

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Xiang Liu
Heard on:	Tuesday, 08 September 2020
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Mrs Helen Carter-Shaw (Chair), Ms Ruby Sukkersudha (Accountant), Ms Victoria Smith (Lay)
Legal Adviser:	Mr Andrew Granville Stafford
Persons present and capacity:	Mr Phillip Law (ACCA Case Presenter) Mr Jonathan Lionel (Hearings Officer)
Observers:	None
Summary:	Allegations 1(a), 1(b), 1(c)(i) and 1(d)(i) found proved Removed from the student register Costs of £5,427

PRELIMINARY

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Mr Xiang Liu. Mr Liu is a student member of ACCA, having

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been admitted to student membership on 07 January 2018, and is resident in China.

2. The Committee had before it a bundle of documents (pages 1 to 77), and a service bundle (pages 1 to 15).
3. Mr Liu did not attend the hearing and was not represented.

PROCEEDING IN ABSENCE

4. Notice of this hearing was sent by email to Mr Liu's registered email address on 07 August 2020. ACCA relied on a delivery receipt showing the email had been delivered the same day. The notice set out the matters required by Regulation 10(1)(b) of the of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR').
5. The Committee was, therefore, satisfied that the requirements of Regulations 10(1) and 22(1) of the CDR as to service had been complied with.
6. Having satisfied itself that service had been effected in accordance with the Regulations, the Committee went on consider whether to proceed in the absence of Mr Liu. The Committee bore in mind that the discretion to do so must be exercised with care and in light of the public interest in dealing with matters such as this fairly, economically and expeditiously.
7. The Committee noted that in his Case Management Form, which he sent to ACCA on 16 May 2020, Mr Liu had ticked the boxes to say he did not intend to attend the hearing and was content for the Committee to proceed in his absence.
8. On 03 September 2020, the Hearings Office had sent an email to Mr Liu asking if he intended to attend the hearing and informing him that he could participate by video or telephone link. Mr Liu replied by email on 04 September 2020 saying *'I'm sorry that I can't attend the committee, but I will accept all decisions.'*
9. The Committee considered that no useful purpose would be served by adjourning this hearing. Mr Liu is aware of the hearing and has not availed himself of the opportunity to participate in the hearing by telephone or video link. Nor has he taken up the offer of an interpreter made by ACCA. Mr Liu has

not applied for an adjournment and has consented to the hearing proceeding today. The Committee considered that, in the public interest, the hearing should proceed in Mr Liu's absence.

ALLEGATIONS AND BRIEF BACKGROUND

10. The allegations against Mr Liu are as follows:

Allegation 1

- (a) During a Financial Management examination on 07 June 2019, Mr Xiang Liu was in possession of unauthorised materials which he had at his desk, contrary to Examination Regulations 4 and 5.
 - (b) Mr Xiang Liu intended to use the unauthorised materials above to gain an unfair advantage;
 - (c) Mr Xiang Liu's conduct in respect of 1(b) above was:
 - (i) Dishonest, in that he intended to use the unauthorised materials which he had in his possession while the exam was in progress to gain an unfair advantage; or alternatively
 - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2019) in that such conduct demonstrates a failure to be straightforward and honest.
 - (d) By reason of his conduct, Mr Xiang Liu is:
 - (i) Guilty of misconduct pursuant to byelaw 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 byelaw 8(a)(iii), in respect of 1(a) above.
11. On 07 June 2019, Mr Liu attended an examination centre in Beijing to sit the Financial Management examination.
12. Prior to examinations, all candidates receive an attendance docket which contains ACCA's Examination Regulations and Examination Guidelines. Mr Liu

signed his attendance docket on 5 June 2019 to confirm he had read and understood the Examination Regulations. Those include the following:

Examination Regulation 4

You are not allowed to take to your exam desk any books, notes or other materials (except those outlined in the guidelines below). These are known as 'unauthorised materials'.

Examination Regulation 5

You are not allowed to possess, use, or intend/attempt to use, any unauthorised materials while the exam is in progress (whether at your desk or otherwise).

Examination Regulation 7(a)

If you breach exam regulation 4 and/or 5 and the 'unauthorised materials' are relevant to the syllabus being examined, it will be assumed that you intended to use them to gain an unfair advantage in the exam. In any subsequent disciplinary proceedings, you will have to prove that you did not intend to use the unauthorised materials to gain an unfair advantage in the exam.

13. Before all examinations, the Supervisor reads a set of announcements to the candidates. These include the following:

'Please remove all items, other than those listed on your attendance docket, from your desk now. Candidates found in possession of unauthorised materials are in breach of the examination regulations and their conduct will be reported to ACCA. If you attempt to gain an unfair advantage in the examination, you are likely to be removed from ACCA's student register following disciplinary proceedings.'

