

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Lew Yoke Peng

Heard on: Thursday, 14 March 2019

Location: ACCA, The Adelphi, 1-11 John Adam Street, London,
WC2N 6AU

Committee: HH Suzan Matthews QC (Chairman)
Mrs Andrea White (Accountant)
Mrs Lynne Jones (Lay)

Legal Adviser: Mr Richard Ferry-Swainson (Legal Adviser)

**Persons present
and capacity:** Ms Sarah Cawley-Wilkinson (ACCA Case Presenter)
Mr Richard Lorkin (Hearings Officer)

Observers: None

Summary: **Exclusion from membership**
Costs of £3,000.00

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INTRODUCTION

1. The Disciplinary Committee (“the Committee”) convened to consider a number of Allegations against Ms Peng, who did not attend, and was not represented.
2. The papers before the Committee were in a bundle, lettered A to I and numbered 1 to 128, additional papers, numbered 129 to 617, a costs schedule numbered 618 to 621, and a tabled bundle numbered 622 to 625. There was a service bundle numbered 1 to 15.
3. The Case Presenter made an application to proceed in the absence of Ms Peng.

SERVICE OF PAPERS /PROCEEDING IN ABSENCE

4. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by the Case Presenter on behalf of ACCA, and accepted the advice of the Legal Adviser.
5. Included within the service bundle was the Notice of Hearing dated 11 February 2019, thereby satisfying the 28 day notice requirement, and sent to Ms Peng by email. Proof of successful delivery was provided.
6. The Committee was satisfied that the Notice had been served in accordance with the Regulations. Having so determined, the Committee then considered whether to proceed in Ms Peng’s absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Ms Peng, it should exercise that discretion with the utmost care and caution, particularly as she was unrepresented.

7. Ms Peng had been engaging with ACCA, and had provided a significant amount of material for the Committee to consider. In a telephone conversation on 8 February 2019, with a Case Progression Officer at ACCA, she said that she would not be attending the hearing [Private], saying she consented, however, to the hearing proceeding in her absence. In an email to ACCA dated 8 March 2019, Ms Peng said that it was not convenient for her to participate in the hearing, because she had to look after her husband. She added that she had forwarded to ACCA, all the documents and evidence she wished to be presented to the Committee.
8. In light of that indication, the Committee concluded that Ms Peng had waived her right to be present and to be represented at this hearing. Ms Peng had been given the opportunity to participate by telephone or video link, but had not taken up the offer. She had not requested an adjournment and there was no indication that she would participate on another occasion, if the matter were to be adjourned.
9. In all the circumstances, the Committee decided that it was in the interests of justice that the matter should proceed, notwithstanding the absence of Ms Peng. In so doing, the Committee would draw no adverse inference from her absence, and would take into account all the information she had provided.

ALLEGATIONS/BRIEF BACKGROUND

10. It is alleged that Ms Peng is liable to disciplinary action on the basis of the following Allegations:

Allegations

Allegation 1

- (a) On 30 October 2017 the Petaling Jaya Magistrates Court convicted Ms Lew Yoke Peng of contempt of court, which was an offence under Article 26 (Contempt of Court) – Third Schedule (Section 99A) Subordinate Courts Act 1948 [Act 92].

(b) On 10 November 2017 the Petaling Jaya Magistrates Court fined Ms Lew Yoke Peng 3,000 Malaysian Ringgit, following her conviction of obstructing a public servant in the discharge of his public functions, contrary to Section 186 of the Malaysian Penal Code.

(c) By reason of her conduct at 1(a) and/or 1(b) above, Ms Lew Yoke Peng is liable to disciplinary action pursuant to bye-law 8(a)(ix).

