

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Zhiyong Wu

Heard on: Tuesday 7 to Thursday 9 November 2017 and Friday 2
March 2018

Location: The International Dispute Resolution Centre, 70 Fleet
Street, London, EC4Y 1EU (7 to 9 November 2017);
ACCA's Offices, The Adelphi, 1-11 John Adam Street,
London, WC2N 6AU (2 March 2018).

Committee: Dr Jonathan Page (Chairman), Mr Jonathan Beckerlegge
(Accountant) and Mrs Lynne Jones (Lay)

Legal Adviser: Mr Leighton Hughes

Persons present and capacity:

Mr Zhiyong Wu (Member)

Mr Oluwole Ogunbiyi (Counsel for Mr Wu)

Mr Richard Saynor (ACCA Case Presenter – 7 to 9
November 2017)

Miss Deborah Baljit (ACCA Case Presenter - 2 March
2018)

Ms Pamela Ramphal (Hearings Officer)

Observer: None

Summary: Excluded from membership of ACCA with immediate
effect

Costs of £20 000 to be paid to ACCA

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THE DOCUMENTS BEFORE THE COMMITTEE

1. The Committee had before it hearing bundles paginated A-W, 1-385, 386-390 (ACCA cost schedules provided only at the sanction stage), 391-563, 64-591, 592-644 and 645-657 together with a service bundle paginated 1-46.

ALLEGATIONS

Allegation 1

- (a) On 4 April 2016 Mr Zhiyong Wu signed a Practising Certificate Training Record ("PCTR") which contained false information in order to obtain a practising certificate from the ACCA.
- (b) Mr Zhiyong Wu's conduct in respect of (a) was:
 - (i) Dishonest;
 - (ii) Contrary to the Fundamental Principle of Integrity.
- (c) By reason of his conduct in respect of 1 (a) and/or 1 (b) above, Mr Zhiyong Wu is:
 - (i) Guilty of misconduct pursuant to bye-law 8(a)(i); or
 - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

Allegation 2

- (a) Contrary to Paragraph 3 (1) of the Complaints and Disciplinary Regulations 2014, Mr Zhiyong Wu has failed to co-operate fully with the investigation of a complaint in that he failed to fully respond to all of the ACCA's correspondence as set out in Schedule A.
- (b) By reason of his conduct at 2 (a) above, Mr Zhiyong Wu is:
 - (i) Guilty of misconduct pursuant to bye-law 8(a)(i); or
 - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

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BACKGROUND

2. Mr Zhiyong Wu was admitted as a member of ACCA on 31 January 2006 and thereafter became a Fellow of ACCA on 31 January 2011.
3. On 20 May 2016, a complaint was made to the to ACCA's Investigations Department by an ACCA Authorisation Officer, Person A, concerning an application Mr Wu had made for a Practising Certificate dated 27 April 2016.
4. ACCA's case was that the background to the April application was of significance. In September 2015, Mr Wu submitted to ACCA's Authorisations Department a Practising Certificate Training Record (PCTR) ostensibly authorised by (but not signed on page 129 of the hearing bundle by) Person B in support of an application to obtain a Practising Certificate. He was advised on 27 January 2016 that, because his PCTR needed a more expansive narrative his application for a certificate would not be proceeded with. In the PCTR, Mr Wu named a Person B as the principle partner who had supervised him. However, while Person B was entitled to train Mr Wu, he did not hold an audit qualification during the relevant period. ACCA confirmed that Person B was not an auditor. Mr Wu told ACCA that Person B [PRIVATE]. Accordingly Mr Wu was advised that he would need to make an application for a waiver of the requirements in order for his application for a Practising Certificate to be processed.
5. Mr Wu did not apply for a waiver. However, subsequently, on an unknown date, he submitted to ACCA's Authorisations Department a further PCTR with an expanded narrative in which he claimed that Person B and Person C had been his supervisors. That PCTR was neither signed nor dated and therefore was not considered further by ACCA.
6. Mr Wu subsequently re-submitted the PCTR, signed and dated 4 April 2016 (on page 233 of the bundle) together with an application for a Practising Certificate dated 27 April 2016. In light of the concerns of the Authorisations Department, Mr Wu's application for a Practising Certificate was not considered further and the matter was referred to ACCA's Investigations Department. This investigation focused on three allegedly false declarations on Mr Wu's PCTR form.

