

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Miss Lin Xiaoting</b>
<b>Heard on:</b>	<b>Thursday, 02 July 2020 and Tuesday, 20 October 2020</b>
<b>Location:</b>	<b>Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU</b>
<b>Committee:</b>	<b>Ms Wendy Yeadon (Chair) Mr Constantinos Lemonides (Accountant) Ms Lorna Jacobs (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Robin Havard (Legal Adviser)</b>
<b>Persons present and capacity:</b>	<b>Ms Michelle Terry (ACCA Case Presenter) Mr Jonathan Lionel (Hearings Officer) Ms Anna Packowksa (Support Hearings Officer) on 02 July 2020.</b>
<b>Observers:</b>	<b>None</b>
<b>Summary</b>	<b>Reprimand</b>
<b>Costs:</b>	<b>£1,000</b>

#### PRELIMINARY APPLICATIONS

#### SERVICE OF PAPERS

1. The Committee had considered the following documents: a hearing bundle (pages 1 to 45), a Tabled Additional (1) bundle (pages 1 to 3) and a service bundle (pages 1 to 15).

2. Having considered the letter dated 04 June 2020 sent by ACCA by email to Miss Lin, and the subsequent emails sent to Miss Lin with access to documents relating to this hearing, the Committee was satisfied that such emails had been sent to her registered email address in accordance with Regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had also noted that the email had been delivered successfully. The emails and the documents to which Miss Lin had access also contained the necessary information in accordance with CDR10. Consequently, the Committee decided that Miss Lin had been properly served with proceedings.

#### **PROCEEDING IN ABSENCE**

3. On 29 June 2020, in the absence of any response from Miss Lin to the email of 4 June 2020, ACCA sent another email to her at the same email address asking her to respond and reminding her of the date of hearing. As in the letter of 04 June 2020, Miss Lin was informed that she was able to join the hearing via telephone or video link. The email had been delivered successfully. However, Miss Lin did not reply.
4. On 30 June 2020, the Hearings Officer of ACCA attempted on two occasions to phone Miss Lin to speak to her about the forthcoming hearing. However, on both occasions, after several rings, the call was disconnected.
5. The Committee was satisfied that ACCA had done everything possible to engage Miss Lin in the proceedings, but she clearly had no intention of doing so. The Committee noted that the emails had been sent to the same email address to which ACCA had sent previous emails in October, November and December 2019, all of which had been delivered successfully but none of which had elicited a response.
6. The Committee found, on the balance of probabilities, that Miss Lin had received the emails from ACCA informing her of the hearing and giving her access to the documents containing the evidence on which ACCA relied in

support of the allegations. The Committee concluded that Miss Lin had voluntarily absented herself from the hearing which she could have joined by telephone or video link if it was not possible for her to attend in person. She had, therefore, waived her right to attend.

7. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made. Finally, the Committee considered that it was in a position to reach proper findings of fact on the written evidence presented to it by ACCA.
8. The Committee ordered that the hearing should proceed in the absence of Miss Lin.

#### **AMENDMENT**

9. The Case Presenter made an application for a number of the allegations to be amended.
10. In Allegations 1.2 and 1.2.1, Ms Terry requested that the references to Allegation 1a should in fact be to 1.1.
11. Ms Terry was also asked for clarification with regard to Allegation 1.3.2 and whether the allegation of a breach of the Fundamental Principle of Integrity should be alleged as an alternative to the allegation of dishonesty at Allegation 1.2.1. Ms Terry confirmed this was the case and requested that Allegation 1.3.2 should become 1.2.2 and that 1.3.2 should now allege a breach of byelaw 8(a)(iii) as an alternative to the allegation of misconduct at paragraph 1.3.1.
12. With regard to Particular 2, Ms Terry requested that this should be amended to Allegation 2.

