

## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Miss Dongyi Li

**Heard on:** Thursday, 12 September 2019

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

**Committee:** Mrs Judith Way (Chairman)  
Mr Robert Clarke (Accountant)  
Ms Helen Kitchen (Lay)

**Legal Adviser:** Ms Judith Chrystie (Legal Adviser)

#### Persons present

**and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)  
Mr Richard Lorkin (Hearings Officer)

**Outcome:** **Removal from the student register.**  
**Disqualification from the Strategic Business Reporting**  
**exam, taken on 06 December 2018.**  
**Costs to be paid to ACCA in the sum of £4,000.**

#### ACCA



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## **SERVICE OF PAPERS**

1. Miss Li was neither present nor represented.
2. The Committee had the following papers before it:
  - (a) Bundle with pages, numbered 1-144;
  - (b) Service Bundle 1 with pages, numbered 1-17;
  - (c) Tabled Additional 1 with pages, numbered p1-3; and
  - (d) Tabled Additional 2 with pages, numbered p1-4.
3. The Committee considered its papers in order to determine whether there had been effective service of the notice of the hearing in accordance with the Complaints and Disciplinary Regulations 2014 (amended 2019) ('the Regulations'). The Committee was satisfied that there was good service.

## **PROCEEDING IN ABSENCE**

4. The Committee recognised that it needed to consider with the utmost care and caution whether or not to proceed in Miss Li's absence. The Committee determined that it was fair to proceed in accordance with its discretionary power at Regulation 10(7) of the Regulations.
5. Miss Li had engaged with ACCA during both its investigation and the preparation for the hearing. This included completing a Case Management Form dated 12 July 2019, in which she stated that she did not intend to attend the hearing in person or on the telephone or via video link. From all the material before it, the Committee concluded that it was plain that Miss Li did not intend to be present at the hearing either in person or remotely today, or on a different date if the hearing was re-scheduled. No application to adjourn had been received and, within the Case Management Form, Miss Li had stated that she consented to the Committee hearing the case in her absence. The Committee considered that there was no purpose in adjourning the hearing. At no point had Miss Li suggested that she wished to attend the hearing, and therefore, in the Committee's view, it was unlikely

that she would attend at a later date.

6. Further, the Committee recognised that there was a public interest in regulatory proceedings being considered and concluded expeditiously.
7. In all the circumstances, after careful consideration, the Committee determined that Miss Li had voluntarily waived her right to attend the hearing, and it was reasonable and fair to proceed in her absence.

#### **PRELIMINARY APPLICATION**

8. ACCA applied to the Committee to amend Allegation 1(a) to insert the words, 'namely a revision note'. The Case Presenter described the change as 'minor'. Miss Li had been informed of ACCA's intention to amend the allegation in an email dated 2 September 2019. No response had been received from Miss Li.
9. ACCA submitted that the additional words were for clarification purposes only, and that their insertion did not alter the substance of the allegations against Miss Li nor prejudice her.
10. In determining whether to grant the application by exercising its discretionary power under regulation 10(5) of the Complaints and Disciplinary Regulations, the Committee considered whether or not Miss Li would be prejudiced in the conduct of her defence. It was satisfied that the insertion of the phrase 'namely a revision note' added further specification and particularisation of an aspect of the allegation. The amendment neither increased nor decreased the substance or the seriousness of the allegation but provided clarification. In this regard, the Committee noted that in the correspondence between Miss Li and ACCA during the investigation process both described the unauthorised material as a revision note or a study note. It appeared to the Committee that there was common ground that the unauthorised material was a revision note. Further, the Committee

was content that Miss Li had admitted to the substance of the allegations against her. As a consequence, the Committee was satisfied that amending the allegation would not adversely impact on Miss Li; the amendment would not prejudice the conduct of her defence, and it determined to grant ACCA's application.

## **ALLEGATION/BRIEF BACKGROUND**

11. The Committee considered the following allegations (as amended):

### Allegation 1

- a. During a Strategic Business Reporting examination on 6 December 2018 in Hong Kong, Miss Dongyi Li was in possession of unauthorised materials, namely a revision note, which she had at her desk, contrary to Examination Regulations 4 and 5.
- b. Miss Dongyi Li intended and further attempted to use any or all of the unauthorised materials set out at 1(a) above to gain an unfair advantage.
- c. Miss Dongyi Li's conduct in respect of 1(b) above was:
  - (i) dishonest, in that Miss Dongyi Li intended and attempted to use any or all of the unauthorised materials which she had at her desk to gain an unfair advantage; or in the alternative
  - (ii) contrary to the Fundamental Principle of Integrity (as applicable in 2018) in that such conduct demonstrates a failure to be straightforward and honest.
- d. By reason of her conduct, Miss Dongyi Li 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.