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7. ACCA's case in relation to Allegation 1(a) was that Mr Wu had made a number of false declarations on the PCTR dated 4 April 2016 as follows:
 - a. That he was employed by Chessons, Chartered Certified Accountants and Registered Auditors during his supervision period, when in fact he was working for his own company, Golden Intelligence Ltd.
 - b. That he had been supervised by two principals at Chessons (Person B and Person C) when he had never in fact worked at Chessons, and when Person C was not employed by or a principal at Chessons;
 - c. That he worked 36 hours a week at Chessons during the period of supervision, whilst investigations demonstrated that he held himself out as being a teaching fellow at Brunel University.
8. ACCA further alleged that in submitting a PCTR which contained false declarations, Mr Wu was acting dishonestly and in breach of ACCA's Fundamental Principle of Integrity. Further, it was alleged that Mr Wu's conduct amounted to professional misconduct or, if not, rendered him liable to disciplinary action pursuant to ACCA's bye-law 8(a)(iii).
9. ACCA's case in relation to Allegation 2 was that Mr Wu repeatedly failed to co-operate with the investigation, in that he failed to respond fully to ACCA's correspondence dated 27 July, 19 September and 1 October 2016. It was alleged by ACCA that although Mr Wu had replied to the correspondence, none of the replies answered the specific questions raised in the correspondence, rather that Mr Wu had simply raised further questions for the Investigations Department to address.
10. ACCA's case was that Mr Wu's failure to co-operate with the investigation amounted to professional misconduct or, if not, rendered him liable to disciplinary action pursuant to ACCA's bye-law 8(a)(iii).

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11. The matter proceeded to a Disciplinary Committee hearing which was conducted on 7,8,9 November 2017 and reconvened on 2 March 2018. The Committee had received and read the documents outlined in paragraph 1.

EVIDENCE BEFORE THE COMMITTEE

12. At the beginning of the hearing, Mr Ogunbiyi, of behalf of Mr Wu, told the Committee that each of the Allegations was denied.

13. ACCA presented its case with reference to the various PCTRs and the documents within the bundle as outlined in paragraph 2 above.

14. Mr Wu gave oral evidence to the Committee. He told the Committee of his career history. Having successfully completed his professional examinations in 2005, he qualified as an accountant and then became a full member of ACCA in January 2006. However, Mr Wu could not apply for a Practising Certificate as he lacked the necessary professional experience, and instead he concentrated on a career in teaching. In 2010, he started his company Golden Intelligence Limited, which offered book-keeping, payroll and VAT services.

15. Mr Wu told the Committee that on 1 July 2012, he started to work for Chessons, supervised by Person B, with the intention of gaining the necessary three years' accountancy experience in order to obtain a Practising Certificate. He said that he had discussed with Person B his background and qualifications. He was told Person B had an ACCA Practising Certificate and that he had an auditing certificate, which he was shown. After initially working in separate offices, in 2013 Person B started sharing Mr Wu's offices. Mr Wu described the working arrangements and said that he always believed that he was "an employee or at least a sub-contractor" of Chessons. He did not receive a salary, but was paid for each piece of work that he was asked to undertake by Person B. He was paid gross and therefore was responsible for his own tax and national insurance obligations.

16. Mr Wu told the Committee that the detail of his training and employment that he put on his PCTR forms was accurate. He said that Person B supervised

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all of his work for Chessons and all of the supervision records that Person B had signed off (Exhibit FC/02) accurately reflected work that he had undertaken under the supervision of Person B. Mr Wu maintained that he was never aware that Person B was not entitled to act as a supervisor for ACCA purposes.

17. Mr Wu said that [PRIVATE] in December 2015. He said he had first met Person C in September 2015 when Person C became involved in Chessons. Person C was appointed the continuity agent at Chessons, and then took on the role of Mr Wu's supervisor [PRIVATE]. He said that Person C had provided some supervision informally in the months leading up to that. Mr Wu was asked why he had stated in an email to ACCA on or around 20 April 2016 (at page 361 of the hearing bundle) "*Person C has always active involvement with the practice and supervised my work.*" This was in response to a specific question from ACCA in relation to supervised blocks of accountancy experience between 1 January 2013 and 31 December 2015. Mr Wu did not think that his email reply had, at least, the potential to mislead ACCA into believing that Person C had supervised him throughout the three year period.
18. Mr Wu told the Committee that his first PCTR form was sent to ACCA in September 2015 for the three year period ending 30 June 2015, but this was returned as it was not sufficiently detailed and did not comply with ACCA's requirements. He said that he subsequently sent a more detailed, unsigned, PCTR to the ACCA Authorisations Department to check whether the form complied with ACCA's requirements. He told the Committee that he then sent a signed copy of the PCTR (dated 4 April 2016), endorsed by Person C as [PRIVATE]. Mr Wu acknowledged that he did not tell the Authorisations Department [PRIVATE]. He said that he did not think he needed to as his three years of PCT had been completed by that time.
19. Mr Wu told the Committee that as Person C was the ACCA continuity agent he believed Person C was able to sign off his PCTR form as it reflected training undertaken with Chessons for which Person C had subsequently become responsible.

