

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Miss Yicheng Li</b>
<b>Heard on:</b>	<b>Monday, 13 December 2021</b>
<b>Location:</b>	<b>Held remotely by video conference</b>
<b>Committee:</b>	<b>Ms Wendy Yeadon (Chair) Ms Beth Picton (Accountant) Mr Damian Kearney (Lay)</b>
<b>Legal adviser:</b>	<b>Mr Alastair McFarlane</b>
<b>Persons present and capacity:</b>	<b>Mr Benjamin Jowett (Case Presenter) Miss Nyero Abboh (Hearings Officer)</b>
<b>Observers:</b>	<b>None</b>
<b>Outcome:</b>	<b>Allegations 1(a)(i), 1(b), 1(c)(i) and 1(d)(i) found proved Removed from the student register Costs of £4,612.50</b>

#### INTRODUCTION

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1. ACCA was represented by Mr Jowett. Miss Li did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1–73, a service bundle, numbered pages 1-19 and two additional costs bundles, numbered pages 1–2 and 1.

### **SERVICE/ PROCEEDING IN ABSENCE**

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Miss Li in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).
3. The Committee next considered whether it was in the interests of justice to proceed in the absence of Miss Li. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Miss Li had a right to attend the hearing and to participate and that the discretion to proceed in her absence must be exercised with the utmost care and caution.
4. On 15 November 2021, the Committee noted that ACCA had sent a notice of hearing letter to Miss Li’s email address, offering her the opportunity of attending via video or telephone link, with the costs being met by ACCA. Miss Li had completed the Case Management Form in May 2021, in which she maintained her denial of any wrongdoing, and asserted that she had *“no knowledge about the law of the UK”* and that international travel was not possible for her *“during this COVID-19 period”* and asked that the case be stopped from proceeding during her absence. She indicated that there were no dates on which she was able to attend. The Committee noted that ACCA responded repeating that the case would proceed remotely and that she was not required to travel and attend in person. There has been no further response from Miss Li.
5. The Committee was satisfied that all reasonable attempts have been made to secure Miss Li’s attendance/participation at the hearing. The Committee was satisfied that Miss Li had voluntarily waived her right to attend and was not persuaded that any adjournment would increase the chance of Miss Li attending or participating further in the case. On the information before it and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice

to proceed in the absence of Miss Li. The Committee reminded itself that her absence added nothing to ACCA's case and was not indicative of guilt.

## **ALLEGATIONS**

### Allegation 1

- (a) During a Taxation (UK) examination on 07 July 2020, Miss Yicheng Li was in possession of:
  - (i) unauthorised materials in the form of two double sided handwritten notes, contrary to Examination Regulation 4.
- (b) Miss Yicheng Li intended to use the notes referred to at 1(a) above or either of them to gain an unfair advantage.
- (c) Miss Yicheng Li's conduct in respect of 1(b) above was:
  - (i) Dishonest, in that Miss Yicheng Li intended to use either or both notes to gain an unfair advantage; in the alternative
  - (ii) Contrary to the Fundamental Principle of Integrity (as applicable in 2020) in that such conduct is not straightforward and honest.
- (d) By reason of her conduct, Miss Yicheng Li 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.

## **BACKGROUND**

- 6. On 01 August 2017, Miss Li registered as an ACCA student.
- 7. On 07 July 2020, Miss Li attended the SH5J 85205 Exam Centre to sit the Tax

UK CBE examination. The exam commenced at 17.30 and was due to last for 3 hours 20 minutes.

8. All candidates for ACCA examinations are made aware of the Examination Regulations as follows:
  - *Prior to an examination, all Computer Based Examination candidates registering for CBE in advance of each CBE session receive an attendance docket which contains the ACCA guidelines and Regulations.*
9. The Exam Centre Invigilator, Miss A, stated in her SCRS1B form, completed on the day of the exam, that the unauthorised material was found in the student's possession at "20:08". Miss A confirmed that the unauthorised material consisted of *"two pieces of pages (sic)"* and that the unauthorised material was found *"under the scrap paper"* and that *"they were found on the desk, under the scrap paper."*
10. When asked whether the unauthorised material was believed to have been used, Miss A stated that *"Candidate 4087876, Li Yicheng had a peek on the notes. So I walked nearer and found her prepared notes."*
11. Miss A further confirmed that the student *"said that she has not ever read those notes."*
12. On the day of the examination, Miss Li completed an SCRS2B form. In that she confirmed *"a small paper"* was in her possession *"at the end of the exam."* She denied that the unauthorised materials were relevant to syllabus being examined and stated *"I accidentally take the unauthorised materials to the syllabus being examined. I am so sorry for making such a mistake and I hope that it will not effect my following exam."* Miss Li was asked whether she used the unauthorised materials, and responded *"I'm not using the materials, the teacher can prove this"*. When asked to confirm whether she attempted to use the unauthorised materials that were found in her possession, Miss Li stated, *"I am not attempted to use the materials (sic)."* When asked whether she intended to use the unauthorised materials, Miss Li has stated, *"I am not intended to use the unauthorised materials, I am so sorry that I have taken it to the exam (sic)."* When asked whether she intended to gain an unfair advantage from the unauthorised

materials, Miss Li has stated, “No.”

