

## HEARING

# DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

## REASONS FOR DECISION

**In the matter of:** Miss Yan Zhu

**Heard on:** Tuesday, 26 November 2024

**Location:** Remotely via Microsoft Teams

**Committee:** Mr Andrew Popat, CBE (Chair)  
Ms Fiona MacNamara (Accountant)  
Mr Andrew Skelton (Lay)

**Legal Adviser:** Ms Helen Gower

**Persons present**

**and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)  
Miss Sofia Tumburi (Hearings Officer)

**Observers:**

**Summary** Allegations 1a, 2, 3a and 4a proved  
Misconduct found proved  
Removal from student register of ACCA with immediate effect

**Costs:** £5,550

## SERVICE OF PAPERS

1. The Disciplinary Committee (“the Committee”) convened to consider allegations against Miss Zhu. Miss Zhu did not participate in the hearing, and she was not represented.

2. The Committee had before it the following papers: a DC Report and Bundle (numbering 1- 56 pages), an Additional Bundle (numbering 1-2 pages), a Service Bundle (numbering 1-21 pages), and a two-page Memorandum and Agenda.
3. The Committee considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“CDR”). The Committee considered the submissions made by Mr Jowett and also took into account the advice of the Legal Adviser.
4. Included within the Service bundle was the Notice of Hearing dated 29 October 2024, thereby satisfying the 28-day notice requirement, which had been sent to Miss Zhu’s email address as it appears in the ACCA Register. The Notice included the time, date, remote venue for the hearing and also Miss Zhu’s right to attend the hearing and to be represented if she so wished. In addition, the Notice provided details about applying for an adjournment and the Committee’s power to proceed in Miss Zhu’s absence, if considered appropriate.
5. The Service Bundle also included a statement from Miss Tumburi, Hearings Officer. Miss Tumburi confirmed that she sent the email dated 29 October 2024 containing the Notice of Hearing and a link to the SharePoint folder to Miss Zhu’s registered address. Miss Tumburi stated that she requested a delivery receipt for her e-mail, but that she has not received such a receipt. Miss Tumburi checked her e-mail ‘sent’ box and saw a copy of two emails sent to Miss Zhu at 9.56 am. Miss Tumburi resent the same emails to Miss Zhu’s registered e-mail address at 10.14-10.15 a.m.
6. Under Regulation 22(7)(c) of ACCA Complaints and Disciplinary Regulations 2014, the service of the Notice of Hearing may be proved by “*a signed statement from the person sending by post or delivering the notice in accordance with this regulation*”. The Committee accepted the statement of Miss Tumburi and was satisfied that Notice of the hearing had been served in accordance with the Regulations.

## **PROCEEDING IN ABSENCE**

7. The Committee heard submissions from Mr Jowett inviting the Committee to proceed in Miss Zhu's absence. He referred the Committee to the documents in the Service Bundle.
8. In addition to the Notice of Hearing, the Service Bundle included evidence of the attempts made by ACCA to contact Miss Zhu. The Committee noted the telephone attendance notes dated 30 October, 04 November and 11 November 2024 which records attempts made by the Hearings Officer to telephone Miss Zhu on the telephone number held by ACCA, and e-mails dated 30 October, 04 November and 11 November 2024 attaching the telephone attendance notes and requesting that Miss Zhu advise whether she will be attending the hearing. There has been no response from Miss Zhu to the Notice of Hearing or this correspondence.
9. The Hearings Officer sent a further e-mail to Miss Zhu on 25 November 2024 with the links to enable her to join the hearing.
10. Mr Jowett invited the Committee to conclude that Miss Zhu has received the Notice of Hearing and has voluntarily absented herself from the hearing. He submitted that the absence of a response from Miss Zhu to the Notice of Hearing was consistent with her failure to engage in ACCA's disciplinary investigation at any stage. Miss Zhu knew that she had been accused of cheating in her examination and had been referred to ACCA. She would therefore have expected to receive correspondence from ACCA. Mr Jowett also referred the Committee to the Additional Bundles which contained a file note dated 21 November 2024. The file note recorded that all the encrypted emails sent to Miss Zhu by the Investigations and Adjudication team were sent through ACCA's case management system. On this system a 'clasped hand' icon appears next to the email if the email has been opened. A screenshot from the case management system shows that an email sent to Miss Zhu on 31 March 2023 was opened on 21 April 2023 at 08.05.
11. The Committee accepted the advice of the Legal Adviser. It bore in mind that although it had a discretion to proceed in the absence of Miss Zhu, it should exercise that discretion with the utmost care and caution.
12. Having carefully considered the documents in the Service Bundle together with the evidence of Miss Tumburi, and the contents of the Additional Bundles, the

Committee was satisfied that Miss Zhu was or should be aware of today's hearing. Miss Zhu has not responded to any communications from ACCA and the Committee inferred that her absence is voluntary and that she has waived her right to attend the hearing.

