

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

- In the matter of:** Miss Chenlu Liu
- Heard on:** Monday, 28 September 2020
- Location:** Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
- Committee:** Mrs Wendy Yeadon (Chair)
Mr Edward Weiss (Accountant)
Dr Jackie Alexander (Lay)
- Legal Adviser:** Ms Judith Chrystie (Legal Adviser)
- Persons present
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)
Miss Geraldine Murray (Hearings Officer)
- Observers:** Mr James Walker, Appointments Board
- Interpreter:** Ms Min Xu
- Outcome:** Student removed from the register
- Costs payable to ACCA of £1000.00

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ALLEGATION/BRIEF BACKGROUND

1. Miss Lui attended the hearing by telephone. She was not represented. An interpreter was available to translate.
2. The Committee had the following papers before it:
 - (a) Bundle with pages lettered A-R and numbered 1-68;
 - (b) Tabled Additional (1) with pages numbered 1-5 (following the decision on facts and misconduct only);
 - (c) Tabled Additional (2) with pages numbered 1-5;
 - (d) Tabled Additional (3) with pages numbered 1-12;
 - (e) Cost Schedule with page numbered 1-6;
 - (f) Service bundle with pages numbered 1-17.
3. The Committee considered the following Allegation:

Allegation 1

- a. During a Financial Reporting examination on 05 September 2019, Miss Chenlu Liu was in possession of:
 - i. Unauthorised materials in the form of handwritten notes whilst at her exam desk, contrary to Examination Regulations 4 and/or 5.
- b. Miss Chenlu Liu intended to use any or all of the unauthorised materials set out at 1(a) above to gain an unfair advantage.
- c. Miss Chenlu Liu's conduct in respect of 1(b) above was:

- i. Dishonest, in that Miss Chenlu Liu intended to use any or all of the unauthorised materials which she had at her exam desk to gain an unfair advantage; or, in the alternative
 - ii. Contrary to the Fundamental Principle of Integrity (as applicable in 2019) in that such conduct is not straightforward and honest;
 - d. By reason of her conduct, Miss Chenlu 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
- 4. On 14 November 2018, Miss Lui first registered as an ACCA student.
- 5. On 05 September 2019, Miss Liu attended the C854/1 Hangzhou exam centre to sit the Financial Reporting CBE examination. The exam commenced at 13.30pm and was due to last for 3 hours 20 minutes. Miss Lui had had no previous unsuccessful attempts at the Financial Reporting exam and had passed several ACCA examinations in the past.
- 6. On the day of the examination, the exam centre Invigilator completed a SCRS 1B report form, which stated that she had not noticed Miss Lui using the notes and that the authorised material:
 - a. Consisted of two pieces of notes;
 - b. Was found at 16.39 under Miss Lui's keyboard whilst she was collecting scrap paper.
- 7. The Invigilator stated that Miss Lui said that she had brought the notes into the exam but never used them and confirmed "*I asked why she brought them in*

(she said when she wanted to hand them in, the test had already begun so she just put them under the keyboard)."

8. On the day of the examination, Miss Liu completed an SCRS2B form in which she stated the unauthorised material:
 - a. Consisted of *"paper"*;
 - b. Was in her possession *"when the examination ended"* as she had forgotten to *"move it from my cloths (sic)"*;
 - c. Was relevant to the syllabus being examined;
 - d. Had been written *"several days ago to check whether I had remembered."*
9. In the same form, Miss Lui claimed that she did not use, intend to use or intend to gain an unfair advantage from the use of, the authorised material.
10. In a report dated 03 October, the Examiner prepared an irregular script report confirming that the unauthorised material was relevant to the syllabus and to the examination but that it was not certain whether the material had been used in the exam. The Examiner stated:

'In my opinion they would have benefitted from a maximum 2 marks for the numbers if the notes had been used. In addition, the notes found for the narrative part of the analysis would not be relevant to the question asked on the day'
11. Miss Lui provided written responses to ACCA's communications about the incident on 13 October 2019 on 01 December 2019 that, in summary, stated:
 - a. She was sincerely sorry she, *"had been found a prohibited behavior"* in the exam;

