

## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Ms Lew Yoke Peng

**Heard on:** Wednesday, 26 and Thursday, 27 February 2020

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

**Committee:** Ms Wendy Yeadon (Chair)  
Mr George Wood (Accountant)  
Mr Nigel Pilkington (Lay)

**Legal Adviser:** Mr Richard Ferry-Swainson

#### Persons present

**and capacity:** Ms Georgia Luscombe (ACCA Case Presenter)  
Ms Nkechi Onwuachi (Hearings Officer)

**Summary:** Appeal dismissed; costs ordered in the sum of  
£2,000.00.

#### ACCA



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## **PRELIMINARY/ SERVICE OF PAPERS**

1. The Appeal Committee (“the Committee”) convened to consider an appeal by Ms Lew against the decision of the Disciplinary Committee on 14 March 2019. Ms Luscombe appeared on behalf of ACCA. Notwithstanding it was her appeal, Ms Lew did not attend nor was she represented.
2. The papers before the Committee were: main bundle, numbered 1 to 928; tabled additional bundle 1, numbered 1 to 38; tabled additional bundle 2, numbered 1 to 11; and a service bundle, numbered 1 to 27.
3. The Committee noted that in correspondence with ACCA, the Appellant pointed out that her first name is Yoke Peng and that her surname is Lew. Accordingly, in this determination she is referred to as Ms Lew, although at the hearing in March 2019 she was referred to as Ms Peng.

## **PROCEEDING IN ABSENCE**

4. Ms Luscombe made an application to proceed in the absence of Ms Lew.
5. The Committee first considered whether the appropriate documents had been served in accordance with the Appeal Regulations (“the Regulations”). The Committee took into account the submissions made by Ms Luscombe on behalf of ACCA and also took into account the advice of the Legal Adviser.
6. Included within the service bundle was the Notice of Hearing dated 24 January 2020, thereby satisfying the 28-day notice requirement which had been sent to Ms Lew’s registered address and her email address. The Notice included details about the time, date and venue for the hearing and also Ms Lew’s right to attend the hearing, in person or by telephone, 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 Ms Lew’s absence, if considered appropriate. An email delivery receipt showed

that the email had been delivered to Ms Lew's email address and furthermore, on 30 January 2020, she responded to it.

7. The Committee was satisfied that the Notice had been served in accordance with the Regulations, which require ACCA to prove that the documents were sent. Having so determined, the Committee then considered whether to proceed in Ms Lew's absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Ms Lew, it should exercise that discretion with care and caution, particularly as Ms Lew was unrepresented.

8. In an email dated 3 February 2020, Ms Lew said to ACCA,

*"I am yet to decide whether I need to attend ..."*

9. In an email dated 21 February 2020, Ms Lew said to ACCA,

*"I don't think I still have to attend the call because [redacted]." She added, "Regarding my own establishment I do not need to answer ACCA because any other businesses in the whole world are not under ACCA controlled. Business are with freedom."*

In response to that email, the Hearings Officer emailed Ms Lew and asked her if she wished to apply for an adjournment.

10. In an email dated 25 February 2020, Ms Lew told ACCA,

*"I already informed you with the email. I will not attend this because this is beyond the border and the disturbance has delayed my business performances and I am stressful [redacted]. I don't have much time to entertain these disturbances. Kindly stop sending your people to disturb or manipulate any members. Any information is already sent to UK local police and Malaysia local Police and global police for further investigations."*

11. The Committee noted that this was Ms Lew's appeal and that therefore there was a burden on her to engage with the hearing. It was also clearly in her interests to participate, since on the hearing of any appeal it shall be for the Appellant to satisfy the Committee that the grounds of appeal are made out. From the correspondence she had sent, the Committee was satisfied that Ms Lew knew about the hearing, she had been given the opportunity to participate by telephone or televisual link, rather than attending in person, and had chosen not to do so. Indeed, she had made it clear that she did not think she needed to attend. It was apparent to the Committee that Ms Lew had decided not to participate in her own appeal and it thus concluded that she had voluntarily absented himself from the hearing, and thereby waived her right to be present and to be represented. The Committee considered an adjournment would serve no useful purpose: Ms Lew had not requested one and it seemed unlikely that she would attend on any other occasion.

12. 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 Lew. In so doing, the Committee would take into account all the relevant documents and correspondence provided by Ms Lew for the purposes of this appeal.

