

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

- In the matter of:** Miss Thaw Thaw Min Khant
- Heard on:** Tuesday, 28 January 2020
- Location:** ACCA, The Adelphi, 1-11 John Adam Street,
London, WC2N 6AU
- Committee:** Graham White (Chair)
Mrs Judith Glover (Accountant)
Mrs Carolyn Tetlow (Lay)
- Legal Adviser:** Mr David Marshall
- Persons present
and capacity:** Ms Georgia Luscombe (ACCA Case Presenter)
Ms Geraldine Murray (Hearings Officer)
- Observers:** Miss Nkechi Onwuachi (ACCA)
- Summary:** Exclusion from membership
- Costs:** Miss Khant ordered to pay £5,000 in costs



1. The Committee heard an allegation against Miss Khant. Ms Luscombe appeared for ACCA. Miss Khant was not present and not represented.

PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

2. The Committee was satisfied that Miss Khant had been served with the documents required by regulation 10(7) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, in accordance with Regulation 22. The required documents were contained in the papers before the Committee. There was evidence that they were sent by email on 17 December 2019 to an email address notified by Miss Khant to ACCA as an address for communications.

PROCEEDING IN ABSENCE

3. Miss Khant completed a Case Management Form on 10 October 2019, in which she consented to the proposed hearing taking place in her absence. The Committee saw an email from Miss Khant dated 19 December 2019 in which she stated that she had received all the documents, and did not want to attend the hearing. There has been no application to adjourn. The Committee concluded that Miss Khant did not wish to exercise her right to be present, and that it would be fair to proceed in her absence. The Committee would take into account the written representations she had made, and would scrutinise ACCA's case carefully.

ALLEGATION(S)/BRIEF BACKGROUND

4. The allegation against Miss Khant was as follows:

Allegation 1

- a) On 8 February 2019 Miss Thaw Thaw Min Khant was convicted of theft from a shop at Luton Crown Court, which is discreditable to the Association or the accountancy profession;
- b) By reason of her conduct at 1(a) above, Miss Thaw Thaw Min Khant is liable to disciplinary action pursuant to bye-law 8(a)(ix).

DECISION ON FACTS/ALLEGATION(S) AND REASONS

5. Miss Khant completed a Case Management Form on 10 October 2019 in which she admitted the facts alleged, i.e. that she was convicted, and that the offence was discreditable. In fairness to Miss Khant, the Committee considered these matters itself, taking into account her admissions.
6. The Committee saw a certificate of conviction. This showed that Miss Khant was convicted on 18 January 2019 of theft from a shop, and sentenced on 08 February 2019. The Committee was satisfied by this evidence.
7. The Committee considered whether the conviction was for an 'offence discreditable to the Association or to the accountancy profession'.
8. The background to the conviction, as stated in the learned Judge's sentencing remarks on 08 February 2019, was that on 22 January 2018 Miss Khant filled a trolley with over £300 worth of goods in a branch of Store A, and then walked out of the store without paying. It seemed that, when challenged, she stated that she had left the store in order to borrow a card from someone else in order to pay for the goods. The name or description of the other person or persons involved was redacted by ACCA from the transcript as provided to the Committee. Since Miss Khant was not present, the Committee decided not to ask for a full version of the transcript. Nevertheless, the significance of the involvement of another person or persons was clear from the transcript. The Judge stated:

"There was a curious coincidence in this case because [name redacted] was detained in identical circumstances some two weeks before, with a very similar value of goods in a trolley, claiming exactly as you did to be leaving the store in order to borrow a card from [redacted] in order to pay for the goods."
9. Miss Khant pleaded not guilty but, as the Judge said, the store staff "*didn't accept what you said at all and nor did the jury. You were prosecuted and you were convicted.*" The Judge imposed a fine of £3,000 plus costs, made a community order for 12 months, and also imposed a weekend curfew for two months.

10. On the basis of these facts, the Committee was quite satisfied that the offence was discreditable both to ACCA and to the accountancy profession. The public would be disturbed to think that a registered accountant could act in such a way. The Committee therefore found that Miss Khant was liable to disciplinary action under Bye-law 8(a)(ii).