- b. She accepted that she had the unauthorised material but did not intend to use it to gain an unfair advantage;
 - c. She did not use the notes during the exam and there was no connection or overlap between her answer in the exam and the notes;
 - d. At the time she found the notes, the exam had started, and she was worried that, if she told the Invigilator about the notes, this would waste time and cause *“unnecessary misunderstanding, and would therefore delay my exam time.”*
 - e. She found the notes in her, *“pants pocket”* and thought the notes, *“would be shook off from my pocket”* so she wrongly moved the notes under the keyboard;
 - f. She prepared the notes prior to the exam as a revision aid;
 - g. She would check her pockets prior to the exam to avoid a repetition of the situation.
12. During the hearing, Miss Lui provided oral evidence. She admitted that she possessed the unauthorised material but denied any intention to use the notes. She offered the following explanation:
- a. The notes were prepared as a memory aid sometime before the exam;
 - b. She had placed the notes in her trousers because she did not have anything else with her at the time but had then folded those trousers and, although they had not been washed, she had not worn them again prior to the day of the exam;
 - c. She walked 10 minutes to the exam;
 - d. The notes were folded and bulky in her pocket, but she did not feel them until into the middle of the exam;

- e. At this point she must have moved around as she started to feel the notes in the front left pocket of her trouser;
- f. She was concerned that the notes would fall out from her pocket and that the Invigilator would consider she was cheating if she drew the notes to their attention, so she placed the notes under the keyboard so that this created some distance from her and made it impossible for her to use the notes.
- g. She accepted that the right approach would have been to alert the Invigilator but, at the time, the exam had started, she was very nervous when she found the notes, she was concerned that she might be suspected of cheating if she handed over the notes and all she thought about was to place distance between her and the notes.

13. ACCA submitted that:

- a. Miss Liu breached Examination Regulation 4 and/or 5 by taking unauthorised materials into an examination meaning she was liable to disciplinary action under byelaw 8(a)(iii);
- b. There could be no other explanation as to why the unauthorised materials were in her possession if not to gain an unfair advantage and Miss Liu has not discharged the reverse burden of proof under Regulation 7(a);
- c. Either Miss Lui deliberately brought the notes into the exam or she brought the notes into the exam by accident and, when she discovered the existence of the notes, she then formed the intention to use the notes if they helped her in the exam;
- d. It was not relevant whether the notes had been used – there was still an intention to cheat;

- e. She would have noticed the notes in her trouser pockets when she first sat down in the exam room and placing them under the keyboard made it easy to lift up her keyboard slightly and slip the notes out, even if the notes were folded. Even if the notes were folded, it would not be difficult to access;
- f. Miss Liu's conduct was clearly dishonest and contrary to the Fundamental Principle of Integrity which imparts a duty on students and members to be "*straightforward and honest*";
- g. Intending and/ or using unauthorised material, such as notes that are relevant to the examination, in order to gain an unfair advantage is behaviour which amounts to misconduct.

DECISION ON FACTS/ALLEGATION AND REASONS

- 14. Miss Lui admitted the facts in Allegation 1(a)(i). In accordance with Regulation 12(3) of the Regulations, the Chair announced that sub-allegation was found proved.
- 15. Having found a breach of Examination Regulations 4 and 5, the Committee considered whether Miss Lui intended to use the unauthorised item to gain an unfair advantage. The Committee recognised that under Examination Regulation 7(a) there was an assumption that the unauthorised material that was relevant to the syllabus was intended to be used to gain an unfair advantage unless proved otherwise by the student.
- 16. The Committee accepted the irregular script report from the Examiner that confirmed the notes were relevant to the exam syllabus (and also to the particular examination).
- 17. The Committee carefully considered Miss Lui's explanation that she mistakenly left the notes, as a revision aid, in her pocket sometime before the day of the exam and had only realised that it was in her clothing some way into the exam itself when she felt it bulky in her pocket. Miss Lui told them that she had

removed the notes from her pocket and placed it beneath the keyboard. She did this to place distance between herself and the notes and to demonstrate that she did not intend to use the material. She said that she was nervous, and, at the time, she feared that the Invigilator would consider she was cheating if she handed the notes over. Miss Lui stated that she had not used and had no intention of using the notes to gain an unfair advantage; she did not intend to cheat.

18. The Committee carefully considered Miss Lui's explanation for her possessing the notes in determining whether it was more likely than not that she did not intend to gain an unfair advantage in possessing the notes. The Committee viewed her explanation as implausible. In particular, it considered it was inherently unlikely that Miss Lui would not have noticed the notes - which she described as bulky - in her trouser pocket - which she described as tight - until a considerable way into the exam. Further, Miss Lui did not provide any full or credible reason for the reason that the notes were folded in her trouser pocket in the first instance, nor did the Committee find her account of why she placed the notes under her keyboard rather than hand it to the Invigilator to be credible. In summary, the Committee determined that Miss Lui's explanation was inadequate to rebut the presumption that the notes were on her possession to allow her to gain an unfair advantage.
19. The Committee, therefore, found Allegation 1(b) proved.
20. The Committee considered Allegation 1(c)(i). It considered the following test:
 - a. Ascertain the actual state of the Ms Lui's knowledge or belief as to the facts;
 - b. Determine whether her conduct was honest or dishonest by the standards of ordinary people.
21. In making its finding at Allegation 1(b), the Committee had established that Miss Lui took notes into an exam, knowing that they were unauthorised and intending to gain an unfair advantage. Having determined Miss Lui's knowledge, the

Committee considered whether, by the standards of the ordinary person, Miss Lui's conduct would be regarded as dishonest. It was in no doubt that bringing notes into an exam that were unauthorised with an intention to cheat would be regarded as dishonest behaviour. Allegation 1(c)(i) was accordingly proved.