14. The exam commenced at 2pm and was due to last three hours. ACCA's case is that at 4pm an Invigilator supervising the exam, Mr A, found unauthorised materials on Mr Liu's desk.

15. ACCA relied on an 'Unauthorised Material' report, form SCRS1B, prepared by Mr A. He stated in the report that he found a rectangular piece of paper, 25 x 18cm, under the Mr Liu's exam paper. It had notes on both sides. He said he saw the candidate trying to cover up the notes whilst he was patrolling nearby. His attention was attracted because the notes were on white paper whilst the paper it was hidden under was yellow. Mr A said *'When I approached to the*

seat of the candidate, he seemed to be very nervous he tried to cover the note with draft paper.'

16. Mr A said in the report that he took the notes from Mr Liu and informed the Supervisor.
17. Mr Liu completed an SCRS2B (Unauthorised Material form) at the exam centre on the day. He stated in it that the unauthorised materials were a *'piece of paper containing some formulas'*. He accepted he had them with him in the exam. He stated *'I have forgotten to save the materials in my backpack and I haven't use it to help me complete the exam. Besides, all information on the materials is included in the formula table on computer.'*
18. Mr Liu was asked on the form whether the materials were relevant to the exam and he agreed they were. He said *'I accept it, because there are some formula on it but I just forget to store it in my bag.'* He also said *'The materials is used to preview when I was waiting for my exam to start. But I had fottent [sic] to place it on my bag. So it appeared in my desk when exam.'*
19. He was asked whether he had used the unauthorised material and he said *'I haven't use it'*. However, in answer to the next question he said *'I have attempted to use it, but I found all the information has already been in computer formula table'*.
20. On 28 June 2019, a Script Examiner completed an Irregular Script Form (ISF). The examiner confirmed that the materials were relevant to the syllabus for this exam. The examiner said *'... some parts are relevant to this exam, although very few. There is no indication in the response that the material has been used.'*
21. On 16 May 2020, Mr Liu sent an email to ACCA returning his completed Case Management Form. In his email he said:

'I would like to present to you some information about my exams in mid-June. First of all, I apologize for the fact that I have not responded to the email for a long time. The email address used when registering for ACCA was not my usual email address. After the exam in June, the ACCA study was suspended due to the preparation for the graduate entrance examination, so the mailbox was not

used again, and the receipt of the mail was missed. I am sorry for the delay in your work schedule.

I admit that in the June exam, I tried to take dishonest behavior. I was preparing materials to review before the exam, but due to negligence in the exam, the materials were not placed outside the examination room. When I found out that my materials were still on my body, I had the idea of cheating.

I am ashamed of my thoughts and actions. I am interested in becoming an accountant, and the most important quality of being an accountant is integrity. But I blasphemed this quality in the exam. When the exam was over, I was deeply sorry. I thought that my ACCA career was over, so I gave up the follow-up study and did not use the mailbox again.

When I opened the mailbox again today, I found that the ACCA headquarters has been in constant contact with me, but I missed receiving these emails. I feel that I have an obligation to respond to ACCA headquarters with my actions and admit my mistakes.

I still want to continue studying ACCA in my heart. I sincerely hope that I can get a chance to change again. I promise that I will abide by the quality of honesty and never make the same mistake again.'

22. On his Case Management Form ('CMF'), Mr Liu ticked the box to indicate he admitted the allegation. Underneath he wrote '*I admit that all the facts above is true.*'

DECISIONS ON ALLEGATIONS AND REASONS

23. The Committee considered the documents before it, the submissions of Mr Law on behalf of ACCA and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard to be applied is proof on the balance of probabilities

Allegation 1(a)

24. Mr Liu admitted Allegation 1(a) in his CMF. In his email of 16 May 2020, he accepted that he had unauthorised materials in the exam room. The Committee was satisfied this was a clear and unequivocal admission to Allegation 1(a) and,

in accordance with CDR 12(3)(c), the Committee found it proved on the basis of that admission.

Allegation 1(b)

25. Mr Liu admitted Allegation 1(b) in his CMF. In his email of 16 May 2020, he admitted that he not only had the notes in the exam room but that he had the idea of cheating. The Committee was satisfied this was a clear and unequivocal admission to Allegation 1(b) and, in accordance with CDR 12(3)(c), the Committee found it proved on the basis of that admission.