SANCTION(S) AND REASONS

11. Having found the facts proved, the Committee considered what sanction, if any, to impose, having regard to ACCA's Guidance for Disciplinary Sanctions.
12. The Committee first sought to identify any aggravating or mitigating factors. Miss Khant submitted a number of mitigating factors in her responses to ACCA. She stated that she had no previous convictions, and that she had paid the fine. The Committee accepted these statements, and gave her credit for them. Miss Khant apologised to ACCA, took responsibility for her actions and expressed remorse for them. The Committee gave her some credit for this. The Committee also gave her credit for having no previous disciplinary findings against her.
13. The main issue Miss Khant put forward in mitigation was that at the relevant time she was pregnant, and that this affected her judgement. She expanded on this in written submissions, which the Committee decided to treat as private because they touched on her health.
14. [Private]
15. [Private]
16. The Committee, therefore, did not accept that the offence was solely due to Miss Khant's judgment being distorted by her condition at the time. The Committee treated the offence as a deliberate one. In the absence of a clear admission that she had been dishonest, the Committee was also unable to credit Miss Khant with any significant level of insight. Miss Khant did not submit any testimonials or references.
17. With regard to aggravating factors, the Committee concluded that this case

was more serious than a typical case of shoplifting, because of the amount involved, the element of planning and the involvement of another person as referred to by the Judge. The sentence imposed appeared to be a serious one for a first offence of shoplifting. The Committee also noted that Miss Khant had failed to report the charge or the conviction to ACCA as she was required to do. It regarded this as an additional aggravating factor.

18. In view of the seriousness of the conviction, the Committee was quite satisfied that it was necessary to impose a sanction. It went through the available sanctions in increasing order of seriousness.
19. The Committee first considered the sanctions of admonishment and reprimand. However, the conviction was far too serious to be dealt with by such a sanction. The Guidance says that reprimand would usually be applied in situations where the conduct is of a minor nature.
20. The Committee then considered carefully the sanction of severe reprimand, perhaps combined with a fine. The Guidance states that this sanction would usually be applied in situations where the conduct is of a serious nature, 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. The Committee concluded that there were no such factors in Miss Khant's case. Her offence was intentional, it caused direct harm, and she had not demonstrated insight. The Committee concluded that the sanction of severe reprimand would not be sufficient, even if combined with a fine.
21. Dishonesty is one of the most serious findings that can be made against an accountant. It is even more serious when it leads to a criminal conviction. Most of the relevant factors listed in the sanctions guidance relating to exclusion from membership were applicable. The Committee found that Miss Khant's conviction was fundamentally incompatible with her being a member of ACCA. The Committee concluded that the only sufficient sanction was exclusion from membership. The Committee therefore ordered that Miss Khant be excluded from membership.

22. A member is normally entitled to apply for readmission to the register after 12 months. The Committee considered whether to extend that period, but decided that there was no need to do so in this case.

COSTS AND REASONS

23. Ms Luscombe applied for costs totalling £7,514. Miss Khant did not make any submissions on costs.
24. The Committee considered that this case was properly brought, and that ACCA was entitled to costs in principle.
25. Ms Luscombe acknowledged that the estimated hearing costs had been based on a hearing lasting one day, whereas it would be completed in half a day. The figure for the Case Presenter and Hearings Officer was £2,230. Miss Luscombe conceded that the figure of £3,050 for hearing costs in section D of the costs schedule could also be reduced. With regard to the amount, the Committee found that the costs were reasonable for the work done. However, an adjustment should be made for the fact that the hearing would be completed in half a day. The Committee assessed the costs at £5,000.
26. The Committee considered Miss Khant's ability to pay such a sum. She did not provide any information as to her means. The Committee had no basis for determining that the costs order would cause severe hardship to Miss Khant.
27. The Committee ordered that Miss Khant pay the sum of £5,000 as a contribution to ACCA's costs.

EFFECTIVE DATE OF ORDER

28. This order will take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations

HH Graham White
Chair
28 January 2020