12. On 22 September 2015, Miss Li first registered as an ACCA student.
13. On 6 December 2018, Miss Li attended the MacPherson Examination Centre in Hong Kong, to sit the Strategic Business Reporting exam. It was her third attempt at the exam, which is the final assessment she needs to pass in order to complete the ACCA qualification.
14. On the day of the examination, the centre Supervisor completed a SCRS 1A report (reports of inappropriate/unprofessional behaviour) form which stated that Miss Li had a paper hidden under her thigh, which was confiscated from her, although she had been un-cooperative when first asked to hand in the paper.
15. Also on 6 December 2018, an Invigilator at the exam completed an SCRS 1A which said that: *'The candidate was suspected cheating'* and that she had reported the incident to the centre Supervisor immediately, and did not speak to the student.
16. The Invigilator provided some further information to ACCA's Investigations Officer on 28 February 2019 in response to some further questions about the incident. She said that:
  - a. She had noticed that the candidate looked at her chair from time to time;
  - b. She reported the candidate's behaviour to the centre supervisor;
  - c. A small piece of paper was hidden under the candidate's thigh;
  - d. The candidate had finally passed the paper to the supervisor who placed it into a plastic bag as evidence.

17. The Examiner's Irregular Script report dated 28 December 2018 confirmed that the unauthorised material was relevant to the exam syllabus, and was relevant to the particular examination. The Examiner stated that the notes had been used during the exam – although the Case Presenter did not rely on this aspect of the Irregular Script, and it was disputed by the Miss Li.

18. On the day of the examination, Miss Li completed an SCRS 2A form (statement by the student about incidents of inappropriate/unprofessional behaviour) in which she stated that she:

- a. Realised that she had a revision note with her when she was struggling with the second question in the test;
- b. Took the note out of her pocket, hid it under her thigh and was then '*caught by a lady in the exam*';
- c. Did not obtain any useful information from the note (but was not trying to excuse her, '*inappropriate behaviour*');
- d. Was, '*sincerely sorry*';
- e. Understood the, '*possible punishment*' but, '*would like to beg for a chance to continue her professional career*';
- f. Described her behaviour as, '*unhonest*'.

19. On 7 December 2018, Ms Li emailed ACCA to provide further clarification and to apologise for bringing in the revision note. She stated that she:

- a. When she prepared the revision note, she had no intention to use it as a cheat sheet;
- b. Understood that the revision note was unauthorised material that she should not have brought into the exam hall;

- c. Threw out all her notes but must have left one piece in her pocket which she realised was there during the exam, at which point she removed it with the intention of using it;
- d. Was under great pressure and had a moment of weakness;
- e. Was feeling insecure in her ability to do well and that anxiety caused her to act irrationally;
- f. Was very ashamed of her '*wrong behavior*';
- g. Would like to continue taking exams until she became a qualified member;
- h. Offered her sincerest apologies, asked that her paper was disqualified and that she was given a second chance as being removed from the student register would lead to her losing her job, and might end her career.

20. In a letter dated 28 February 2019 to ACCA, Miss Li maintained her admissions and replied to questions from ACCA, to advise that she understood the examination regulations, had taken action to comply with them, but had inadvertently left one of her study notes in her pocket. She admitted to taking a '*peek*' at the note when she thought no one was looking and said that she was caught before she had even finished looking at the first line of the note. However, she stated that this was the, '*first time that [she] had ever behaved dishonestly in an exam*'. She stated that she was cooperative when approached by the centre Supervisor and Invigilator, but she had been, '*embarrassed and ashamed and her mind had gone blank so she could not respond to anything.*'

## DECISION ON FACTS/ALLEGATION AND REASONS

21. Miss Li had made an early admission – which she had consistently maintained - that she possessed, and sought to use, unauthorised material, namely a revision note, during the examination on 6 December 2018. Further, she admitted that, although she had not prepared the note with the intention of cheating, when she found it in her pocket during the exam, she did intend to use it to gain an unfair advantage.
22. Following Miss Li's admissions in the Case Management Form, as well as through her correspondence with ACCA, the Committee was satisfied that factual Allegations 1(a) and (b) were established. The Chair announced they were proved in accordance with Regulation 12(3)(c) of the Regulations.
23. In relation to Allegation 1(c)(i) – the allegation of dishonesty - the Committee applied the two stage subjective and objective test set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67* to determine whether Miss Li had been dishonest. In seeking to ascertain the actual state of the Miss Li's knowledge or belief as to the facts, the Committee considered her written communications with ACCA, Miss Li described her behaviour as '*inappropriate*', '*wrong*', '*unhonest*' and that '*was the first time I ever behaved dishonestly in an exam*'. These descriptions, together with other phrases used by Miss Li, such as '*being caught*' and taking '*a peek at the note*' and, '*I have to admit, with shame, that instead of reporting the issue to the exam staff, I was intending to use the note after I took it out*', satisfied the Committee that Miss Li had - and was aware she had - a dishonest state of mind when she attempted to use the note.
24. Having identified Miss Li's state of mind as dishonest, the Committee considered the objective limb of the test for dishonesty, namely, whether her conduct was honest or dishonest by the standards of ordinary people. The Committee considered that it was plain that the ordinary



person would regard intending to cheat in a professional exam as dishonest. The Committee found Allegation 1(c)(i) proved.

25. Having found Allegation 1(c)(i) proved, the Committee did not go on to consider Allegation 1(c)(ii), which was charged in the alternative.