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20. Mr Wu said that he worked at Chessons alongside his full-time role as a teaching fellow at initially Aston University and then Brunel University from 2013. His roles involved lecturing and providing tutorials for as many as 300 students, for between 6 and 11 hours a week, together with what he described as some periods of intense marking. Mr Wu also undertook 2-3 weeks of lecturing in China twice each year. He rejected the suggestion that his teaching work would have prevented him from working the 36 hours week that he had stated he undertook at Chessons throughout the period.
21. Mr Wu denied failing to co-operate with the ACCA investigation. He said that he was not trying to avoid answering the questions set out in each of the letters sent to him by ACCA. His case was that he had repeatedly asked for clarification of the Allegations and that it was his intention to respond to the questions in one single document once he understood the totality of the investigation that he was facing as well as the source of the evidence relied upon by ACCA.
22. Mr Wu called Person C to give oral evidence to the Committee on his behalf. Person C told the Committee that he was the continuity agent for Chessons and took over the running of the practice [PRIVATE]. He said that he was accustomed to spending at least one full day each week at the practice from September 2015 [PRIVATE]. He said that ACCA was aware that he was the continuity agent.
23. Person C said that when he met Mr Wu in October 2015, his impression was that he was either a salaried employee or a sub-contractor. He said that Mr Wu had explained to him that he had encountered difficulties in obtaining a Practising Certificate from ACCA on the basis of the PCTR that he had previously submitted. He said he went through the PCTR that Person B had previously initialled and satisfied himself that it was in order.
24. Person C accepted having signed the amended and augmented version of the PCTR and told the Committee that he endorsed what Person B had previously signed off. He said that Person B had told him that he had supervised Mr Wu during his training. Person C said that he had also questioned Mr Wu about the work undertaken by him as set out in the PCTR and asked him to work through a number of theoretical scenarios in order to

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satisfy himself that Mr Wu's competencies were appropriately evidenced and established in accordance with the PCTR. Person C said that he had never discussed with Person B whether he was an authorised trainer, as this had no bearing upon the discussions relating to the continuity agreement.

25. Person C rejected ACCA's suggestion that he was not authorised to sign off the PCTR as he was not an ACCA authorised trainer. He told the Committee that he was advised by a representative of ACCA that he could sign the training record in respect of all of Mr Wu's training.

26. The Committee also heard the oral evidence of Person D, an accountant and ACCA member who had worked for Chessons since 2013 as a trainee accountant. He said that he had been self-employed throughout, but sub-contracted to Chessons. He told the Committee that he was supervised by [PRIVATE] and then Person C took over. He said that he was aware that [PRIVATE]. He had been advised by ACCA to ensure that his entire supervision was signed off by Person C, and his application for an ACCA Practising Certificate was then successfully processed by ACCA through the waiver route in 2016. Person D told the Committee that he had met Mr Wu through his work, that he understood Mr Wu also worked for Chessons, and that he was also always supervised by Person B. He said that he was aware Mr Wu ran a company that undertook book-keeping, but that company had nothing to do with Chessons. He said Mr Wu was often in the office, and put in long hours, but he was aware that Mr Wu also had a lecturing appointment. Person D estimated that on average Mr Wu would have been in the office for 37-40 hours each week mostly, but not always, working full days.

27. Mr Wu also adduced the read evidence of Person E, a Fellow member of ACCA, who spoke highly of Mr Wu's probity.

DECISION ON ALLEGATIONS AND REASONS

28. The Committee carefully considered all of the evidence, oral and documentary, weighing that evidence dispassionately and determining, using its experience, expertise and commonsense, which evidence it

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accepted and which evidence that it rejected. It bore in mind the detailed submissions of Counsel.

29. The Committee acknowledged that the burden of proving the Allegations rests with ACCA. Furthermore, whilst the standard of proof is the balance of probabilities, the Committee needed to look for cogent evidence to substantiate serious allegations involving dishonesty.

