

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Tianyang Liu

Heard on: Thursday, 28 November 2024

Location: Remotely via Microsoft Teams

Committee: Ms Kathryn Douglas (Chair)
Mr George Wood (Accountant)
Mr Nigel Pilkington (Lay)

Legal Adviser: Miss Judith Chrystie

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case Presenter)
Miss Sofia Tumburi (Hearings Officer)

Observers: Ms Jackie Alexander (Appointments Board)

Summary Removed from the student register

Costs: £5000 awarded to ACCA

SERVICE OF PAPERS

1. Mr Liu was neither present nor represented.

ACCA



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2. In determining whether the Notice of the Hearing ('the Notice') dated 31 October 2024 had been served in accordance with the provisions of the Complaints and Disciplinary Regulations 2014 (as amended) ('the Regulations'), the Committee considered its Service Bundle with pages numbered 1-25.
3. The Notice had been sent to Mr Liu's registered email address and complied with the other requirements of the Regulations, including the provisions requiring the Notice to be served at least 28 days prior to the hearing. The Committee was satisfied that there was effective service under the Regulations.

PROCEEDING IN ABSENCE

4. The Committee recognised that it should only proceed in Mr Liu's absence with the utmost care and caution.
5. Mr Liu had initially engaged with ACCA: he completed form SCRS2B on 08 December 2020 to provide his explanation; he responded to ACCA's Exam Conduct team on 02 February 2021. However, Mr Liu had not engaged with ACCA since then.
6. The Investigations Officer had written to Mr Liu on 19 May 2021, had chased for a response on 12 July 2021 and emailed on 14 October 2021 to advise that the matter was to be referred to an assessor. Mr Liu had not acknowledged or replied to the Officer's correspondence.
7. There was then no further communication from ACCA until 13 May 2022 when Mr Liu was informed that the matter was to be referred to a Disciplinary Committee. He did not respond to this email. The next correspondence from ACCA was not until 24 September 2024. Again, Mr Liu did not reply. Further, Mr Liu had not responded to several emails from the Hearing Officer to his registered email address as follows: 31 October 2024 and 07, 14, 15, 21 and 27 November 2024. In the emails, the Hearing Officer asked Mr Liu whether he intended to attend the hearing, if he required an interpreter and, if he did not wish to attend, whether he was content for the Committee to consider the case in his absence? Mr Liu had not replied to these emails. The Hearing Officer

also emailed the student at an alternative email address that had been located in the papers, but this email address was not functional.

8. Further, the Service Bundle contained telephone attendance notes evidencing that the Hearing Officer had attempted to call the student on 07, 14, 15 and 21 November 2024 without success. The Officer had also attempted to call Mr Liu on the morning of the hearing. On each occasion, as set out in the attendance notes, the mobile was not answered and there was an automated message, which stated that the 'phone was powered off'. The Hearing Officer was unable to leave a voicemail message.
9. The Committee recognised the extensive communication from ACCA to Mr Liu which had gone unanswered. It was mindful that there had been significant gaps in ACCA's correspondence after the matter was transferred for formal investigation. The delay was not Mr Liu's fault, but he did not at any point engage.
10. The Committee recognised that its bundles contained confirmation that delivery of ACCA's emails to the registered email address had been completed. Further, the Committee accepted the advice that case law (particularly *Adeogba v General Medical Council* [2016] EWCA Civ 162) held that a regulator's responsibility was to communicate with the practitioner at the address provided and that the student could, and should, have taken steps to keep in touch or update his details.
11. Given all the circumstances, the Committee considered that Mr Liu had chosen not to further communicate with ACCA and to disengage from the process. As a consequence, the Committee was satisfied that Mr Liu had voluntarily waived his right to attend the hearing. At no point had Mr Liu suggested that he wished to be present nor represented. Therefore, in the Committee's view, there was no purpose in adjourning the hearing as it was unlikely that Mr Liu would attend on a rescheduled date.
12. The Committee recognised that, through his completion of the form SCRS2B, and his email dated 02 February 2021, Mr Liu had provided an explanation, which it would take into account during the course of the hearing.

13. Further, the Committee considered that there was a public interest in regulatory proceedings being concluded expeditiously and, in this regard, the Committee noted that the allegations were now nearly four years old and should be resolved without further delay.
14. In all the circumstances, the Committee determined that it was reasonable and fair to proceed in Mr Liu's absence in accordance with its discretionary power at regulation 10(7) of the Regulations.