26. In relation to the allegation of misconduct at Allegation 1(d)(i), the Committee considered that Miss Li's dishonest conduct fell far short of the standards expected of students of the accountancy profession, and was entirely unacceptable conduct, which brought the profession into disrepute. The Committee considered that dishonesty could not be anything other than a serious departure from the standards expected. The Committee judged that Miss Li's conduct clearly amounted to misconduct and therefore found Allegation 1(d)(i) proved.

27. Having found Allegation 1(d)(i) proved, the Committee did not go on to consider Allegation 1(d)(ii), which was charged in the alternative.

## **SANCTIONS AND REASONS**

28. The Committee had regard to the Guidance for Disciplinary Sanctions ('the Guidance').

29. The Committee reviewed what mitigation existed in the case. It was advised that Miss Li had no previous disciplinary or complaint history. Further, the Committee recognised that Miss Li had made early admissions, had apologised and shown remorse, had some insight into the possible consequences of her conduct and had cooperated fully with ACCA. The Committee also considered Miss Li's explanation that because this was the only exam she needed to pass to be qualified with ACCA, this placed her under pressure, and she said led her to behave irrationally in, in effect, 'a moment of weakness'. The Committee considered that this explanation needed to be balanced against the fact that had she passed this final exam, she might have gained qualification

by virtue of cheating, and without demonstrating that she had, in fact, the requisite knowledge and understanding deemed appropriate and necessary to achieve ACCA qualification.

30. The Committee did not consider that there were any aggravating circumstances in the case other than the finding of dishonesty.

31. The Committee regarded Miss Li's misconduct and related dishonesty as serious; Miss Li attempted to cheat in a professional exam. Such cheating could detrimentally impact on the public's confidence in the integrity and credibility of ACCA's exams and qualifications. The Committee acknowledged the mitigation in the case. However, it considered there was not sufficient mitigation, in a case involving dishonesty, for it to be in the public interest to impose no order or to conclude this matter with an admonishment or a reprimand. The Committee took account of paragraph E2 of the Guidance, which stated that the public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. Miss Li sought to look at a note containing information relevant to the examination she was sitting with the intention to cheat. The Committee considered that making no order or imposing an admonishment or a reprimand would not reflect the seriousness of Miss Li's choice of actions, and the dishonest intention she formed by seeking to use the note.

32. The Committee reviewed the Guidance in relation to a sanction of a severe reprimand. The Committee considered that Miss Li had demonstrated insight, had apologised, had a previous good record, had not repeated her misconduct (although she had had no opportunity to do so) and had cooperated with ACCA's investigation. However, the Committee also considered that important factors that might indicate that a severe reprimand was a reasonable and proportionate sanction were not present in this case. In particular, the Committee considered that Miss Li's actions were intentional, the misconduct had the potential to

cause harm (in that Miss Li would have gained her qualification by dishonest means rather than demonstrating her knowledge and understanding in order to pass the examination unassisted by cheating), and Miss Li had not provided references. As a consequence, the Committee considered that it would not be proportionate and sufficient in the public interest to impose a severe reprimand.

33. The Committee recognised that ACCA's Examination Regulations expressly provide that if a student attempts to gain an unfair advantage in the exam, he or she is likely to be removed from the student register following disciplinary proceedings. The Committee found no exceptional circumstances in the case, and considered that the only appropriate order in the public interest was to remove Miss Li's name from the student register. This reflected the seriousness and significance of her misconduct and dishonesty.

34. The Committee, therefore, ordered that Miss Li should be removed from the student register and that any future application should be referred to the Admissions and Licensing Committee. It made no order in relation to the period of time that should elapse before an application for readmission should be considered nor did it consider that imposing the order with immediate effect was necessary in the public interest. The order will therefore take effect following the expiry of the appeal period, or on the conclusion of any appeal.

35. The Committee further ordered that Miss Li should be disqualified from the Strategic Business Reporting examination on 6 December 2018.

### **COSTS AND REASONS**

36. ACCA claimed costs in the sum of £6,024.46. The Case Presenter submitted that this sum should be reduced to £4539.46 in recognition that the hearing had not lasted the full time estimate.

37. The Committee recognised that under Regulation 15(1) of the Regulations, it could direct that Miss Li pay such sum by way of costs to ACCA as it

considered appropriate. In determining whether an order for costs was appropriate, the Committee was satisfied that Miss Li's conduct had not had any adverse impact on the costs incurred.

38. However, the Committee considered that further cost reductions were necessary to reflect the reduced hearing time and determined that an appropriate cost claim would be in the sum of £4000. It considered that this sum reflected the amount properly incurred in investigating and hearing the allegations against Miss Li.

39. Miss Li had not provided any statement or evidence as to her means. The papers before the Committee suggested that Miss Li was working and therefore had an income. In the circumstances, the Committee considered that there was no evidence about Miss Li's means or ability (or otherwise) to pay the costs of the hearing to justify a further reduction to the costs.

40. The Committee ordered that Miss Li should pay costs in the sum of £4,000.

**Mrs Judith Way**  
**Chairman**  
**12 September 2019**