

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Miss Kangxin Liang</b>
<b>Heard on:</b>	<b>Tuesday, 10 November 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>Mrs Helen Carter-Shaw (Chair) Mr Peter Brown (Accountant) Mr Gerard McClay (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Richard Ferry-Swainson (Legal Adviser)</b>
<b>Persons present and capacity:</b>	<b>Ms Michelle Terry (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer)</b>
<b>Observers:</b>	<b>None</b>
<b>Summary</b>	<b>Removed from the student register Allegation 2 proved, and misconduct found proved.</b>
<b>Costs:</b>	<b>Miss Kangxin Liang ordered to pay costs of £6000.00</b>

#### ACCA



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## **INTRODUCTION/SERVICE OF PAPERS**

1. The Disciplinary Committee (“the Committee”) convened to consider two Allegations against Miss Liang. Miss Liang did not participate in the hearing.
2. The papers before the Committee were in a bundle numbered 1 to 48, together with a tabled additional bundle numbered 1 to 5 and a second additional bundle numbered 1 to 12. There was also a service bundle numbered 1 to 14 and a costs bundle numbered 1 to 5.

## **PROCEEDING IN ABSENCE**

3. 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 Ms Terry on behalf of ACCA and also took into account the advice of the Legal Adviser.
4. Included within the service bundle was the Notice of Hearing dated 13 October 2020, thereby satisfying the 28-day notice requirement, which had been sent to Miss Liang’s email address as it appears in the ACCA register. The Notice included details about the time, date and remote venue for the hearing and also Miss Liang’s right to attend the hearing, by telephone or video link, 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 Miss Liang’s absence, if considered appropriate. There were receipts confirming the emails had been delivered to Miss Liang’s registered email address.
5. 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, not that they were received. Having so determined, the Committee then considered whether to proceed in Miss Liang’s absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Miss Liang, it should exercise that discretion with the utmost care and caution, particularly as Miss Liang was unrepresented.

6. In an email, dated 03 November 2020, sent to Miss Liang by the Hearings Officer, she was asked if she would be attending the hearing. Miss Liang did not respond to that email.
7. The Committee noted that Miss Liang faced serious allegations of dishonesty and that there was a clear public interest in the matter being dealt with expeditiously. The Committee considered an adjournment would serve no useful purpose because it seemed unlikely that Miss Liang would attend on any other occasion and she had not applied for one. In light of her complete lack of engagement throughout the investigation of this matter, the Committee concluded that Miss Liang had voluntarily absented herself from the hearing and thereby waived her right to be present and to be represented at this hearing.
8. In all the circumstances, the Committee decided that it was in the interests of justice and in the public interest that the matter should proceed, notwithstanding the absence of Miss Liang. No adverse inference would be drawn from her non-attendance.

#### **ALLEGATIONS/BRIEF BACKGROUND**

9. It is alleged that Miss Liang is liable to disciplinary action on the basis of the following Allegations:

##### **Allegation 1**

1. On an unknown date or dates between 09 August 2019 and 03 September 2019 ACCA student Miss Kangxin Liang was concerned in an offer to sell ACCA FAB Accountant in Business CBE questions online.
2. Miss Liang's conduct in respect of matters set out at 1.1 was:

- 2.1. Dishonest in that she made exam questions available in return for payment that would have allowed other exam entrants to gain an unfair advantage, or in the alternative
  - 2.2. Contrary to the Fundamental Principle of Integrity
3. By reason of any or all of her conduct in respect of 1.1 and/or 1.2 above, Miss Liang is guilty of misconduct pursuant to byelaw 8(a)(i)

### **Allegation 2**

1. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Miss Liang has failed to co-operate fully with the investigation of a complaint in that:
  2. Miss Liang failed to respond at all to ACCA's correspondence dated:
    - 2.1. 06 November 2019;
    - 2.2. 28 November 2019; and
    - 2.3. 13 December 2019;
  3. By reason of her conduct in respect of any or all of the matters set out at 2.1 and 2.2 above, Miss Liang is:
    - 3.1. Guilty of misconduct, pursuant to byelaw 8(a)(i); or in the alternative
    - 3.2. Liable to disciplinary action pursuant to byelaw 8(a)(iii)
10. Miss Liang initially registered as an ACCA student on 29 May 2019 and is currently registered as a student member. Her ACCA ID is 4604300.
11. On 09 August 2019, Miss Liang sat and passed the ACCA CBE (Computer Based Exam) FAB (Foundations in Accountant and Business) - Accountant in Business exam.