ALLEGATION

15. The Committee's papers consisted of a Report and Bundle with pages numbered 1 to 51. Further material was identified during the course of the hearing and placed in the Committee's files. The Committee did not formally admit this material as late evidence and did not, therefore, take it into account in reaching their determinations.
16. The Committee considered the following allegation:

Allegation 1

- (a) During a TX examination on 08 December 2020, Mr Tianyang Liu was in possession of:
 - (i) Unauthorised materials in the form of notes during the exam, contrary to Examination Regulations 4.
- (b) Mr Tianyang Liu intended to use any or all of the items set out at 1(a) above to gain an unfair advantage.
- (c) Mr Tianyang Liu's conduct in respect of 1(b) above was:
 - (i) Dishonest, in that Mr Tianyang Liu intended to gain an unfair advantage; in the alternative
 - (ii) A failure to act with Integrity.

- (d) By reason of his conduct, Mr Tianyang Liu is:
- (i) Guilty of misconduct pursuant to bye-law 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 bye-law 8(a)(iii), in respect of 1(a) above.

BRIEF BACKGROUND

17. On 17 August 2017, Mr Liu first registered as an ACCA student.
18. On 08 December 2020, Mr Liu attended the Company A exam centre to sit the TX examination. The exam started at 1:30pm and was scheduled to last 3 hours and 20 minutes. Mr Liu had previously sat ACCA examinations.
19. The exam centre Invigilator completed a SCRS1B form on the day of the exam. The form stated that unauthorised material was:
- a. Found in the student's possession at *"16.31... when his draft paper was being collected"*,
 - b. Consisted of *"two A4 sized pages of handwritten notes"*,
 - c. Found *"on the table, under his yellow draft paper,"*
 - d. Believed to have been used because, *"There was nothing under his keyboard at his seat before he was seated. He must have taken the notes out of his pocket and placed them on his table during the exam"*.
20. The invigilator described that the student, *"seemed to be a little nervous"* and had said that he did not look at the notes but wrote them during his test and forgot to leave them outside the test room.
21. A further SCRS1B form was completed by the supervisor who identified that she was alerted to the unauthorised material by the invigilator at the end of the exam. In the SCRS1B the supervisor stated that the notes were found at

“17.32” and consisted of, “2 pieces of paper, A4... under draft paper on the desk”. The supervisor noted that Mr Liu had claimed that he had needed more paper and could not find the invigilator, but the supervisor felt that this was, “impossible.... [The] invigilator was in room [sic] and this was a small room...”

22. On the day of the examination, Mr Liu completed an SCRS2B form. He ticked “Yes” in response to whether he was in possession of unauthorised materials but “No” to a question about whether he intended to gain an unfair advantage. He stated that the notes:

- a. Were, “One blank A4 paper. I used it as a scratch. One A4 paper with words (I don’t use it),
- b. Found at the end of the exam,
- c. Not relevant to the syllabus being examined – “No, in fact I use it as the scratch paper for exam. And I don’t have notes on it.”,
- d. Fell to the ground from his coat pocket and he picked them up in the final three minutes of the exam to use as ‘scratch’ paper as he felt he would not have enough time to finish the examination if he, “chose to hand up and ask the invigilator for a new one” [sic].

23. Mr Liu denied that he attempted to use the notes or that he intended to gain an unfair advantage. He said that he recognised his mistake, which he described as, “severe”. He said that he was aware of the regulations, that he used the paper by accident and that he was, “very sorry to make a big mistake in the last 3 minutes of the examination” and, “very sorry for my fault and silly act” [sic]

24. In correspondence with ACCA following the incident, Mr Liu explained his position. In a letter dated 02 February 2021, Mr Liu stated as follows.

- a. He was sorry about taking two papers into the exam.
- b. This was by accident and not intentional.

- c. He had put the paper into his coat pocket on his way to the exam and forgot to take them out. When he had taken off his coat during the exam, the two papers fell on the ground but he had not found them until the last five minutes.
 - d. In the last five minutes of the exam, he had three questions to finish and had used up all the scratch paper.
 - e. He felt he would not have time to finish the questions if he raised his hand for new paper so he picked up the blank paper and used it as scratch paper.
 - f. He regretted his “*silly mistake*”.
 - g. He had worked hard at ACCA for over five years and had “*never violated ACCA’s discipline*” and promised not to do it again.
25. In an irregular script report dated 01 January 2021, the examiner confirmed that the material was relevant to the syllabus and “*maybe*” relevant to the exam. In his report, the examiner stated:
- The student argues that the notes are just rough workings, but they do not seem to relate to anything in part C of the exam. The student’s performance for part C of the exam is fairly poor, and the notes do not appear to have been used here. However, the notes also cover material which might 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 not workings in any case. It is not possible to comment on these sections, especially as a student could simply have guessed at the correct answer for any question where there is one from four choices.*
26. On 21 May 2021, ACCA’s Investigation Department wrote to Mr Liu to advise him of the complaint and requested his comments. Mr Liu did not provide a response.
27. ACCA submitted that:

- a. It accepted that the invigilator did not see Mr Liu looking at the notes – but this did not mean the student had not looked or would not have looked if he had the opportunity.
- b. Even on Mr Liu’s explanation, blank paper was brought into the exam which gave him an advantage as it meant he didn’t need to take time to ask for blank paper.
- c. The examiner’s report had confirmed that the notes were relevant to the exam syllabus.
- d. The possession of notes, which were relevant to the syllabus, meant that there was an evidential burden placed on Mr Liu to show that he did not intend to use the notes to gain an unfair advantage.
- e. Mr Liu’s explanation for possessing the notes was not plausible. It was more likely than not that he brought in pre-written revision notes into the exam to give himself an advantage. The notes were detailed rather than jottings.
- f. The examiner’s report stated that the notes were not used for Part C of the exam. This was relevant because it supported ACCA’s case that they were revision notes prepared before the exam.
- g. Mr Liu arrived in time to hear the supervisor’s announcements which included statements about the prohibition of unauthorised material.
- h. Given Mr Liu was in possession of the unauthorised material, relevant to the syllabus being examined, the burden of proof shifts to him.
- i. He has failed to discharge the burden of proof as he had not furnished a plausible explanation as to why the unauthorised materials were in his possession if not to gain an unfair advantage. This was dishonest.

DECISION ON FACTS/ALLEGATIONS AND REASONS

28. The Committee found allegation 1(a) proved by ACCA. There was evidence from the invigilator, the supervisor and the student himself that Mr Liu possessed the notes. This was not disputed. The Committee was satisfied that Mr Liu possessed the notes and that these amounted to unauthorised material in breach of Exam Regulation 4.
29. The Committee found allegation 1(b) proved. The Committee considered whether Mr Liu intended to use the material to gain an unfair advantage. It recognised that, if the unauthorised materials were relevant to the syllabus being examined, the provisions of Exam Regulation 6 were engaged. These operated to reverse the burden of proof so that it would be assumed that Mr Liu intended to use the notes to gain an unfair advantage unless he proved to the Committee that he did not breach Exam Regulation 4 to gain an unfair advantage. The Committee accepted the evidence of the Examiner in the Irregular Script report that the notes were relevant to the syllabus. The Committee was therefore satisfied that the reversal of the burden proof under Exam Regulation 6 was invoked.
30. The Committee considered Mr Liu's written explanation. It concluded that his explanation was implausible and contrived. The various elements to excuse the presence of the notes lacked credibility, particularly when viewed as a whole - namely, that the notes were in his coat pocket during the exam, they had fallen out when he removed his coat, he had discovered the notes had fallen out in the final five minutes of the exam, this was at the point he needed more scrap paper, he decided to use the notes as scrap paper rather than call over the invigilator, which would have 'wasted' time. The Committee also considered the notes themselves: these were detailed and consistent in form and text with prepared written notes rather than scribbled notes in the final moments of an examination. The Committee did not accept Mr Liu's assertions; he had not discharged the burden to prove he did not intend to use the notes to gain an unfair advantage and the assumption remained that he had an intention, in effect, to cheat in the exam.
31. The Committee found allegation 1(c)(i) – the allegation of dishonesty – proved. The Committee applied the two-stage subjective and objective test to determine whether Mr Liu had been dishonest. In seeking to ascertain the actual state of Mr Liu's knowledge or belief as to the facts, the Committee

considered that Mr Liu - as a student who had sat ACCA exams previously, who had heard the exam supervisor's announcement prior to the TX exam, who had received a docket setting out the regulations in advance - knew that possession of the revision notes (as the Committee has found) in a professional exam was prohibited. The Committee was satisfied that Mr Liu was aware that possessing unauthorised material in an exam was not permitted and did intend to gain an unfair advantage.

32. Having identified the state of Mr Liu's knowledge or belief as to the facts, the Committee considered the objective limb of the test for dishonesty, namely, whether his conduct was honest or dishonest by the standards of ordinary people. The Committee considered it was plain that the ordinary person would regard intending to gain an unfair advantage - or cheating - in a professional exam as dishonest. The Committee found allegation 1(c)(i) proved.
33. Having found allegation 1(c)(i) proved, the Committee did not go on to consider allegation 1(c)(ii), which was charged in the alternative.
34. In relation to the allegation of misconduct at allegation 1(d)(i), the Committee considered that Mr Liu's dishonest conduct fell far short of the standards expected of a student member of the accountancy profession. It regarded the conduct as entirely unacceptable, which brought the profession into disrepute. The Committee considered that dishonesty could not be anything other than a serious departure from the standards expected; a student wishing to become a member of the accountancy profession would be expected to be honest. Dishonesty went to the heart of the professional standards expected and the Committee judged that Mr Liu's conduct clearly amounted to misconduct and therefore found allegation 1(d)(i) proved.
35. Having found allegation 1(d)(i) proved, the Committee did not go on to consider allegation 1(d)(ii), which was charged in the alternative.