13. In the Examiner’s Irregular Script Report, dated 20 July 2020, the Examiner confirmed that the material is relevant to the syllabus and is relevant to the examination. As to whether the material has been used when the student was attempting the exam, the Examiner stated “MAYBE,” and also stated “*The notes cover a wide range of points, although they are hard to decipher in places because of the abbreviations used. Some aspects appear to relate to the three questions attempted by the candidate in part C, although (with answers now computer based) it is impossible to say whether the notes were actually used or not. All of the student’s answers were very poor, so probably no benefit obtained from the notes. However, the notes also cover quite a bit of material which would have been examined in parts A and B of the exam, consisting of 60 objective test marks. I do not see these questions and there are no workings in any case. It is therefore not possible to comment on these sections, especially as a student could have simply guessed at the correct answer for any question where there is a one from four choice (sic).*”
14. On 24 July 2020, ACCA’s Exam’s Conduct Department wrote to Miss Li in relation to the irregularity that had occurred at the Exam Centre and requested a response from her. On 03 August 2020, Miss Li provided a response asserting:  
  
*“During the examination for TX UK held in July 2020, I accidentally took my notes into the examination room. The notes were only used for review before the exam. However, I was not intended to cheat or take advantage of the notes in the exam. I only used the formula sheet given on the computer to complete my exam. In addition, I failed the TX UK exam twice before 2020 and I firmly believe that I won’t pass the exam this time. I apologize for the mistake and I am very sure it will never happen again.”* (sic).
15. On 11 October 2020, Miss Li provided a response to the ACCA Investigations Officer and accepted that the handwritten notes were in her possession during the TX UK examination on 07 July 2020 and that they constituted “*unauthorised materials*” but denied that they were relevant to the syllabus or exam. Miss Li denied intending to use the unauthorised materials during the exam stating that  
  
*“The materials were only used for review before the exam. I did not intend to*

*cheat or take advantage of the notes in the exam.” Further she denied using the unauthorised materials stating that “I only used the formula sheet given on the computer during the exam.” In her further comments, she stated:*

*“The handwritten materials were taken into the exam room unintentionally by mistake for reasons as below: 1) The exam venue was changed due to COVID19, which is much far away from my home than originally booked. 2) I was the last 2nd person (probably the last one) who arrived the exam hotel in such a hurry for taking the temperature check in an anxious manner, which made me forget the procedure of checking my belongings completely. 3) Usually I arrive the exam venue at least 60 minutes earlier when taking other ACCA tests. But the traffic didn't go smoothly on July 7th, I was only about 30 minutes earlier than the exam time, regardless having to take the temperature check as an additional procedure under such a special circumstance. I apologize for my mistake, and make sure it will never happen again with all ACCA rules be strictly followed in the future (sic).”*

#### **ACCA's SUBMISSIONS**

16. ACCA submitted that Miss Li has breached Examination Regulations 4 and 5 by taking unauthorised materials into an examination. It further contended that her purpose for doing so was to intend to use the unauthorised material to gain an unfair advantage.
17. ACCA relied on the provision set out in Exam Regulation 6. Once a student is found in possession of '*unauthorised material relevant to the syllabus being examined*', it is assumed that the student intended to use it to gain an unfair advantage. ACCA maintain that Miss Li was found in possession of such materials and therefore Exam Regulation 6 applied. The burden of proof therefore shifted to Miss Li and ACCA submitted that in all the circumstances she has failed to discharge the requisite burden of proof.
18. ACCA submitted that by trying to gain an unfair advantage by cheating in an exam, Miss Li's conduct would be regarded as dishonest according to the standards of ordinary decent people and amounted to misconduct under byelaw 8(a)(i).

19. As an alternative, ACCA submitted that Miss Li has breached the Fundamental Principle of Integrity in light of her intention to use the unauthorised material in order to gain an unfair advantage during the Tax UK examination on 07 July 2020. This conduct is contrary to the Fundamental Principle of Integrity, which imparts a duty on students and members to be “*straightforward and honest.*”

#### **MISS LI’S SUBMISSIONS**

20. There were no submissions from Miss Li other than her denials of wrongdoing and explanations contained in the case papers.

#### **DECISION ON ALLEGATIONS AND REASONS**

21. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving that Miss Li possessed unauthorised materials relevant to the syllabus being examined rested upon ACCA. However, pursuant to Examination Regulation 6, if this was established, the burden of proving that she did not intend to use them to gain an unfair advantage was on her. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the ‘balance of probabilities’.
22. The Committee heard that there had been no previous findings against Miss Li and accepted that it was relevant to put her good character into the balance in her favour.

#### **DECISION ON FACTS**

23. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Mr Jowett on behalf of ACCA and the explanations from Miss Li in the case papers. It reminded itself to exercise caution as it was working from documents alone and carefully considered the weight to attach to the evidence and submissions it had received.

#### **Allegation 1(a)(i)**

24. The Committee accepted the evidence from Miss A as credible and reliable and was satisfied that Miss Li had the two pages of notes with her in the exam and that the notes constituted unauthorised material under the Exam Regulations. It therefore found Allegation 1(a)(i) proved.