## **BACKGROUND**

13. On 14 March 2019, Ms Lew faced the following 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).
14. Ms Lew became an ACCA member on 15 September 2004, and a fellow of ACCA on 15 September 2009.
15. On 12 December 2017, ACCA's Investigations Department received a query from ACCA Malaysia. Ms Lew had contacted ACCA Malaysia seeking financial assistance. ACCA Malaysia's query was about whether or not Ms Lew 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.
16. It was Ms Lew'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 [redacted]. Online media accounts of the incident record it as having taken place on 6 September 2017. Ms Lew 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.
17. Ms Lew's subsequent encounter with a parking official was filmed and published on social media and news sites. The video was said to show Ms Lew holding a steering wheel locking device while she speaks to the parking official. The Committees were not provided with that video.
18. Ms Lew had described incidents to the Investigations Officer which she had said made her believe that people, possibly connected with a previous employer, were persecuting her. She said that the action of the parking official towards her on that day was another of those incidents.

19. On 30 October 2017, Ms Lew 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. Although the precise nature of her conduct remains unclear, Ms Lew'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 Lew 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.
20. On 10 November 2017, the court fined Ms Lew RM3,000 as a result of her conviction for obstructing a public servant. The fine was paid in full on the same day.
21. Notwithstanding the convictions, Ms Lew, in her written representations, maintained that she was innocent of any offence when her case was heard by an ACCA Disciplinary Committee on 14 March 2019. She did not attend that day and the hearing went ahead in her absence.
22. The Disciplinary Committee found all the matters alleged proved, and decided to remove Ms Lew from the Register and ordered that she pay £3,000 in costs.
23. Following those decisions, Ms Lew submitted an application to appeal the findings, sanction and costs. Her application to appeal was considered by a Committee Chair on 19 May 2019. That Chair refused permission to appeal on the findings but allowed Ms Lew's application to appeal the sanction imposed and the costs. In doing so he stated:

*"The Committee found that obstructing officers carrying out their lawful duty and acting in contempt of court was a serious departure from the standards expected from a professional accountant and member of ACCA. It declared that it was satisfied her behavior, as*

*reflected by the convictions, was discreditable to the Association and to the accountancy profession.*

*There was some evidence before the Committee of stress, remorse, reflection and of potential hardship, and that has been reinforced by the further material provided. The Committee concluded that obstructing public officials in the course of their lawful business, and acting in contempt of court was very serious, and that without insight or acceptance of the behavior, it was fundamentally incompatible with being a member of ACCA.*

*However, there had been no previous criminal convictions. The obstruction attracted a financial penalty. The prosecution appeal failed. A short custodial sentence for the contempt was considered by the judge to have been sufficient, and there is no evidence that this contempt, serious though it was, involved either violence, dishonesty, or an attempt to pervert the course of justice. There had been no repetition of either type of behavior. It is arguable, taking into account all the aggravating and mitigating factors, and applying the current Sanctions Guidance, that an order for erasure was disproportionate.*

*As far as costs are concerned there is now further evidence of Ms Peng's constrained circumstances and limited means."*

24. Ms Lew then, as was her right, applied to a second Chair to reconsider her full application to appeal. That application was considered by a different Chair on 24 July 2019. That Chair rejected the application, thus allowing Ms Lew to only appeal the sanction and costs in accordance with the decision made by the first Chair. In accordance with Appeal Regulation 6(4)(h), that decision was final.
25. Ms Lew responded in a long document, under six headings with the following titles: 1. Court Case; 2. Consumer Protection Act; 3. Bullying Act; 4. Business

operation loss because of the dismemberment notice from ACCA UK; 5. Discrimination Act; and 6. Human Right. The document, although not easy to follow, provided little assistance to this Committee in deciding whether the sanction was disproportionate and/or unreasonable. It made no reference to the costs but made passing reference to “*severe financial stress.*” Ms Lew continued to maintain her innocence and to claim some form of conspiracy against her, accusing ACCA of committing “*an offence in bullying act and discrimination act.*”

### **DECISION ON APPEAL AND REASONS**

26. The Committee considered the appeal with care, and took into account all the material before it together with the submissions made. The Committee also took into account the fact that English was clearly not Ms Lew’s first language. The Committee accepted the advice of the Legal Adviser. The Committee was cognisant of the fact that, in accordance with the permission granted by the Chair on 19 May 2019, it was only concerned with the sanction and costs imposed, and not with the findings made by the Disciplinary Committee.

27. In considering its decision on sanction, the Disciplinary Committee considered the following aggravating factors:

*“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 behavior; significant negative online publicity.”*

28. When considering mitigating factors, the Disciplinary Committee took into account that Ms Lew stated she was not in public practice. She said she did 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 book-keeping, with three levels of service. She did not provide those services but directed people to computer packages that would. She said



she did not accept any accounting work. She described how difficult her working life was: running the business on her own [redacted]; running the house on her own for the same reason; being a carer [redacted]; and accepting the emotional cost of being a carer. She said the business was surviving on minimum funds. The Disciplinary Committee also took into account: the lack of any previous disciplinary matters before ACCA; a potentially heightened vulnerability because of a previous incident [redacted] and domestic stress [redacted], which may have impacted upon her behaviour; and an apology to the Malaysian Court about recording proceedings.