13. The Committee was of the view that Miss Zhu faced serious allegations and that there was a clear public interest in the matter being dealt with expeditiously. The Committee considered an adjournment would serve no useful purpose because it was unlikely that Miss Zhu would attend on any other occasion, and she had not applied for an adjournment.
14. In all the circumstances, the Committee decided that it was in the interests of justice and in the public interest that the matter should proceed.

### **ALLEGATIONS**

The Committee convened to consider the following allegations:

1. During an AA examination on 06 June 2022, Miss Yan Zhu (Miss Zhu):
  - a. Was in possession of unauthorised materials comprising hand-written notes, contrary to Examination Regulation 4.
2. Miss Zhu intended to use the notes referred to in allegation 1(a) to gain an unfair advantage.
3. Miss Zhu's conduct in respect of 1(a) above was:
  - a. Dishonest, by reason of the matters referred to in allegation 2; in the alternative
  - b. Demonstrates a failure to act with Integrity
4. Miss Zhu is accordingly:
  - a. Guilty of misconduct pursuant to bye-law 8(a)(i) or alternatively in respect of allegation 1;

- b. In respect of allegation 1 only is liable to disciplinary action pursuant to bye-law 8(a)(iii).

## **BRIEF BACKGROUND**

15. On 24 March 2021 Miss Zhu became an ACCA registered student. She has had no previous attempts at the Audit and Assurance (AA) examination and has previously passed five ACCA examinations.
16. Miss Zhu attended the China C854 exam centre in China on 06 June 2022 to sit the AA examination. The exam commenced at 13.30 pm and was due to last for 3 hours 20 minutes.
17. All candidates for ACCA examinations are made aware of the Examination Regulations as they receive an attendance docket which contains the ACCA guidelines and Regulations.
18. ACCA received a report, completed on 06 June 2022, from the Supervisor of the C854 exam centre which indicated that during the AA examination Miss Zhu was found in possession of unauthorised materials in the form of notes. The unauthorised material consisted of a *“1 page. A4 size. Both sides with unauthorised materials”*. The report stated that the material was found at 15.48 pm and was *“found under the working paper”*. The supervisor stated that she believed the unauthorised material was used stating, *“Yes. There is evidence of the candidate looking at the material recorded by surveillance cameras.”*
19. Two other invigilators also present at the examination on 06 June 2022 completed SCRS1B forms, providing their own report on the incident.
20. On the day of the AA examination Miss Zhu completed an SCRS2B form in relation to the incident and the unauthorised material confirming that she had *“paper”*. When asked whether she accepted that the unauthorised materials were relevant to the syllabus being examined, Miss Zhu replied *“yes”* and that they were *“relevant to the examination”*. When asked about the purpose for which she had the unauthorised materials Miss Zhu stated, *“to review exam”*. In response to whether she used the unauthorised materials, Miss Zhu responded, *“No I only take it and forget to take out”*. Miss Zhu stated that she had not attempted to use the materials and did not intend to use the

unauthorised materials. Miss Zhu signed the form, confirming that the facts were a true reflection of the incident.

21. On 26 July 2022, ACCA's Exam's Conduct Department wrote to Miss Zhu in relation to the irregularity that had occurred at the exam centre. Miss Zhu did not provide a response and she did not respond to any subsequent correspondence sent to her by ACCA's Investigation Department.
22. On 03 March 2023, ACCA's Investigation Officer wrote to the Exam Centre and asked whether they were able to provide the CCTV footage referred to in the SCRS1B forms in relation to the incident. On 06 March 2023, the Exam Centre provided a response advising that no footage is available because the CCTV has only a real time monitoring function for surveillance at the time of the examination.

#### **DECISION ON FACTS, ALLEGATIONS AND REASONS**

23. The Committee had listened carefully to the submissions made by Mr Jowett and also considered legal advice, which it had accepted.

#### **ALLEGATION 1(A)**

24. The Committee noted that Miss Zhu signed the SCRS2B confirming that she had an unauthorised paper with her in the AA examination.
25. In reaching its findings of fact in respect of Allegation 1(a), the Committee had considered carefully, the following documentary evidence:
  - (i) SCRS1B form completed by the exam invigilator Person A with their signature and the date (06 June 2022). The form confirms that the unauthorised material was found at 15.48 p.m. Person A stated that the unauthorised material was used by Miss Zhu because there was evidence of Miss Zhu looking at the material recorded by surveillance cameras. Person A was alerted because "*the candidate moved her working paper from one side to another frequently*" and Miss Zhu "*refused to give the unauthorised material to the invigilator*".