11. Ms Peng became an ACCA member on 15 September 2004, and a fellow of ACCA on 15 September 2009.
12. On 12 December 2017, ACCA's Investigations Department received a query from ACCA Malaysia. Ms Peng had contacted ACCA Malaysia seeking financial assistance. ACCA Malaysia's query was about whether or not Ms Peng could be liable to disciplinary action under Bye-Law 8, because of the publicity related to the incident which led to her appearance in court, and because of the convictions she had received. On 13 December 2017, ACCA's Investigations Department opened an investigation.
13. It is Ms Peng's own account that on the day of the incident, which led to her conviction for obstructing a public servant, she had driven a car to a restaurant to buy food [Private]. Online media accounts of the incident record it as having taken place on 6 September 2017. Ms Peng said that she had parked in front of a restaurant where she bought food. She returned to find that her car was clamped. She said she was surprised because she had seen nothing to indicate the car could be clamped, and because the car had three disability (OKU) stickers. She contacted the parking officials responsible for the clamp.
14. Ms Peng's subsequent encounter with a parking official was filmed and published on social media and news sites. The video is said to show Ms Peng holding a steering wheel locking device while she speaks to the parking official. The Committee was not provided with that video.

15. Ms Peng has described incidents to the Investigations Officer, which she has said make her believe that people, possibly connected with a previous employer, are persecuting her. She said that the action of the parking official towards her on that day was another of those incidents.
16. On 30 October 2017, Ms Peng attended a Court hearing about the incident between her and the parking official. The charge was that she had obstructed a public servant in the discharge of his public functions. Ms Peng's actions at the hearing led to her conviction on 30 October 2017 for Contempt of Court. The court sentenced her to two weeks' imprisonment. Ms Peng said, in a document she provided in response to this investigation, that the incident in court happened when she was trying to explain about the video clip, and that the case was being manipulated.
17. On 10 November 2017, the court fined Ms Peng RM3,000 as a result of her conviction for obstructing a public servant. The fine was paid in full on the same day.
18. Notwithstanding the convictions, Ms Peng, in her written representations, maintained that she was innocent of any offence.

DECISION ON FACTS/ALLEGATIONS AND REASONS

19. The Committee considered, with care, all the evidence presented, and the submissions made by the Case Presenter, together with the submissions provided by Ms Peng. The Committee accepted the advice of the Legal Adviser and that matters had to be proved on the balance of probabilities.

Allegations 1(a) & (b)

20. The Committee was provided with confirmation of Court records from the Petaling Java Magistrates' Court, detailing Ms Peng's conviction on 30 October 2017 for Contempt of Court, and her sentence of two weeks' imprisonment.

21. The Committee was also provided with confirmation of Court records from the Petaling Java Magistrates' Court detailing Ms Peng's conviction on 10 November 2017, for an offence contrary to Section 186 of the Malaysian Penal Code (obstructing a public servant in the discharge of his public functions) and her sentence of a fine of 3,000 Malaysia Ringgit.
22. In the material provided by Ms Peng, it was clear that she disputes these convictions and, indeed, suggests they have been overturned. However, the Committee was satisfied they were subsisting, and found them proved on the basis of Bye-law 8 (as applicable in 2017), which states:

Liability to disciplinary action

8. (a) A member, relevant firm or registered student shall, subject to bye-law 11, be liable to disciplinary action if:

*(ix) before a court of competent jurisdiction in the United Kingdom **or elsewhere**, he or it has pleaded guilty to, been found guilty of, or has accepted a caution in relation to, any offence discreditable to the Association or to the accountancy profession; or ...*

e) For the purposes of bye-law 8(a)(ix), a copy of the certificate or memorandum of conviction or caution, and of any final judgment, ruling or determination given in the criminal proceedings, shall be conclusive proof of the conviction or caution, and of any facts and matters found, as the case may be.

Allegation 1(c)

23. The Committee then went on to consider whether, by reason of her conduct in Allegation 1(a) and/or 1(b), Ms Peng was liable to disciplinary action. The test from Bye-law 8, referred to above, is whether the offences were discreditable to the Association or to the accountancy profession.