### **Allegation 1(b)**

25. The Committee next considered Allegation 1(b) and whether Miss Li intended to use the unauthorised materials to gain an unfair advantage.
26. Exam Regulation 6 provides that where unauthorised materials relevant to the syllabus being examined are found in the possession of an examinee, it is presumed that the examinee intended to use them to gain an unfair advantage. This presumption can be rebutted by the examinee. The Committee was satisfied on Miss Li's reported assertion that the notes were for revision and, on the evidence of the Examiner, that the notes were relevant to the syllabus being examined. Therefore, there was a burden upon Miss Li to establish, on the balance of probabilities, that she did not intend to use the unauthorised materials to gain an unfair advantage in the exam.
27. The Committee noted that this was not Miss Li's first exam and that she had failed this Taxation (UK) exam on two previous occasions. It noted her explanation about being late and how she forgot to check her belongings but rejected her "accidental" explanation for taking the notes into the exam as implausible. It accepted that she had attended 30 minutes before the start of the exam and the evidence that they were noted on her desk under scrap paper. It also accepted Miss A's observation evidence that reported Miss Li as having "*a peek*" at the notes as reliable and accurate. It was not persuaded that Miss Li had rebutted the presumption under Exam Regulation 6.
28. Further, and in any event, the Committee thought it more likely that, had the bringing into the exam of the material been an innocent error without any intention to use it to cheat, she would have kept them on her person, rather than having them on the desk under scrap paper. The Committee rejected her



innocent explanation as less plausible and despite her hitherto good character was satisfied that it was more likely than not that she had brought the notes into the exam, because she had the intention of referring to them, which it accepted she was seen doing. It was satisfied that she had intended to use the notes to gain an unfair advantage. Accordingly, Allegation 1(b) is proved.

#### **Allegation 1(c)(i) - Dishonesty**

29. The Committee next asked itself whether the proven conduct in Allegation 1 (b) was dishonest.
30. The Committee considered what Miss Li's belief was, as to the facts. It accepted that the material was relevant to the exam she was sitting and was satisfied that she intended to use the notes to cheat and that she knew that taking this material into the exam was prohibited. It was satisfied that this conduct was dishonest according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 1(c)(i) was proved and did not consider the alternative of Allegation 1(c)(ii).

#### **Allegation 1(d)(i) - Misconduct**

31. The Committee next asked itself whether, having been in possession of unauthorised materials with an intention to use them to gain an unfair advantage and having been dishonest, Miss Li was guilty of misconduct.
32. The Committee had regard to the definition of misconduct in byelaw 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Miss Li's actions brought discredit on her, the Association, and the accountancy profession. It was satisfied that her conduct to gain an advantage in a professional exam reached the threshold for misconduct.
33. In the light of its judgment on Allegation 1(d)(i), no finding was needed upon Allegation 1(d)(ii).

#### **SANCTIONS AND REASONS**

34. The Committee noted its powers on sanction were those set out in Regulation 13(4). It had regard to ACCA's Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.
35. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. The dishonest behaviour was serious. Trust and honesty are fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermines its reputation and public confidence in it.
36. The aggravating factors the Committee identified were:
- The behaviour involved dishonesty and there was an element of pre-planning;
  - The serious potential impact on the reputation of the profession;
  - There was no evidence of insight into the seriousness of the conduct;
  - There were no expressions of regret or apology.
37. The only mitigating factor the Committee identified was:
- A previous good character with no disciplinary record.
38. Given the Committee's view of the seriousness of her conduct, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven misconduct.
39. The Committee reminded itself that it was dealing with a case of dishonesty and had specific regard to Section E2 of the Guidance in relation to dishonesty and was mindful of the case law to the effect that dishonesty lies at the top of the spectrum of misconduct. The Committee determined that her behaviour was fundamentally incompatible with Miss Li remaining on the student register

of ACCA and considered that the only appropriate and proportionate sanction was that she be removed from the student register.

#### **COSTS AND REASONS**

40. ACCA claimed costs of £5,572.50 and provided a detailed schedule of costs. The Committee noted Miss Li has not provided any information as to her means. The Committee decided that it was appropriate to award costs to ACCA in this case and considered that the sum claimed by them was a reasonable one in relation to the work undertaken. It noted Mr Jowett's concession that the case had not taken the full day reduced his fees and those claimed for the Hearing Officer by a total of £960 to reflect that. Accordingly, the Committee concluded that the sum of £4,612.50 was appropriate and proportionate. Accordingly, it ordered that Miss Li pay ACCA's costs in the amount of £4,612.50.

#### **EFFECTIVE DATE OF ORDER**

41. This order shall take effect from the date of the expiry of the appeal period unless notice of appeal is given prior to the expiry of that period, in which case it shall become effective (if at all) as described in the Appeal Regulations. The Committee was not persuaded that the ground for imposing an immediate order was made out given the facts of this case and that public protection is not involved.

**Mrs Wendy Yeadon**  
**Chair**  
**13 December 2021**