

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Yiwen Liu
Heard on:	23 February 2024
Location:	Remotely via Microsoft Teams
Committee:	Mr Andrew Gell (Chair) Ms Fiona MacNamara (Accountant) Mr Damian Kearney (Lay)
Legal Adviser:	Mr Andrew Granville Stafford
Persons present and capacity:	Ms Elaine Skittrell (ACCA Case Presenter) Miss Nicole Boateng (Hearings Officer)
Summary:	Allegations 1, 2, 3(a) and 4(a) proved Removal from the student register Costs of £4,880

PRELIMINARY

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Miss Yiwen Liu. Miss Liu is a student member of ACCA and is resident in China.

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2. The Committee had before it a Bundle of documents (73 pages) and a Service Bundle (20 pages).
3. Miss Liu did not attend the hearing and was not represented.

PROCEEDING IN ABSENCE

4. The Notice of hearing was sent by email on 26 January 2024 to Miss Liu's registered email address. The Committee was provided with a delivery receipt showing the email was delivered to that address.
5. There was no response to the notice of hearing from Miss Liu. On 14 February 2024 the Hearings Officer made a call to Miss Liu's registered telephone number. The call was answered, but when the Hearings Officer identified herself as calling from ACCA there was no response. The Hearings Officer made a further call on 20 February 2024 with the same result. The Hearings Officer followed up these calls with emails asking her to confirm if she was going to attend the hearing but there has been no reply.
6. The Committee was satisfied that the requirements of Regulations 10(1) and 22(1) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR') as to service had been complied with.
7. 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 Miss Liu. The Committee bore in mind that the discretion to do so must be exercised in light of the public interest in dealing with matters such as this fairly, economically, and expeditiously.
8. The Committee considered that no useful purpose would be served by adjourning this hearing. It was satisfied, in light of the emails and telephone calls referred to above, that Miss Liu is aware of the hearing. She has not availed herself of the opportunity to participate in the hearing by video link and she has not requested an adjournment. In light of the serious nature of the allegations in this case, the Committee was satisfied that the interests of justice and the public interest was served by proceeding in Miss Liu's absence.

ALLEGATIONS AND BRIEF BACKGROUND

9. The allegations against Miss Liu are as follows.

Miss Yiwen Liu (Miss Liu), a student of the Association of Chartered Certified Accountants (ACCA):

1. On 8 March 2022, during a Taxation (TX) examination (the Exam), was in possession of unauthorised material, in the form of a sheet of a A4 sized paper with notes written on it, whilst at her exam desk, contrary to Examination Regulations 4 and/or 10.
2. Intended to use and/or used the unauthorised material referred to in allegation 1, to gain an unfair advantage in the exam.
3. Miss Liu's conduct as referred to in paragraphs 1 and 2 above was:
 - a) Dishonest, in that Miss Liu intended to use the unauthorised material which she had in her possession to gain an unfair advantage in the exam: or in the alternative,
 - b) Demonstrates a failure to act with integrity (as applicable in 2022);
4. By reason of her conduct, Miss Liu is:
 - a) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at 1 to 3 above; or in the alternative,
 - b) In respect of Allegation 1, liable to disciplinary action pursuant to bye-law 8(a)(iii).
10. Miss Liu was admitted to student membership of ACCA on 19 March 2019. She had previously passed four ACCA exams, two at the second attempt.
11. On 8 March 2022 Miss Liu attended an examination centre in Yantai, China to sit an ACCA Taxation ('TX') examination. She had previously sat the TX exam on two occasions and had failed on both occasions.
12. Prior to examinations, all candidates receive an attendance docket which contains ACCA's Examination Regulations 2022. These include the following regulations:

'4. You are not permitted during the exam to possess (whether at your desk or on or about your person), use or attempt to use any notes, books or other written materials (whether in electronic form or otherwise) except those expressly permitted within the Exam Guidelines. These are known as 'unauthorised materials'.

6. (a) If you breach exam regulation 4 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.

10. You may not engage in any conduct designed to assist you in your exam attempt or provide any improper assistance to any other exam entrant in their exam attempt.'

13. ACCA's case is that during the exam Miss Liu was found to be in possession of revision notes, which are unauthorised materials for the purposes of the Exam Regulations.

14. ACCA relied on a report from one of the exam supervisors, Supervisor A. They stated they had found unauthorised materials in Miss Liu's possession at 11.55 pm (sic). They stated in their report:

'The supervisor detected the unauthorised material when collecting docketts at the end of the exam. The supervisor noted the invigilator [Invigilator B] to confirm at once. Then I took a photo of material and told the student concerned to finish the report after the exam.'