24. Ms Peng provided written correspondence in which she detailed what she said occurred. With reference to obstructing the public servant, she said that she was advised by her lawyer to admit fault at court, but she had no intention of causing harm and it just so happened that she had opened her car and still had the steering lock in her hand. She said she was talking using hand gestures and movement, but no one was hurt and she did not hit anyone.
25. With reference to the Contempt of Court she said this was because she used her computer in court, but no one had told her that she was not allowed to do so. She said, *"I was with injuries on neck, hands, leg and twisted bone structure on shouter plus the hair was pulled off with the crystal was thrown towards me and caused neck injury and face was swollen. Hence, i have shouted "don't push my hand to backwards as i worry my broken hand and the disable hands" because of pains and by natural reaction i have used my denture to bite in order to release from the broken hands. (Merely defending) They are 5 or 6 officers who pushed me and i have withdrawn to the wall as maximum surrender posture. I have to use my hand to work and prepare bracelets for christmas sales. Anyway, the CCTV and satellites know the truth."* [sic]
26. In an email to ACCA dated 19 January 2018, Ms Peng provided more detail about what she said happened. She said she parked her car in front of a restaurant, and went in to buy food [Private], and also her business partner. She then went to a stationary store. When she returned to her car it had been clamped. She was "curious" because where she had parked was not normally a clamping zone and she had 3 OKU stickers (Disabled stickers) because her husband also drives the car. Ms Peng said she called the mobile phone contact number, but there was no reply. She was worried about the delay in getting the food home and also about her husband's safety because he had suffered falls. She then called 999, but was told it was not an emergency and to call 103, which she did, but which seemed to just be advertising. She then called the clamp contact number again and this time it was answered. She said that when the man turned up she was fearful because of a previous incident, where a motorist was attacked outside their

office, and she was worried there might be another motive such as kidnapping or stealing her car, because it was a non-clamping zone. She said, *“Hence, I am holding the car steering lock with intention to unlock the car if they toll off my car and whack my head as a protection action as a lady from being whack by 6 crash helmets. I was surrounded by 6 authorities with crash helmets.”* She said that she was explaining to the men that it was not a clamping zone, and she had bought food for her disabled husband and had to rush back. She asked them to unclamp the car, but they would not, and she started to worry about her safety. She said, *“There were so many of them (which I have captured into my video handphone) and they were moving around and laughing at me, bullying me to produce the KAD OKU.”*

27. Ms Peng went on to say that she raised her voice, as she was fearful of them. She also feared they would take her car away and remove car parts from it. She said she felt humiliated, and she refused to allow them to take away her car, and she tried to lock the steering wheel using the steering wheel lock. She then said, *“However, the MPJS officers continued to bully me till I couldn’t steering lock my steering wheel, and unknowingly I was still holding the steering lock, we had further argument which I was still holding the steering lock. Inevitably, I further scolded the MPJS officer with my hand holding the steering lock but it was Never to hurt him or anyone. It was just like a MOTHERHOOD HOLDING A CANE STICK, as I am a mother myself.”* Ms Peng said that she then went to put the steering lock back in the car, but the officer closed the door on her leg. With reference to the video recording of the event which went “viral” on the internet, she said it did not show the whole event, but that she had the video clips which showed how the officers laughed, and bullied her and hurt her leg. She maintained that she was not threatening the officers.
28. Ms Peng also made reference to being a victim of personal attacks, including car accidents, and her rented room being broken into, and she appeared to link these with her business and people who wanted to do her harm.

29. In a telephone conversation with ACCA on 16 July 2018, Miss Peng said that she was the victim, and she was the innocent party in these incidents.
30. The Committee did not have any prosecution evidence about the narrative of the two incidents which led to the convictions, although it did have the various accounts given by Miss Peng. Notwithstanding the lack of any detail about the facts behind the convictions, obstructing officers carrying out their lawful duty, and acting in Contempt of Court is a serious departure from the standards expected from a professional accountant, and member of ACCA. Whatever her concerns may have been when her car was clamped, and also when she was in court, the Committee was satisfied that Miss Peng's behaviour, as reflected by her convictions, was discreditable to the association and to the accountancy profession. Accordingly, the Committee found Allegation 1(c) proved.