12. On 03 September 2019, ACCA's CBE Delivery team received a referral from the British Council office in China. The British Council raised concerns about the integrity of ACCA's CBE exams after they found CBE questions offered on sale online. The British Council supplied ACCA with a screen capture of the advertisement and images that came with it, identified as 4604300(1).jpg and 4604300(2).jpg. It was stated that the advertisement appeared to offer ACCA F2 CBE questions for sale.
  
13. The web advertisement and the sample screen capture, some of which were in Chinese characters, were reviewed by ACCA Senior CBE Administrator, Mr Kieran Docherty. In his referral form, Mr Docherty explained:
  - The student's ACCA registration number is at the top of the screen which allowed for the student to be identified. This also meant that the licensed on-demand centres could be identified, as ACCA's internal databases allow for all centres at which students attempt their exams to be shown. The header also shows the CBE sat, which was FAB – Accountant in Business.
  
  - The student registration number at the top of photo 4604300(2).jpg is: 4604300. Mr Docherty confirmed that he checked ACCA member's database and this is the registration number of Miss Liang Kangxin. Miss Liang initially registered as an ACCA student on 29 May 2019 and is registered as a student member.
  
  - ACCA's internal database showed that Miss Liang sat the FAB - Accountant in Business - exam on 09 August 2019 and she passed.
  
  - Mr Docherty reviewed the two images 4604300(1).jpg and 4604300(2).jpg and confirmed that these were questions put to Miss Liang in her FAB – Account in Business exam on the 09 August 2019
  
14. On 04 September 2020, Ms Lynn Donaldson (Senior CBE Administrator at ACCA) provided a witness statement confirming that *"there are no past papers*

*made available as the questions are selected from a question bank for each exam and questions could be selected again.”*

15. ACCA wrote to Miss Liang by email to seek her comments in relation to the investigation on the dates set out in Allegation 2. No response was received to any of those emails.

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

16. The Committee considered with care all the evidence presented and the submissions made by the parties. The Committee accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities.

### **Allegation 1**

17. The Committee considered the evidence in relation to Allegation 1 to be somewhat inadequate. There was nothing from the British Council to say where and when these advertisements were placed and whether both images appeared together. The Chinese characters on image (1) purported to be translated, but there was no statement from the person who translated it confirming from which language it had been translated and that the translation was accurate. The name that appeared on image (1) - XinKang Liang - was not an exact match for Miss Liang. There was no other identifying feature in that image linking it to Miss Liang and it was not entirely clear that what appeared in that image was an offer for sale. Image (2) had Miss Liang's ACCA ID number but nothing else to identify her and the Chinese characters present in the image had not been translated. There was nothing in image (2) to suggest it was an offer for sale. In all the circumstances, the Committee did not consider there was sufficient evidence to prove this allegation on the balance of probabilities. The Committee therefore found Allegation 1(1) not proved.
18. Having found Allegation 1(1) not proved it followed that Allegations 1(2) and 1(3) were also not proved, since they were predicated on a positive case being found in relation to Allegation 1(1).

## **Allegation 2**

19. The Committee noted that the email address recorded on ACCA's database for Miss Liang is: L1546910726@163.com. The documents in the original bundle appeared to have been sent to different email addresses. However, the Committee was informed by the Investigating Officer that this appearance was as a result of the documents being corrupted when the bundle was converted for optical character recognition, in order to make the bundle searchable. This was clarified in the second additional bundle, which provided copies of the original emails and it was thus apparent that the emails sent to Miss Liang on 06 November 2019, 28 November 2019 and 13 December 2019, were in fact all sent to the correct email address for Miss Liang. She had not responded to any of those emails.
  
20. The Committee was advised by the Legal Adviser that the duty to co-operate with an ACCA investigation is absolute, that is to say, every relevant person is under a duty to co-operate with any Investigating Officer and any Assessor in relation to the consideration and investigation of any complaint. A failure, or partial failure, to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of the regulations and may render the relevant person liable to disciplinary action. Miss Liang failed to respond to any of the correspondence sent to her by the Investigating Officer on the three dates specified in Allegation 2, where she was asked in the correspondence to comment on the matters alleged. In the correspondence sent on 28 November 2019 and 13 December 2019, Miss Liang was also warned that a failure to respond might result in an allegation of failure to cooperate with ACCA. The Committee noted that the correspondence was sent by email to Miss Liang's email address provided by Miss Liang when registering with ACCA. The Committee was thus satisfied, on the balance of probabilities, that Miss Liang had failed to co-operate as alleged and found Allegation 2(1) and 2(2), in its entirety, proved.
  