'It was found under her scratch paper and was the same size with its scratch paper.'

'The unauthorised material were found under the scratch paper while the supervisor collecting docketts.'

'The unauthorised material was collected by supervisor at once and asked the student to finish the reports after the exam.'

15. The Committee was provided with a copy of the notes. They were written in hand on one side of an A4 sheet, both in English and in Chinese.

16. The Invigilator, Invigilator B, also made a report. They said:

'The supervisor found the unauthorised material when collecting docketts. They noted me immediately to confirm. Then they took a photo of the material and asked the student to finish the report after the exam.'

17. The Invigilator described Miss Liu's behaviour, when she was found in possession of the unauthorised material, as *'she was nervous and quited [sic] the exam'*.

18. The Invigilator confirmed that an SCRS2B form was provided to Miss Liu, which she completed. Miss Liu confirmed in her answers on the form that she did

have her examination attendance docket at the exam but she said she had not read the reverse of the docket containing the Examination Regulations and Guidelines.

19. Miss Liu was asked in the form to confirm whether she was in possession of unauthorised materials whilst the exam was in progress. She ticked 'No' and stated *'It's a paper in my pocket which to make a rough draft when paper provided by exam used up'*.

20. She was asked if she accepted that the unauthorised material was relevant to the syllabus being examined. She explained, *'Yes, it has knowledge I wrote on paper.'* She was then asked to confirm the purpose for which she had the unauthorised material in her possession. She stated, *'Not in purpose, it's an ordinary paper in my pocket.'*

21. Miss Liu's form also contained the following questions and answers.

'Q: Please confirm whether you used the unauthorised materials that were found in your possession. . .

A: I wrote some knowledge on paper in case not to forget.

Q: Please confirm whether you attempted to use the unauthorised materials . .

A: That's not cheating paper, it's all written in exam time.

Q: Please confirm whether you intended to use the unauthorised materials . . .

A: The paper examination given is used up, for keeping the order of exam I choose to use my paper to continue to take draft.'

22. ACCA also relied on an Irregular Script report from an Examiner. The Examiner considered the notes that had been seized from Miss Liu. They confirmed they were relevant to both the syllabus and the particular exam Miss Liu was taking. In answer to the question whether the notes had been used by Miss Liu when she was attempting the exam, they wrote *'Maybe'*. They added:

'The student's performance for part C of the exam is reasonable, and there is no way to say whether the notes were actually used.'

23. The Investigating Officer wrote to Miss Liu by email on 8 November 2022. The email asked her a number of questions, which she responded to on 19 December 2022.

24. In her response, Miss Liu accepted that the notes in question were in her possession during the TX exam and that they were unauthorised materials. She also accepted the notes were relevant to the syllabus and the examination that she was taking. Miss Liu answered 'yes' when she was asked whether she intended to use the notes and whether she did actually use them during the exam.
25. Miss Liu was asked whether she wrote the information on the A4 sheet of paper before or during the exam of 8 March 2022. Miss Liu answered simply '*I wrote the information on A4 paper*'.
26. Miss Liu was also asked whether she had any other comments, to which she replied:
- 'I know what I've done is totally wrong when the exam is over, and I'm so sorry that I gave up a chance to treat the examination properly and fairly. The unauthorised materials is not allowed to be brought in exam but I did it whenever on purpose or not. I believe that I'm not a qualified ACCA student, I obeyed rules and took action immorally. If I am not able to be an ACCA student, I will accept it and treat this mistake as a vital lesson in my life to remind me all the time the importance of honesty and complying the rules'*.
27. On 14 February 2023, Miss Liu was asked again to clarify whether she wrote the information on the A4 sheet of paper before or during the exam on 8 March 2022. Miss Liu responded by email on 22 February 2023 stating, '*I wrote the paper before the exam started on that day*'.

DECISIONS ON ALLEGATIONS AND REASONS

28. The Committee considered the documents before it, the submissions of Ms Skittrell 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. However, where a student is found to be in possession of unauthorised material during an exam the burden is reversed and the student is presumed to have intended to use the material to gain an unfair advantage unless the contrary is proved (Exam Regulation 6(a)).

Allegation 1

29. The Exam Regulations and Guidelines make it clear that any notes brought into the exam are unauthorised materials. The Committee noted Miss Liu's admission in her email of 19 December 2022, in which she stated:

'The unauthorised materials is not allowed to be brought in exam but I did it . . . If I am not able to be an ACCA student, I will accept it and treat this mistake as a vital lesson . . .'