13. As for Allegation 2.1, it was pointed out to Ms Terry that, as drafted, it did not amount to an allegation and that it seemed to be the case that, in effect, Allegations 2.1 and 2.2 amounted to one allegation and so should be merged. Ms Terry agreed and requested the merger of Allegations 2.1 and 2.2.
14. Ms Terry also requested that Allegation 2.2.2 (as currently numbered) should refer to correspondence dated 28 November 2019 as opposed to 08 November 2019.
15. Due to the merging of Allegations 2.1 and 2.2, the numbering of the subsequent paragraphs would also need amending.
16. The Committee had considered the applications being made by Ms Terry. It was concerned that, at this stage in the proceedings, the Committee was being asked to consider such a number of amendments to the allegations against Miss Lin.
17. However, having considered the proposed amendments individually and then cumulatively, the Committee was satisfied that Miss Lin would not be prejudiced in any defence she may have pursued had she attended the hearing. The evidence on which ACCA sought to prove the allegations remained the same and, even before the amendments, the substantive nature of the allegations was capable of being understood. On this basis, the applications to amend the allegations were granted.

## **ALLEGATIONS as amended**

### Allegation 1

- 1.1 On or around 19 September 2019, ACCA student Miss Lin Xiaoting / 林小婷 offered to sell ACCA F1 / AB CBE (computer-based exam) questions on [www.1688.com](http://www.1688.com) web site.
- 1.2 Miss Lin Xiaoting / 林小婷's conduct in respect of the matters set out at 1.1

above was:

1.2.1 Dishonest in that she offered to assist another/ other exam entrants to gain an unfair advantage in one or more of the ACCA exams referred to in 1.1 above in return for payment; or alternatively

1.2.2 Contrary to the Fundamental Principle of Integrity in that such conduct is not straightforward and honest.

1.3 By reason of her conduct Miss Lin Xiaoting / 林小婷 is:

1.3.1 Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of 1.1 and/or 1.2 above; or alternatively

1.3.2 In breach of byelaw 8(a)(iii)

## Allegation 2

2.1 Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss Lin Xiaoting / 林小婷 has failed to co-operate fully with the investigation of a complaint in that she failed to respond at all to any of ACCA's correspondence dated:

2.1.1 25 October 2019;

2.1.2 28 November 2019; and

2.1.3 13 December 2019.

2.2 By reason of her conduct in respect of any or all of the matters set out at 2.1 above, Miss Lin Xiaoting / 林小婷 is:

2.2.1 Guilty of misconduct, pursuant to byelaw 8(a)(i); or alternatively

2.2.2 In breach of byelaw 8(a)(iii).

## **APPLICATION TO ADJOURN HEARING ON 02 JULY 2020**

18. Following Ms Terry outlining the case on behalf of ACCA, the Committee raised a number of questions relating to the examination process, particularly with regard to access to past papers which were often made available when preparing for an exam, and whether the situation was different in any way with regard to computer-based exams. Ms Terry was unable to indicate whether ACCA published past computer-based exam questions nor whether ACCA would publish answers to questions contained in past papers.
19. It was agreed that the Committee would retire to enable Ms Terry to find out whether that information could be obtained but the Committee was advised that, if Ms Terry was able to obtain such information, this would represent additional evidence which Ms Terry herself would not be able to introduce to the Committee and it would also represent evidence which had not been served on Miss Lin. Ms Terry confirmed that, if she was able to obtain the additional evidence, it may be necessary for her to request an adjournment so that the evidence could be served on Miss Lin and provided to the Committee.
20. The Committee also indicated that it may be helpful for Mr Docherty, whose evidence was relied upon by ACCA in respect of Allegation 1.1, to be available to answer questions if the matter was adjourned.
21. On resumption of the hearing, Ms Terry confirmed that she had been able to obtain answers to the questions raised by the Committee. Ms Terry suggested that some of the material would be on the website, but the Committee did not have that material in front of it and it would be inappropriate for such evidence to be produced at this stage. Indeed, the Committee noted that much of ACCA's case was based on a screen shot of a page on a website, but this had been properly served on Miss Lin to provide her with an opportunity to respond.
22. The Committee understood that, in accordance with CDR10(8)(c), it had a wide discretion to adjourn a hearing at any time during the hearing.