29. In deciding the appropriate sanction, the Disciplinary Committee said:

*“The Committee considered all the options available from the least serious upwards. The Committee did not think it appropriate to take no further action, admonish or reprimand in a case where there had been two convictions for serious offences, one of which had resulted in an immediate custodial sentence.*

*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.*

*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 behavior 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.*

*In all the circumstances, and following ACCA's guidance, the Committee concluded that the only appropriate and proportionate sanction was removal from the register. 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 behavior, 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 behavior, 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 behavior.*

*The Committee also considered that a failure to remove a member from the register 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 behavior falls far below the standard expected of a member of the profession.*

*The Committee therefore ordered that Ms Peng be removed from the Register.”*

30. The Committee considered the question of sanction with care. It looked at all sanctions from the least serious to removal and took into account all the material provided, all the mitigating and aggravating factors and it had regard to the Sanction Guidance issued by ACCA. It noted Ms Lew’s continued denial of any wrongdoing and her lack of insight, remorse or acceptance of her behaviour. Indeed, her lack of insight was compounded by her assertion that ACCA UK effectively had no jurisdiction over her and she did not need to answer to ACCA. The Committee considered it would be inappropriate to take no further action in this case. Ms Lew had been convicted of serious offences, one of which resulted in a custodial sentence. In light of her complete lack of insight the Committee could not be satisfied that she would not behave in a similar way again, if faced with a stressful situation.
31. The Committee next considered an admonishment. However, for the same reasons as not taking any further action, the Committee concluded that such a sanction would not be appropriate.
32. In accordance with the Sanctions Guidance, a reprimand was not appropriate either. It could not be said that the conduct in this case was of a minor nature. It involved an altercation with a public official who was performing his duty. It occurred in a public place, was filmed and placed on public media websites. That conduct was compounded by Ms Lew’s behaviour in court, where she was held to be in contempt. The Committee considered there is a continuing risk to the public if a similar situation arose again. Furthermore, there was no

evidence of Ms Lew's understanding and genuine insight into the conduct found proved.

33. The Committee then considered whether a severe reprimand would be a sufficient sanction in this case. The Guidance states that this sanction would usually be applied in situations where the conduct is of a serious nature, which it is, but 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. In this case, there was no such mitigation advanced. The Committee had already identified a continuing risk and there was no evidence of Ms Lew's understanding and appreciation of the conduct found proved. The Guidance goes on to say that a severe reprimand may be appropriate where most of the factors listed above in paragraph 29 are present. The Committee agreed with the Disciplinary Committee that whilst some of those factors were present, many were not. For all these reasons, a severe reprimand was not, therefore, a sufficient sanction in this case.

34. The Committee agreed with the Disciplinary Committee's conclusion that Ms Lew's behaviour was very serious and fundamentally incompatible with membership of ACCA. Had she accepted her wrongdoing, demonstrated insight and remorse, and assured the Committee that she would never behave in this way again, then it might have been possible to consider a lesser sanction. However, in all the circumstances, and in light of the guidance issued by ACCA on sanction, the Committee was not persuaded that the order of removal from the Register was disproportionate and/or unreasonable.

35. When considering the question of costs, the Disciplinary Committee stated:

*"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 Committee*

*Officer for today's hearing which, in the event, took less than a full day. The Committee therefore made a reduction to reflect this.*

*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 [redacted].*

*In light of its observations above, the Committee reduced the amount requested and made an order in the sum of £3,000."*

36. Although in her correspondence Ms Lew made reference to severe financial hardship, she had not provided any further information or detail about her current financial situation, and because she had not attended her own appeal hearing, it had not been possible for the Committee to enquire further into this. In such circumstances, the Committee could see no reason to consider reducing the costs awarded by the Disciplinary Committee, which were in any event well under half those incurred by ACCA in bringing the case.
37. Ms Lew's appeal on both sanction and costs is therefore dismissed.

#### **COSTS OF THE APPEAL**

38. The Committee noted that a further £5,075 had been expended by ACCA in responding to Ms Lew's appeal. The Committee considered the costs requested to be fair and reasonable, and noted that the Association had only claimed for a single day when in fact the hearing went into a second day. Ms Lew had provided almost nothing to assist the Committee about her financial position, nor had she responded to the question of costs for this hearing. However, in all the circumstances, the Committee accepted that she was of limited means. It noted that the Disciplinary Committee had decided to reduce the costs of the substantive hearing to allow for Ms Lew's limited means and,

out of an abundance of fairness, the Committee was prepared to do similar. Accordingly, the Committee decided to make an order for costs in the sum of £2,000.

39. For the avoidance of doubt, Ms Lew also has to pay the costs of £3,000 ordered by the Disciplinary Committee, making a total of £5,000.

**Ms Wendy Yeadon**  
**Chair**  
**27 February 2020**