21. The Committee is of the view that failing to co-operate fully with an investigation being carried out by her regulator into her alleged misconduct is a serious

matter. A student member should not be able to frustrate, delay, or derail completely an investigation into their conduct. Being a student member of ACCA brings with it a duty to co-operate, both in relation to compliance with the Regulations and into the investigation of a complaint. The Committee was satisfied that such behaviour represented a serious falling short of professional standards and brought discredit upon Miss Liang and also upon the profession and ACCA as regulator. It, therefore, decided that Miss Liang's behaviour in failing to co-operate amounted to misconduct and that Allegation 2(3)(3.1) was proved.

22. Having found Allegation 2(3)(3.1) proved, it was not necessary for the Committee to consider Allegation 2(3)(3.2) which was in the alternative.

#### **SANCTION AND REASONS**

23. In reaching its decision on sanction, the Committee took into account the submissions made by Ms Terry. 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 Miss Liang, 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.
24. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
25. The Committee did not consider there to be any aggravating features.
26. The Committee did not consider there to be any significant mitigating factors. The Committee noted that Miss Liang had no previous disciplinary record with ACCA, but this carried little weight because her misconduct occurred so early in her association with ACCA.
27. The Committee did not think it appropriate, or in the public interest, to take no further action or order an admonishment in a case where a student member



had repeatedly failed to cooperate with her Regulator. Every member is duty bound to cooperate with ACCA in its investigations.

28. The Committee then considered whether to reprimand Miss Liang. The guidance indicates that a reprimand would be appropriate in cases where the conduct is of a minor nature, there appears to be no continuing risk to the public and there has been sufficient evidence of an individual's understanding, together with genuine insight into the conduct found proved. The Committee did not consider Miss Liang's conduct to be of a minor nature and she had shown no insight into her behaviour. The Committee noted that when addressing factors relevant to seriousness in specific case types, ACCA's Guidance indicates that a failure to co-operate is considered to be very serious. Accordingly, the Committee concluded that a reprimand would not adequately reflect the seriousness of the conduct in this case.
  
29. 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 Committee considered none of these criteria to be met. The guidance adds that this sanction may be appropriate where most of the following factors are present:
  - The misconduct was not intentional and no longer continuing;
  - Evidence that the conduct would not have 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.

30. The Committee considered that almost none of these factors applied in this case and that accordingly a severe reprimand would not adequately reflect the seriousness of Miss Liang's behaviour. Her misconduct was intentional, she has not demonstrated any insight into her failings nor made any apology; her previous good record is so short as to be negligible in the circumstances; her behaviour was repeated; there has been no evidence of rehabilitate steps; no references; and the misconduct itself was a lack of co-operation during the investigation stage.
31. Accordingly, the Committee decided that the only appropriate and proportionate sanction was removal from the student register. Failing to co-operate at all with an investigation being carried out by her regulator into her alleged misconduct is a very serious matter. A student member should not be able to frustrate, delay, or derail completely an investigation into their conduct. Being a student member of ACCA brings with it a duty to co-operate, both in relation to compliance with the Regulations and into the investigation of a complaint. The Committee was satisfied that such behaviour represented a serious falling short of professional standards and was fundamentally incompatible with membership of ACCA.
32. The Committee acknowledged the impact this decision would have on Miss Liang and thought it was unfortunate that she had decided to behave in this way after having successfully passed the FAB exam. However, this intentional conduct was such a serious breach of byelaw 8 that no other sanction would adequately reflect the gravity of her offending behaviour. The Committee considered that a failure to remove a student from the register who had blatantly ignored requests for information from her Regulator 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 would not be tolerated.

33. The Committee therefore ordered that Miss Liang be removed from the student register.

### **COSTS AND REASONS**

34. ACCA applied for costs in the sum of £6421.50. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable. The Committee noted that whilst Allegation 1 had not been found proved it considered ACCA had acted quite properly in bringing this case and this was not, therefore, a reason to reduce the costs. The Committee did, however, note the amount of time taken clarifying the content of the emails sent to Miss Liang, which meant today's hearing took considerably longer than would otherwise have been the case. This would be reflected in its decision on costs since this delay was not Miss Liang's fault. Miss Liang did not provide any details of her means or provide any representations about the costs requested by ACCA. There was, therefore, no evidential basis upon which the Committee could make any reduction on that ground.
35. In light of its observations above, the Committee reduced the amount requested to reflect the actual costs more likely to have been incurred had there not been the delay aforementioned and made an order in the sum of £6000.

### **EFFECTIVE DATE OF ORDER**

36. This order will have effect at the expiry of the appeal period, or at the conclusion of any appeal if one is made.

**Mrs Helen Carter-Shaw**  
**Chair**  
**10 November 2020**