Allegation 1 (a)

30. The Committee noted it was not in issue that Mr Wu submitted a PCTR record, signed by him and dated 4 April 2016 in which he set out details of his employment and professional supervision for each of the consecutive six monthly periods of his training between 1 January 2013 and 31 December 2016. The key question for the Committee to determine was whether the information contained in that record was false in any one or more of the three aspects particularised by ACCA:

31. "a. *That he was employed by Chessons, Chartered Certified Accountants and Registered Auditors during his supervision period, when in fact he was working for his own company, Golden Intelligence Ltd.*"

32. The Committee accepted that throughout the three year training period, Mr Wu was undertaking work for Chessons. The Committee found as a fact that throughout the period, Mr Wu was a director of Golden Intelligence Ltd, as was accepted by Mr Wu in his evidence before the Committee. However, the Committee was not satisfied that Golden Intelligence Ltd had any involvement in the work undertaken by Mr Wu for Chessons. It noted that the work evidenced by the PCTR was accountancy work rather than the book-keeping services provided by Golden Intelligence Ltd. Also, the Committee was presented with no evidence of payments made to Golden Intelligence Ltd, or anything that undermined Mr Wu's evidence that he was paid personally by cash, cheque or bank transfer in his own name. The Committee was satisfied that Mr Wu was working as either a subcontractor or employee throughout his training period. Accordingly, the Committee was not satisfied that this limb of Allegation 1(a) had been proved by ACCA.

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33. *"b. That he had been supervised by two principals at Chessons; Person B; and Person C, when he had never in fact worked at Chessons, and when Person C was not employed by or a principal at Chessons."*

34. In light of the Committee's finding that Mr Wu had undertaken work at Chessons, the remaining questions for the Committee regarding this particular were whether Mr Wu had been supervised by Person B and Person C and whether Person C was employed by or a principal of Chessons at the time when Mr Wu was undertaking his PCT. The following matters were not in dispute:

- Person B had supervised Mr Wu's accountancy work over the three year period that was the subject of the PCTR;
- Person C had not supervised Mr Wu's accountancy work over that period;
- Person C had become the continuity agent at Chessons in December 2015.

35. The Committee was satisfied that Mr Wu had clearly declared in the PCTR dated 4 April 2016 that he had been supervised by Person B and Person C throughout the period covered by the PCTR. This was apparent from the face of the document and supported by Mr Wu's email to the ACCA Authorisations Officer at page 361 of the hearing bundle. The email is undated, but is found between an email from the officer to Mr Wu dated 20 April 2016 and a subsequent email from Mr Wu to the officer dated 4 May 2016. In the body of the email, in response to a specific question as to whether all of his experience was obtained under the direct supervision of Person C, Mr Wu wrote: *"Yes, all my experiences are with Chessons and under Person C. Person C holds [a] practising certificate with ACCA. Person C has always [had an] active involvement with the practice and supervised my work."* The Committee found that Mr Wu intended the PCTR to represent that Person C had in fact supervised him over those three years, and that this was false. Accordingly, the Committee found that this limb of Allegation 1(b) had been proved by ACCA.

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36. *"c. That he worked 36 hours a week at Chessons during the period of supervision, whilst investigations demonstrated that he held himself out as being a teaching fellow at Brunel University."*

37. The Committee bore in mind Mr Wu's evidence where he stated that he worked as a teaching fellow at Aston and then Brunel University, but that nevertheless he had been able to work 36 hours per week on average at Chessons over each relevant six month period. The Committee had questioned how this level of Chessons work could have been achieved successfully or competently by Mr Wu in light of his teaching commitments. However, the Committee accepted the clear evidence of Person D, namely that Mr Wu was working very long hours at Chessons, including evenings and weekends. Although the Committee found the evidence was equivocal, it concluded that it was possible for such hours to have been completed alongside his University role. In the absence of cogent evidence either way, the Committee found this third limb of Allegation 1(a) not proved.

38. Having made the above findings of fact in relation to Allegation 1(a), the Committee went on to consider whether the conduct found proved was dishonest and/or contrary to the Fundamental Principle of Integrity.

Allegation 1(b)(i)

39. The Committee acknowledged that the appropriate test for dishonesty is that used in civil actions, namely that a Committee must ascertain (subjectively) the state of the individual's knowledge or belief as to the relevant facts and then determine whether their conduct was dishonest by the (objective) standards of ordinary decent people.