30. The Committee was satisfied on the balance of probabilities that Miss Liu had unauthorised materials with her during the TX exam on 8 March 2022. It was further satisfied that this amounted to a breach of both Exam Regulation 4 and Exam Regulation 10. Miss Liu's conduct was designed to assist her in passing an exam which, the Committee noted, she had failed on two previous occasions.
31. Therefore, the Committee found Allegation 1 proved.

Allegation 2

32. By virtue of its finding in respect of Allegation 1, the Committee was satisfied that the notes were in Miss Liu's possession and that she was not authorised to have them with her in the exam.
33. The Committee was further satisfied, based on the contents of the notes and Miss Liu's own admissions, that these notes were relevant to the subject being examined. She accepted in her email of 19 December 2022 that the materials were relevant to the exam.
34. The Committee considered that no logical conclusion could be drawn save that Miss Liu intended to use, and potentially did use, the notes to gain an unfair advantage in the exam.
35. Accordingly, the Committee found Allegation 2 proved.

Allegation 3(a)

36. The Committee was satisfied that Miss Liu was well aware she was not permitted to bring notes into the exam and clearly knew that what she was doing amounted to cheating. There is no doubt that bringing revision notes into an exam room with the intent to gain an unfair disadvantage would be regarded as dishonest by ordinary and reasonable members of the public. The Committee found that Miss Liu's actions were dishonest and therefore Allegation 3(a) was proved.

Allegation 3(b)

37. As Allegation 3(b) was an alternative to Allegation 3(a), there was no need for the Committee to consider it.

Allegation 4(a)

38. Bringing notes into an exam in order to cheat in a professional examination clearly falls far short of acceptable standards. It would be regarded as deplorable by fellow members of the profession and adversely affects the reputation of the profession.
39. This conduct undoubtedly amounts to misconduct and therefore the Committee found Allegation 4 proved.

Allegation 4(b)

40. As Allegation 4(b) was an alternative to Allegation 4(a), there was no need for the Committee to consider it.

SANCTION AND REASONS

41. 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. Having found that Miss 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.
42. In mitigation, the Committee took into account that no previous findings had been made against Miss Liu and that she had made some admissions in relation to the allegations.
43. The Committee considered the aggravating factors. Miss Liu's actions were deliberate and for personal gain. She initially denied the allegations, although the Committee accepted her subsequent admissions demonstrated some insight. Her behaviour was, however, planned and pre-meditated.
44. In light of the aggravating factors, and in particular the deliberate nature of the dishonesty, the conduct was clearly too serious to justify an admonishment or a reprimand. This was not misconduct of a minor nature, which is one of the key factors which would justify such a sanction.
45. The Committee considered whether a severe reprimand would be an appropriate sanction. The Committee had regard to the fact that Miss Liu engaged in a pre-meditated dishonest act. It was intentional misconduct of a

nature which results in harm because it undermines the integrity of the exam system. Having regard to the GDS, the Committee was satisfied that a severe reprimand was not an appropriate sanction.

46. The Committee concluded that Miss Liu's actions in this case were fundamentally incompatible with being a student member of a professional association. They constituted a serious departure from relevant standards. There was no mitigation which would justify a lesser sanction than removal from the student register. The Committee did not feel that any order which allowed Miss Liu to retain her student membership of ACCA could possibly be appropriate.
47. Therefore, the Committee made an order under CDR 13(4)(c) of the Disciplinary Regulations removing Miss Liu from the student register.
48. 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 Miss Liu's right to apply for readmission beyond the normal minimum period. The Committee bore in mind that any application for re-admission would in any event have to be considered by the Admissions & Licensing Committee.

COSTS AND REASONS

49. ACCA applied for costs against Miss Liu in the sum of £5,555.50. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing. Ms Skittrell accepted some reduction would be appropriate to reflect the actual length of the hearing.
50. The Committee found that there was no reason in principle not to make an order for costs in ACCA's favour. Nor did it consider that the application was for an unreasonable amount, save that it reduced the costs for today's hearing in light of the time taken to conclude it.
51. The Committee had no information about Miss Liu's financial circumstances.
52. In the circumstances, the Committee ordered Miss Liu to pay ACCA's costs in the sum of £4,880.

EFFECTIVE DATE OF ORDER

53. The Committee was unable to identify any risk to the public which would justify directing that the sanction takes immediate effect. Therefore, 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 Miss Liu gives notice of appeal in accordance with the Appeal Regulations prior to that.

Mr Andrew Gell
Chair
23 February 2024