22. Having found Allegation 1(c)(i) proved, the Committee made no finding in relation to Allegation 1(c)(ii), which had been pleaded in the alternative.

23. The Committee considered whether the factual allegations that had been found proved amounted to misconduct. It regarded the breaches of the Examination Regulations and the dishonesty as clearly falling short of the standards expected of an individual attempting to become an accountant. Cheating in an examination was totally unacceptable conduct. The Committee judged that this conduct plainly amounted to misconduct; it was conduct that was discreditable to Miss Lui and brought discredit to ACCA and the accountancy profession. The Committee, therefore, found Allegation 1(d)(i) proved.

24. Having found Allegation 1(d)(i) proved, the Committee made no finding in relation to Allegation 1(d)(ii), which had been pleaded in the alternative.

SANCTIONS AND REASONS

25. The Committee had regard to the Guidance for Disciplinary Sanctions ('the Guidance').

26. The Committee considered that there was some mitigation in the case: Miss Lui had no previous disciplinary history and she had cooperated and engaged with ACCA's investigation and at the hearing.

27. The Committee did not consider that there were any aggravating circumstances in the case other than the serious nature of the dishonesty.

28. The Committee found Miss Lui deliberately attempted to cheat in a professional exam. It regarded such behaviour as a significant departure from the standards

of conduct expected from an individual hoping to join the accountancy profession. It considered that cheating in a professional exam could detrimentally impact on the public's perception in the integrity and credibility of ACCA's exams and brought discredit on ACCA and its standards for the profession. The Committee also identified a potential risk to the public: had Miss Lui been successful in her attempt to gain an unfair advantage, this might have led to her passing an exam when she was not ready to do so.

29. The Committee considered there was only limited mitigation in a case involving dishonesty, for it to be in the public interest to impose no order. Further, the Committee determined that it would be insufficient to conclude this matter with an admonishment or a reprimand. Miss Lui intentionally took unauthorised notes into the examination with the intention to cheat. The Committee considered that an admonishment or a reprimand would not reflect the seriousness of the deliberate and planned conduct and dishonest intention behind it.
30. The Committee recognised that dishonesty was often regarded as being incompatible with remaining on a professional register, other than in exceptional circumstances. The Committee was concerned at the lack of insight, understanding and reflection by Miss Lui about her conduct. In her written communications with ACCA, Miss Lui had offered a limited apology related to bringing unauthorised material into the exam. During the hearing, Miss Lui did not demonstrate remorse or insight into the findings against her nor did she show that she understood the serious nature of the issues and the consequences of her actions. As a consequence, the Committee considered that it would not be sufficient to conclude the case with a severe reprimand; there were not any exceptional circumstances in this case.
31. The Committee determined that an order removing Miss Lui's name from the register was the only appropriate and reasonable order in the circumstances of the case. It did not, however, consider that it was proportionate to extend the minimum period of 12 months before an application for readmission could be made, nor did it consider that it was in the interests of the public for the removal order to have immediate effect.

COSTS AND REASONS

32. ACCA claimed costs in the sum of £5,634.00.
33. The Committee considered the schedule of costs provided by ACCA. It was satisfied that the sum claimed was reasonable and had been reasonably incurred.
34. The Committee recognised that under Regulation 15(1) of the Complaint and Disciplinary Regulations 2014 (as amended) it could direct Miss Lui to pay such sum by way of costs to ACCA as it considered appropriate. In determining whether an order for costs was appropriate, the Committee was satisfied that Miss Lui's conduct had not had any adverse impact on the costs incurred but that her financial circumstances were limited. Miss Lui only received an allowance from her parents and was a student.
35. Miss Lui had asked for the costs to be reduced '*a little bit*' but she had not disputed the principle that, as a consequence of her misconduct, ACCA had incurred costs for which she could be liable.
36. In all these circumstances, the Committee determined that the imposition of an extensive order for costs would cause severe financial hardship and there was no reasonable way in which Miss Lui could pay the full sums claimed. As a consequence, the Committee considered that it was appropriate to make an order for costs requiring Miss Lui to pay the sum of £1000.

Ms Wendy Yeadon
Chair
28 September 2020