SANCTIONS AND REASONS

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

37. The Committee reviewed the mitigation in the case. It was advised that Mr Liu had no previous disciplinary or complaint history. The Committee recognised that this was an isolated incident but did not consider that there was any other significant mitigation in the case. Whilst the Committee recognised that Mr Liu had made early, partial admissions about the incident and had apologised, it did not consider that these steps amounted to genuine insight, remorse or regret. Mr Liu was apologising for conduct that he described as a 'silly mistake' which, in the Committee's view failed to understand, or accept, the gravity of his misconduct and the potential for harm had he been successful in passing the assessment through dishonesty.
38. The Committee regarded Mr Liu's misconduct and related dishonesty as very serious; Mr Liu attempted to cheat in a professional exam. Had he been successful, Mr Liu might have passed the exam by dishonest means rather than possessing the necessary knowledge and understanding. Mr Liu's dishonesty had the potential to harm future clients and the public by gaining a professional qualification through cheating.
39. The Committee took account of paragraph E2 of the Guidance which stated that the public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. It did not consider that a high degree of probity was demonstrated by Mr Liu who had attempted, and had intended, to gain an unfair advantage in a professional exam. The Committee considered that Mr Liu's actions were intentional and planned. Further, he had taken ACCA exams before and was familiar with the requirement not to have unauthorised material at the exam desk. The Committee considered that making no order or imposing an admonishment or a reprimand would be insufficient. This was not a minor breach of the Exam Regulations or of the expectations placed on Mr Liu as an individual seeking admission to the accountancy profession. Neither of these orders would reflect the seriousness of the deliberate and dishonest intention Mr Liu formed when deciding to prepare the notes and possess them during the exam.
40. The Committee reviewed the Guidance in relation to a sanction of a severe reprimand. The Committee recognised that Mr Liu had a previous good record and that this was an isolated incident. However, the Committee also considered that important factors that might indicate that a severe reprimand was a

reasonable and proportionate sanction were not present in this case. In particular, the misconduct was intentional rather than unintentional, the conduct could have caused harm, the Committee did not have the benefit of references, the Committee questioned Mr Liu's insight and did not regard his apologies and expressions of regret as amounting to a genuine recognition of the seriousness of his actions and wider consequences of his misconduct. As a consequence, in the circumstances of this case given the seriousness of the issues and the expectations on an accountant to be honest, the Committee could not be satisfied that that it would be sufficient to conclude the matter with a severe reprimand.

41. The Committee recognised that ACCA's Examination Regulations expressly provide that if a student attempts to gain an unfair advantage in the exam, he or she is likely to be removed from the student register following disciplinary proceedings. The Committee found no exceptional circumstances in the case and considered that the only appropriate order in the public interest was to remove Mr Liu's name from the student register. It considered that this reflected the planned attempt to cheat, the subsequent implausible explanation to cover up the dishonesty, and the significance of his misconduct, which it considered was a significant departure from professional standards. The Committee considered that Mr Liu's misconduct was fundamentally incompatible with being an accountant and remaining on the student register.
42. The Committee, therefore, ordered that Mr Liu's name should be removed from the student register. It made no order in relation to the period of time that should elapse before an application for readmission should be considered.

COSTS AND REASONS

43. ACCA claimed costs in the sum of £5,545.50. The Committee considered that a discount to reflect that the hearing had not lasted as long as anticipated was needed and reduced the claim to £5000. The Committee regarded the remaining costs as reasonable and reasonably incurred.
44. The Committee noted that under regulation 15(1) of the Regulations, it could direct that Mr Liu pay such sum by way of costs to ACCA as it considered appropriate. It considered that it was appropriate to impose a cost order.

45. The Committee had regard to the Guidance on Cost Orders.
46. The Committee recognised that it needed to consider the principle that the majority of those paying ACCA's fees should not be required to subsidise the minority who, through their own misconduct, have found themselves subject to disciplinary proceedings. Mr Liu had not supplied any evidence regarding his financial circumstances. The Committee was therefore unable to determine whether any reduction for costs should be made to reflect the student's ability to pay an order for costs awarded to ACCA.
47. Having not received any documentary evidence as to the student's financial circumstances, and having considered ACCA's guidance as to costs, accordingly, the Committee has inferred that the member is able to meet the costs as assessed by the Committee.
48. The Committee considered that it would appropriate to make an order for costs and that it was reasonable and proportionate to impose a cost order that Mr Liu pay ACCA's costs in the sum of £5000.

Kathryn Douglas
Chair
28 November 2024