23. Ms Terry requested an adjournment so that she could furnish the Committee and serve on Miss Lin evidence with regard to the process followed by ACCA when conducting exams and the publication of past papers and in order for Mr Docherty to be available to give oral evidence so that the case can be presented by ACCA in full.
24. The Committee considered that the following options were available to it: first, that any further evidence was now inadmissible and that the hearing should continue with ACCA having to rely on the evidence it had served and presented in order to endeavour to prove the allegations to the required standard; alternatively, the hearing should be adjourned in the interests of a fair hearing and in the public interest so that the additional evidence could be served on Miss Lin and supplied to the Committee. It would then be possible for Mr Docherty to attend to answer any questions the Committee may wish to put to him.
25. The Committee concluded that, whilst unfortunate, and whilst it fully recognised that Miss Lin may continue to decline to engage with the process, it was in the interests of a fair hearing, and in the public interest, for the case to be adjourned to the first available date. This was to enable ACCA to serve on Miss Lin a transcript of today's hearing, any additional evidence on which it wished to rely, and for Mr Docherty to attend to give evidence at the adjourned hearing.

#### **HEARING ON 20 OCTOBER 2020**

#### **SERVICE**

26. In advance of the resumption of the hearing, the Committee had considered the following additional documents: an Additional bundle (1) (pages 1 to 3); an Additional bundle (2) (pages 1 to 7) and service bundle 1 (pages 1 to 10).
27. The Committee noted that notice of the adjourned hearing date had been served on Miss Lin by an email dated 22 September 2020 together with emails

enabling Miss Lin to access the additional evidence on which ACCA wished to rely.

28. The Committee was satisfied that such emails had been sent to her registered email address and that the email had been delivered successfully. The Committee was, therefore, satisfied that Miss Lin had been effectively served with notice of the adjourned hearing.

### **PROCEEDING IN ABSENCE**

29. On 13 October 2020, in the absence of any response from Miss Lin to the email of 22 September 2020, ACCA sent another email to her at the same email address asking her to respond and reminding her of the date of hearing.
30. As in the email of 22 September 2020, Miss Lin was informed that she was able to join the hearing via telephone or video link. The email had been delivered successfully. However, Miss Lin did not reply.
31. Taking account of the non-appearance of Miss Lin at the hearing on 02 July 2020, the Committee concluded, for the same reasons, that it was appropriate to proceed in the absence of Miss Lin. There was no indication that Miss Lin wished to participate in the hearing, and that she had waived her right to attend.

### **DOCUMENTS**

32. The document contained in additional bundle (1) was simply a further copy of the document contained in the Tabled Additional (1). At pages 6 and 7 of additional bundle (2), there were emails dated 30 July 2020 from ACCA confirming that the person described as the seller on the webpage was not a student registered with ACCA.
33. The Committee concluded that it was appropriate to allow those documents to be admitted at this stage. They had been sent to Miss Lin well in advance of



today's hearing and they were relevant to the issues to be determined by the Committee.

### **WITNESS EVIDENCE**

34. Additional bundle (2) contained a witness statement of Mr Stuart Hardie.
35. The reason for the adjournment of the hearing on 02 July 2020 was to enable ACCA to provide further evidence of the exam process and for Mr Docherty to be available to answer any questions the Committee may wish to ask him by way of clarification.
36. The statement of Mr Hardie provided further information with regard to the exam process, to include the way in which ACCA set exam questions and make available questions to assist students in their revision.
37. On this basis, the Committee allowed his statement into evidence.

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

#### **Allegation 1.1**

38. The Committee had considered carefully the content of the statement provided by Mr Kieran Docherty dated 04 October 2019 and the unsigned and undated statement of Mr Stuart Hardie. Mr Docherty worked within the ACCA Computer-based exam ("CBE") Delivery Team and Mr Hardie is a CBE team manager. The content of both statements was unchallenged, together with the documents to which reference was made.
39. On 04 January 2019, Miss Lin initially registered as an ACCA student and is currently registered as a student member. Her ACCA ID is 4492913.

40. On 19 September 2019, during a routine online search of the ACCA CBE (Computer Based Exam), ACCA discovered a page from a Chinese web site, [www.1688.com](http://www.1688.com), accessible using the link below:

<https://www.1688.com/huo/detail-591769339703.html?spm=a262i4.9164788.zhaohuo-list-offerlist.54.29082303cSiSY0>

