the circumstances, the Committee determined that it was in the interests of the public that the sanction order should have immediate effect and so directed.

DECISION ON COSTS AND REASONS

46. The Committee was provided with two costs schedules. ACCA applied for costs in the sum of £6,648.00. Mr Jowett informed the Committee, however, that this was

a straightforward case in which Miss Dong had made early admissions. He accepted that the amount claimed for the costs of the investigation and the hearing could, therefore, be reduced by the Committee. He also invited the Committee to consider whether there should be a further reduction as the hearing would not take the hours claimed.

47. The Committee made deductions for the hours claimed in relation to the Investigations Officer, the Case Presenter and the Hearings Officer and concluded that the sum of £4,898.00 would be an appropriate and reasonable sum for ACCA to claim by way of costs. The Committee noted that Miss Dong had not provided any details of her current financial means, although the Committee noted that in correspondence to ACCA she had indicated that she was concerned about paying the costs of a hearing.
48. Although the Committee did not have any financial information from Miss Dong, it took into account that she was a young student living in the People's Republic of China. The Committee determined that it would be fair and proportionate to order Miss Dong to pay a contribution to ACCA's costs in the sum of £1,000.00.

ORDER

- i. Miss Zhaoqingzi Dong shall be removed from ACCA's student register with immediate effect.
- ii. Miss Zhaoqingzi Dong shall pay a contribution to ACCA's costs in the sum of £1,000.00.

Mr Andrew Popat CBE
Chair
15 February 2022