- (ii) SCRS1B form completed by the exam invigilator Person B with their signature and the date (06 June 2022). The form confirms that the unauthorised material was found at 15.48 p.m. and was found “*under her scrapepaper on the desk near the keyboard (sic)*”. Person B states that they believed that the material was used because “*The invigilator Person A indicated that on the computer screen of the security cameras when the student was copying from the note under her scrapepaper (sic)*”.
  - (iii) SCRS1B form completed by the exam invigilator Person C with their signature and the date (06 June 2022). Person C also confirms that the unauthorised material were found at 15.48 p.m. They believed that the unauthorised material was used because “*CCTV showed [the candidate] was reading the prepared note*”. Person C confirms that Miss Zhu “*refused to give the note to invigilator*”.
26. The Committee found that the evidence of the supervisor and exam invigilators, in documentary form was consistent and credible.
27. The Committee was also provided with a report from the Examiner for the AA examination was asked to comment on Miss Zhu’s script. The Examiner confirmed that the unauthorised material was relevant to the syllabus and the examination. The Examiner stated that the unauthorised material had been used by the candidate and provided the following details: “*Prepared answers for audit risks and responses. Relevant to Q1G 8078. Prepared answers relevant to risks of new client, sales bonus, valuation of receivables. In the sales bonus risk the explanation of the risk (2<sup>nd</sup> para) is identical in wording to the unauthorised materials for most of the para. No credit was awarded for this by the original marker*”.
28. Exam Regulation 4 states:
- “*You are not permitted during the exam to possess (whether at your desk or on or about your person), use or attempt to use any notes, books or other written materials (whether in electronic form or otherwise) except those expressly permitted within the Exam Guidelines. These are known as ‘unauthorised materials’.*”

29. Miss Zhu made an unequivocal admission in the pro-forma she completed on the day of the examination that she was in possession of notes that were relevant to the examination. The Committee noted that the unauthorised materials were partly typewritten and partly handwritten, but it did not consider that this was material to the determination of Allegation 1(a).
30. The Committee found Allegation 1(a) proved by the documentary evidence.

## **ALLEGATION 2**

31. The Committee was referred by Mr Jowett to Exam Regulations 6(a) which provides:

*“If you breach exam regulation 4, or permit another person to act contrary to exam regulation 4, and the ‘unauthorised materials’ are relevant to the syllabus being examined, it will be assumed that you, and/or the other person, intended to use them to gain an unfair advantage for you, or others, in the exam, and/or a future exam. In any subsequent disciplinary proceedings, you will have to prove that you, and/or the other person, did not intend to use the ‘unauthorised materials’ to gain an unfair advantage for you, or others, in the exam and/or a future exam”*

32. The Committee having found Allegation 1(a) proved, Miss Zhu bore the burden of proving that she did not intend to use the ‘unauthorised materials’. Miss Zhu has not engaged with the ACCA investigation or this hearing and she has not discharged that burden of proof.
33. The Committee was also satisfied, on the balance of probabilities, that Miss Zhu did intend to use the ‘unauthorised materials’ to gain an unfair advantage. As an ACCA Student, Miss Zhu knew that she was not permitted to bring such materials into the examination. She was provided with the relevant guidelines in the attendance docket for the AA examination. Miss Zhu’s behaviour in the examination alerted the exam invigilator to the possibility that she may be using unauthorised materials, and such materials were found on Miss Zhu’s desk. Miss Zhu was observed to be moving her papers and looking at her notes. An Examiner for the AA examination reported that Miss Zhu used wording in her examination answers which was identical to that in her notes.



34. The Committee considered there was no satisfactory explanation for Miss Zhu's possession of the unauthorised material or her observed behaviour on 06 June 2022 and inferred that she intended to use her notes during the AA examination to give herself an unfair advantage over other candidates.
35. The Committee therefore found Allegation 2(a) proved.

### **ALLEGATION 3(A)**

36. In reaching its decision in respect of this allegation, the Committee applied the test for dishonesty as set out and prescribed in the decision of the Supreme Court in the case of *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67.
37. The Committee was satisfied that Miss Zhu, as an ACCA student participating in exams, was aware of the basic requirement that she should not receive any improper assistance in an exam and that such assistance would give her an unfair advantage over other students. Miss Zhu knew that she should not bring unauthorised materials into the exam and that use of such materials was prohibited.
38. The Committee was satisfied that, by the standards of ordinary decent people, Miss Zhu's conduct would be considered to be dishonest. Consequently, the Committee found Allegation 3(a) proved.

### **ALLEGATION 3(B)**

39. On the basis that this allegation was pleaded in the alternative to Allegation 2(b), the Committee made no finding in respect of it.

### **ALLEGATION 4(A)**

40. Taking account of its findings that Miss Zhu had acted dishonestly, the Committee was satisfied that she was guilty of misconduct. Such conduct fell far below the standards expected of an accountant and member of ACCA, and could properly be described as deplorable. In the Committee's judgement, it brought discredit to Miss Zhu, the Association and the accountancy profession.