41. [www.1688.com](http://www.1688.com) is a China-based consumer-to-consumer marketplace website.
42. This was reported to [www.1688.com](http://www.1688.com) by ACCA and the webpage had since been removed. However, prior to its removal, ACCA had taken a screen capture of the page.
43. Having considered ACCA's records, the Committee found that, on 30 March 2019, Miss Lin sat and passed the FAB – Accountant in Business (F1) exam.
44. Mr Docherty identified, and the Committee was satisfied, that the student named on the ACCA certificate shown on the webpage was Miss Lin and that the certificate related to the Provisional Result Notification for the CBE exam, FAB – Accountant in Business (F1). Ms Terry confirmed that the certificate could be printed by Miss Lin at the conclusion of the exam.
45. The Committee was also satisfied that the webpage showed that ACCA Fundamentals-Knowledge 1 (AB) CBE questions were being offered for sale, although the Committee had not seen the questions themselves, nor had ACCA. However, in an email from ACCA dated 30 July 2020, it was confirmed that the person described as the "Seller" on the webpage, Xie Lao Ban De, was not a person registered as an ACCA student.
46. When Miss Lin sat the exam, she would have been provided with a student information sheet which was given to each student which would set out what students can and cannot do in the exam process. Exam Regulation 9 stipulates:

- "9. You may not assist, or attempt to assist, any other person before, during and/or after your exams or obtain or attempt to obtain assistance by improper means from any other person before or during your exams."*
47. The Committee also found that, when sitting a CBE exam, it was not permitted for a student to remove the exam questions at the end of the exam or to use any sort of photographic device to take photographs of the exam questions. The Committee also found that students were not permitted to sell, supply or publish in any way copies or images of exam questions.
48. Mr Hardie confirmed that specimen exam questions and answers were accessible via ACCA's website but that such questions would not be included in the "*question bank*" used by ACCA to set questions which would have to be answered by students in "*live exams*". Consequently, the Committee was satisfied that, for the exam questions to be available from "*live exams*", a person would have to have used some sort of photographic device to take photographs of the exam questions during a CBE or be able somehow to download them. However, there was no evidence before the Committee that Miss Lin had done this.
49. Ms Terry referred the Committee to the email from a Senior Examinations Administrator – CBE dated 16 January 2020, which stated:
- "Yes, we can confirm that sight of questions set in past papers may give a student an advantage because there is a probability the question will appear during the exam again."*
50. The Committee also accepted Mr Hardie's written evidence that a student having sight of past questions from live exams could give that student an unfair advantage because Mr Hardie stated that the same question, or a minor variation of it, could appear during a future live exam on that subject.
51. In her submissions on 20 October 2020, Ms Terry had confirmed very fairly that ACCA was not alleging that Miss Lin was the seller but that it was appropriate

to infer from the Committee's findings that the only way in which the questions were able to be advertised for sale was as a result of Miss Lin providing those questions.

52. However, Allegation 1.1 alleged that it was Ms Lin who had "*offered to sell*" ACCA F1/AB CBE questions on the [www.1688.com](http://www.1688.com) website. As stated, and it is clear from the document itself, the screen shot of the webpage referred to the "*seller*" as "Xie Lao Ban De Ren", and not Miss Lin. Miss Terry had confirmed that ACCA was not alleging that Miss Lin had been the seller. Whether or not Miss Lin had improperly taken photos of the exam questions and whether or not Miss Lin allowed a third party, whether knowingly or otherwise, to offer for sale the exam questions to the public, did not form part of the allegation.
53. On the basis of its findings, the Committee found that ACCA had failed to prove, on the balance of probabilities, that, on or around 19 September 2019, ACCA student Miss Lin Xiaoting offered to sell ACCA F1 / AB CBE (computer-based exam) questions on [www.1688.com](http://www.1688.com) web site.
54. The Committee, therefore, found the facts of Allegation 1.1 not proved.

### **Allegation 1.2 and 1.3**

55. On the basis that the Committee had found Allegation 1.1 not proved, it must follow that the Committee did not find Allegations 1.2.1, 1.2.2, 1.3.1 and 1.3.2 proved.

### **Allegation 2.1**

56. On 25 October 2019, ACCA wrote to Miss Lin informing her of the investigation and the nature of the allegations against her. The Committee was satisfied that the addresses to which the emails were sent matched those addresses registered at the time on ACCA's database. Miss Lin was required to respond by 15 November 2019, but she failed to do so.