SANCTION AND REASONS

31. In reaching its decision on sanction, the Committee took into account the submissions made by Ms Cawley-Wilkinson, and all matters of mitigation provided by Ms Peng. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA, and had in mind the fact that the purpose of sanctions was not to punish Ms Peng, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.
32. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
33. The Committee considered the following aggravating features: complete absence of insight and/or appropriate remorse - she admitted she recorded the proceedings in court, but not that she was in contempt of court; her sentence of immediate imprisonment indicated the seriousness of the behaviour; significant negative online publicity.

34. When considering mitigating factors the Committee took into account the record made of the telephone conversation on 16 July 2018, referred to above, where Ms Peng stated she was not in public practice. She said she does the books for her own business, which is an advertising business, directing people to services they can find online. Her website has a section about accounting and bookkeeping, with three levels of service. She does not provide those services, but directs people to computer packages that will. She said she does not accept any accounting work. She described how difficult her working life was: running the business on her own [Private]; running the house on her own for the same reason; being a carer [Private]; and accepting the emotional cost of being a carer. She said the business was surviving on minimum funds. The Committee also took into account: the lack of any previous disciplinary matters before ACCA; a potentially heightened vulnerability because of a previous incident where she was the victim of an attack, [Private], which may have impacted upon her behaviour; and an apology to the Malaysian Court about recording proceedings.
35. The Committee considered all the options available from the least serious upwards. The Committee did not think it appropriate to take no further action, to admonish or to reprimand, in a case where there had been two convictions for serious offences, one of which had resulted in an immediate custodial sentence.
36. The Committee then considered whether a severe reprimand would adequately reflect the seriousness of the case. The guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature, but where there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved. The guidance adds that this sanction may be appropriate where most of the following factors are present:

- the misconduct was not intentional and is no longer continuing;
- no evidence that the conduct caused direct or indirect harm;
- insight into failings;
- genuine expression of regret/apologies;
- previous good record;
- no repetition of failure/conduct since the matters alleged;
- rehabilitative/corrective steps taken to cure the conduct and ensure future errors do not occur;
- relevant and appropriate references;
- co-operation during the investigation stage.

37. Whilst some of these factors were present, many were not. The Committee could not conclude that there was no continuing risk to the public, and there was no evidence of Ms Peng's understanding and appreciation of the conduct found proved. Ms Peng's behaviour reflected poorly upon the profession and ACCA. The Committee considered it important that professional accountants be aware that they should not behave in this way.

38. In all the circumstances, and following ACCA's guidance, the Committee concluded that the only appropriate and proportionate sanction was exclusion from membership. Obstructing public officials in the course of their lawful business, and acting in Contempt of Court, is very serious and, without insight or acceptance of the behaviour, fundamentally incompatible with being a member of ACCA. The Committee was concerned that, in light of the lack of insight or acceptance of the majority of her behaviour, the conduct could well be repeated if Ms Peng found herself in another stressful situation. Whilst there has been no criticism of Ms Peng's professional performance, the Committee was mindful of the importance of upholding the reputation and standards of the profession. The Committee was therefore satisfied that no other sanction would adequately reflect the gravity of her offending behaviour.

39. The Committee also considered that a failure to exclude a member who had behaved as Ms Peng had behaved, would seriously undermine public confidence in the profession, and in ACCA as its regulator. In order to maintain public confidence and uphold proper standards in the profession it was necessary to send out a clear message that this sort of behaviour falls far below the standard expected of a member of the profession.
40. The Committee therefore ordered that Ms Peng be excluded from membership.

COSTS AND REASONS

41. ACCA applied for costs in the sum of £7,147.93. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable, except for the estimates for the Case Presenter and Hearings Officer for today's hearing which, in the event, took less than a full day. The Committee therefore made a reduction to reflect this.
42. Ms Peng did not provide any specific details of her means, or provide any representations about the costs requested by ACCA. However, there was much in the material she did provide, including her year-end accounts for 2017, to suggest that she was of limited means. She had said her business was surviving on minimum funds, and she was a full-time carer [Private].
43. In light of its observations above, the Committee reduced the amount requested, and made an order in the sum of £3,000.

EFFECTIVE DATE OF ORDER

44. This order will take effect at the conclusion of the appeal period.

HH Suzan Matthews QC
Chairman
14 March 2019