41. The Committee found Allegation 4(a) proved.

#### **ALLEGATION 4(B)**

42. On the basis that this allegation was pleaded in the alternative to Allegation 4(a), the Committee made no finding in respect of it.

#### **SANCTION AND REASONS**

43. 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 listened to submissions from Mr Jowett, and to legal advice from the Legal Adviser, which it accepted.
44. 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.
45. The Committee considered whether any mitigating or aggravating factors featured in this case.
46. The Committee accepted that there were no previous findings against Miss Zhu. The Committee gave little weight to this mitigating factor because Miss Zhu had been an ACCA student for a short period of sixteen months. There was no evidence of any other mitigating factors in this case.
47. As for aggravating features, on the basis of the Committee's findings, it had been established that Miss Zhu's behaviour had been dishonest. Her actions involved some element of planning and pre-meditation. Miss Zhu copied at least one section of her notes into her examination answers which is a flagrant breach of the Exam Regulations. Her dishonest conduct was for her personal gain. There was also a risk that Miss Zhu would have gained qualification as an accountant without the necessary competence or experience. Miss Zhu therefore presented a risk to the reputation of the profession and could have caused harm or had an adverse impact on members of the public.

48. The Committee noted that Miss Zhu has not responded to ACCA's Investigations Officer and had shown neither insight nor remorse.
49. The Committee considered the sanctions in ascending order. It concluded that taking no action, or imposing an admonishment or a reprimand would not adequately reflect the seriousness of the Committee's findings.
50. The Committee then considered whether a severe reprimand would be an appropriate sanction. The Committee considered the Guidance for Disciplinary Sanctions paragraph C4.1. The Committee did not consider that there were particular circumstances of the case or mitigation advanced which satisfied the Committee that there was no continuing risk to the public. There was also no evidence of Miss Zhu's understanding and appreciation of the conduct found proved. The majority of the factors listed in paragraph C4.1 were not present.
51. Taking account of the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate. Miss Zhu had been found to have acted dishonestly.
52. The Committee considered the Sanctions Guidance at paragraph C5.1, noting that the sanction of removal from the student register is the most serious sanction that can be imposed on a member. The Committee considered Miss Zhu's conduct involved a serious departure from professional standards, dishonesty, lack of insight into the seriousness of the concerns, an attempt to cover up conduct through her reluctance to provide the unauthorised material to the exam invigilator, and the potential for the dishonest conduct to impact on clients, should she have qualified as an accountant without the necessary competence. Any one of these considerations may be circumstances in which removal from the student register may be appropriate, and in this case, there were many such circumstances.
53. In the Committee's judgement, Miss Zhu's overall conduct was fundamentally incompatible with being a student of ACCA and risked undermining the integrity of ACCA membership. The Committee adopted paragraph E2 of the Sanctions Guidance which stated that the reputation of ACCA and the accountancy profession was built upon the public being able to rely on a student or member to do the right thing in difficult circumstances. It noted this was a cornerstone of the public value which an accountant brings.

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

### **COSTS AND REASONS**

56. ACCA applied for costs in the sum of £6,225.50. The Committee was provided with a schedule of costs.
57. Despite being given the opportunity to do so, Miss Zhu did not provide any details of her means or provide any representations about the costs requested by ACCA. There was, therefore, no evidential basis upon which the Committee could make any reduction on this ground.
58. The Committee had in mind the principle that members against whom an allegation has been proven should pay the reasonable and proportionate cost of ACCA in bringing the case. This was because the majority of members should not be required to subsidise the minority of members or students who, through their own failings, have found themselves subject to disciplinary proceedings.
59. Mr Jowett highlighted to the Committee that the schedule of costs estimated the length of the hearing at 5 hours, but that the hearing has not taken this length of time. He suggested that the Committee may wish to reflect this position in any order for costs.
60. The Committee was satisfied that the costs claimed were appropriate and reasonable, but that the costs should be reduced by £675.50, which reflects the costs of the Case Presenter and Hearings Officer for 3 hours.
61. The Committee therefore made an order for costs in the sum of £5,550.

### **EFFECTIVE DATE OF ORDER**

62. In light of its decision, the Committee considered whether the order should take effect at the conclusion of the appeal period or whether it should have immediate effect. The Committee noted Miss Zhu's status as a student member. Given the seriousness of Miss Zhu's conduct the Committee was of the view that if an immediate order were not made, the wrong signal would be sent to members of the profession and members of the public. The Committee decided that it was in the interests of the public that the order should have immediate effect because of the gravity of Miss Zhu's conduct.

**Andrew Popat, CBE**  
**Chair**  
**26 November 2024**