57. On 28 November 2019, ACCA wrote again to Miss Lin using the correct email addresses as shown on the register. Miss Lin was required to respond by 12 December 2019 but, again, she failed to do so.
58. Finally, on 13 December 2019, ACCA wrote again to Miss Lin using the same email addresses. Miss Lin was required to respond by 10 January 2020, but she failed to do so.
59. Having found that Miss Lin failed to respond to any of the correspondence from ACCA, and having found that, on each occasion, the emails were sent to the correct email addresses as recorded on the register, the Committee found, on the balance of probabilities, that Miss Lin received the said emails. Her subsequent failure to respond in any way to the said emails represented a failure on her part to cooperate fully with ACCA.
60. On this basis, the Committee found the facts of Allegation 2.1 proved.

#### **Allegation 2.2.1**

61. Every professional, including student members, has an obligation to co-operate fully with their professional body and to engage with it when any complaints are raised against the individual. There is also an obligation to ensure that a professional body is able to communicate appropriately with its members. Such co-operation is fundamental to the regulator being able to discharge its obligations of ensuring protection of the public, upholding the reputation of the profession and maintaining proper standards of conduct. The Committee considered that Miss Lin's failure to engage with ACCA was unacceptable, but it did not consider it was so serious as to bring discredit to herself and ACCA. In the circumstances, in the Committee's judgement, the failures were not sufficiently serious so as to reach the threshold of misconduct.
62. The Committee, therefore, found Allegation 2.2.1 not proved.

### **Allegation 2.2.2**

63. The Committee repeated its observations under Allegation 2.2.1 above and found that Miss Lin was liable to disciplinary action as a result of the breach of Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, namely failing to cooperate fully with the investigation of a complaint.
64. The Committee, therefore, found Allegation 2.2.2 proved.

### **SANCTION AND REASONS**

65. 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 also listened to legal advice from the Legal Adviser which it accepted.
66. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
67. 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.
68. The Committee considered whether any mitigating or aggravating factors featured in this case.
69. The Committee accepted that there were no previous findings against Miss Lin.
70. However, this was the extent of any material available to the Committee by way of mitigation. The Committee had no information regarding the personal circumstances of Miss Lin, nor had it been provided with any testimonials or references as to Miss Lin's character.

71. As for aggravating features, on the basis of the findings, it had not been established that Miss Lin's behaviour had been dishonest. Indeed, the Committee had not found Miss Lin to be guilty of misconduct in respect of both of the substantive allegations. Nevertheless, it was suggested by Ms Terry that the failure of Miss Lin to correspond with ACCA at any stage could undermine the investigation of the complaint and that this represented an aggravating feature.
72. The difficulty faced by the Committee was that Miss Lin had not engaged in the proceedings and, therefore, an assessment of the criteria contained within the Guidance with regard to the sanctions available was not possible.
73. Taking that into account, the Committee concluded that an admonishment would not adequately reflect the seriousness of the Committee's findings.
74. In the circumstances, and in order to reflect the seriousness of the allegation found proved, the Committee determined that a Reprimand was an appropriate, proportionate and sufficient sanction. The Committee considered that it was important to mark the need for a member, including student members, to cooperate with ACCA at all times.

## **COSTS AND REASONS**

75. The Committee had been provided with a bundle relating to ACCA's claim for costs (pages 1 to 4).
76. When considering whether to award ACCA its costs and, if so, the amount of the award, the Committee was concerned at the manner in which the proceedings had been pursued. First, the Committee had been disappointed at the number of amendments that ACCA was forced to seek to the original allegations. Secondly, the Committee had allowed an adjournment of the hearing to enable ACCA to provide the Committee with further information. It was also a surprise to the Committee that no witnesses were called to give oral

evidence, having adjourned the hearing on 02 July 2020 in the expectation that Mr Doherty would attend at the hearing today. Finally, the most serious allegation had not been found proved.

77. The amount of costs for which ACCA applied was £5,936.00.
78. Taking account of the Committee's observations regarding the manner in which the case was prepared, the Committee concluded that a reasonable sum to be awarded to ACCA in respect of costs was £1,000.00.
79. The Committee considered whether that amount should be discounted any further. However, Ms Lin had not provided ACCA with any details of her means. Miss Lin would have been warned at the outset of the importance of providing such details. In the absence of any information, the Committee had approached the issue of costs on the basis that Miss Lin was able to pay any amount awarded.
80. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £1,000.00.

#### **EFFECTIVE DATE OF ORDER**

81. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

**Ms Wendy Yeadon**  
**Chair**  
**20 October 2020**