Allegation 1(c)(i)

26. Mr Liu admitted Allegation 1(c)(i) in his CMF. After taking advice from the Legal Adviser and hearing from the Case Presenter, the Committee determined that the appropriate course was not to find this allegation proved on the basis of admission. The question of whether conduct was dishonest involved consideration of both facts and standards. The Committee also considered that, given Mr Liu was unrepresented and that English is not his first language, the fairest course was to require ACCA to prove this allegation of dishonesty.
27. The Committee considered whether Mr Liu's conduct was dishonest in light of its finding, at Allegation 1(b), that his intention was to gain an unfair advantage in the exam.
28. The Committee noted that Mr Liu had sat four exams before. He acknowledged that he had read and understood the Exam Regulations. He was, therefore, well aware of the importance of not using revision notes in an exam. Of significance, he attempted to hide these notes under his exam script when the Invigilator walked by.
29. Further, he acknowledged in his email of 16 May 2020 that he had formed, at the latest while he was in the exam room, the intention to cheat. He also admitted in that email he had been dishonest.
30. The Committee was satisfied that being in possession of revision notes in an exam room with the intent to gain an unfair disadvantage would be regarded as dishonest by ordinary and reasonable members of the public.

31. On the basis of the evidence and Mr Liu's admissions, the Committee was satisfied that Mr Liu's actions were dishonest and therefore Allegation 1(c)(i) was proved.

Allegation 1(c)(ii)

32. As Allegation 1(c)(ii), which alleged a breach of the Fundamental Principle of Integrity, was an alternative to 1(c)(i), it was not necessary for the Committee to consider this Allegation.

Allegation 1(d)(i)

33. The Committee was in no doubt that bringing revision notes into an exam and intending to use them to cheat brings discredit to Mr Liu, the Association and the profession. It would undoubtedly be regarded as deplorable by members of the profession. Mr Liu's conduct plainly amounted to misconduct.

34. Accordingly, the Committee found Allegation 1(d)(i) proved.

Allegation 1(d)(ii)

35. As Allegation 1(d)(ii) was put in the alternative to Allegation 1(d)(i), there was no need for the Committee to consider it.

SANCTION AND REASONS

36. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour.

37. The Committee regarded the following as aggravating factors. Mr Liu stood to gain a personal benefit from his misconduct. Further, there is obvious potential for harm to the reputation of the profession and the integrity of the exam system where students cheat and, as a result, pass exams they should not have passed.

38. In mitigation, the Committee took into account that no previous disciplinary findings had been made against Mr Liu. He had engaged with the process and had apologised for his actions. The Committee accepted that Mr Liu had demonstrated some insight into his misconduct but was not convinced that he

had fully accepted or appreciated the seriousness of what he had done. In the circumstances, the Committee considered his insight was developing rather than full. The Committee accepted that his actions were opportunistic and unsophisticated rather than planned and deliberate.

39. Having found that Mr Liu's actions amounted to misconduct, taking no further action was clearly not appropriate. The Committee, therefore, considered the available sanctions in ascending order of seriousness.
40. Mr Liu's actions were not only a very serious departure from proper and acceptable standards but were dishonest. The Committee considered the guidance in GDS on dishonesty, which emphasises that the public is entitled to expect a high degree of probity from a member of the accountancy profession. It would be inappropriate, given the nature of the conduct in question, to admonish or reprimand Mr Liu.
41. The Committee considered whether a severe reprimand would be an appropriate sanction. Considering the guidance in the GDS, the Committee decided this would not adequately mark the seriousness of the misconduct.
42. The Committee concluded that Mr Liu's actions in this case were fundamentally incompatible with being a member of a professional association. They constituted a serious departure from relevant standards. Having regard to the guidance in the GDS, the Committee concluded that the mitigation and the extenuating circumstances in this case did not justify any course other than removal from the student register.
43. Further, the Committee did not feel that any order which allowed Mr Liu to retain his student membership of ACCA could possibly be justified in light of the public interest.
44. Therefore, the Committee made an order under CDR 13(4)(c) of the Disciplinary Regulations removing Mr Liu from the student register.
45. The Committee did not consider that the public interest in this case required it to additionally make an order under CDR 13(4)(c) restricting Mr Liu's right to apply for readmission beyond the normal minimum period.

COSTS AND REASONS

46. ACCA applied for costs against Mr Liu in the sum of £5,427. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing.
47. The Committee considered that, in principle, an order for costs should be made in ACCA's favour. The Committee considered that the costs claimed were appropriate and reasonable.
48. The Committee had no information about Mr Liu's financial circumstances.
49. The Committee found no reason to reduce the amount from that claimed. The Committee ordered Mr Liu to pay ACCA's costs in the sum of £5,427.

EFFECTIVE DATE OF ORDER

50. The order will come into effect from the date of expiry of the appeal period, namely after 21 days from service of this written statement of the Committee's reasons for its decision, unless Mr Liu gives notice of appeal in accordance with the Appeal Regulations prior to that.

Mrs Helen Carter-Shaw
Chair
08 September 2020

Schedule of Anonymisation

Mr A	Fu Qian
The examiner	Unknown