40. On the basis of the facts found proved in relation to Allegation 1(a), as set out above, the Committee's approach was therefore to ask itself the following questions:

- Did Mr Wu deliberately mislead ACCA when he stated in the PCTR dated 4 April 2016 that he had been supervised by two principals at Chessons (Person B and Person C) when Person C was not in fact employed by or a principal at Chessons. If he did not, then the

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Allegation of dishonesty ends there. However, if he did, the Committee would go on to ask;

- Was that conduct dishonest by the objective standards of ordinary decent people? It was for the Committee to decide what those standards were and to apply them to this question. If what Mr Wu did was not dishonest by those standards, the allegation of dishonesty ended there. However, if the Committee was satisfied on the balance of probabilities that ordinary decent people would consider Mr Wu's actions to have been dishonest, then the Committee would be entitled to find Allegation 1(b)(i) proved, whether Mr Wu personally regarded his actions as dishonest or not.

41. The Committee was satisfied that Mr Wu had been acting dishonestly when he signed the PCTR on 4 April 2016. It was clear to the Committee that Mr Wu knew that he needed either to obtain a waiver from ACCA or to have his training supervised by his principal and that was why, [PRIVATE], he had had the PCTR signed by Person C.

42. The Committee bore in mind the email correspondence between Person A (of ACCA) and Mr Wu. In an e-mail dated 27 January 2016, Person A wrote to Mr Wu stating "Please note that any amendments to your PCTR need to be reviewed and signed by your supervising Principal [at page 363 of the bundle]... As these amendments cannot be verified by your supervising Principal" [PRIVATE] "in order to use this experience... you can apply to the Admissions and Licensing Committee for a waiver. This would mean that your application for a Practising Certificate would be considered by the Committee and could not be granted administratively by the authorisation team... You would then be placed into a queue awaiting a slot before the Admissions and Licensing Committee, as we discussed on the phone, slots before the Committee do have a long lead time attached to them."

43. The Committee was entirely satisfied that Mr Wu did not wish to wait the long lead time that would be occasioned by the application for a waiver, so instead sought to submit the PCTR signed by Person C in circumstances where he knew that Person C had not supervised all of his professional training.

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44. The Committee was in no doubt that ordinary decent people would consider that for an accountant deliberately to submit false documentation to their regulator in an application to obtain a practising certificate, in which they falsely represented the nature and extent of the supervision of their training, was dishonest.

Allegation 1(b)(ii)

45. For the same reasons as set out in relation to Allegation 1(b)(i) the Committee was in no doubt that Mr Wu had acted in clear breach of ACCA's Fundamental Principle of Integrity, in that he was being neither straightforward nor honest when he completed the PCTR.

Allegation 1(c)(i)

46. The Committee next considered whether Mr Wu was guilty of misconduct by reason of his acts found proved in relation to Allegation 1(a) and/or Allegation 1(b). It bore in mind that not every professional act or omission, and not every professional failing is sufficiently serious as to amount to misconduct. The Committee reminded itself of the definition of misconduct within bye-law 8, and also the legal authorities and guidance set out in the advice of the legal adviser.

47. The Committee was satisfied that Mr Wu's dishonest behaviour was professionally culpable, and discreditable to Mr Wu, ACCA and the Accountancy Profession. The Committee considered the dishonesty to be a departure from the high standards expected of an ACCA member and conduct that brought ACCA and the profession into disrepute.

48. Accordingly, the Committee concluded that the dishonest behaviour found proved amounted to misconduct. To characterise it as other than misconduct would fail to uphold proper professional standards and would undermine public confidence in the profession and in the regulatory function of ACCA.

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Allegation 1(c)(ii)

49. Having found Allegation 1(c)(i) proved, the Committee did not need to consider Allegation 1(c)(ii).

Allegation 2 (a)

50. The Committee carefully considered each of the pieces of ACCA correspondence set out in Schedule A. It noted that ACCA had initially written to Mr Wu on 21 June 2016, setting out the issues raised by the complaint that had been made against him and then posing 6 straightforward questions aimed at assisting ACCA's investigative process. Mr Wu had replied to that letter but, rather than answering any of the questions, he chose to pose his own questions which sought further details such as "the basis on which" the Allegations were made.

51. As a result of Mr Wu's response, he was reminded, by way of a further letter dated 20 July 2016, of his obligation to cooperate with his regulator when it was investigating a complaint.

52. On 27 July 2016, ACCA wrote a further letter (Schedule A(i)). The Committee was satisfied that the letter once again clearly set out the issues raised by the complaint that had been made against Mr Wu and then posed the same 6 straightforward questions aimed at assisting ACCA's investigative process, that had not yet been answered by Mr Wu. It again reminded Mr Wu of his professional responsibility to cooperate with the ACCA investigation.

53. The Committee found that, rather than cooperating with his regulator, Mr Wu responded to ACCA's latest letter but once again chose not to answer the questions that had been posed. The Committee was satisfied that in his letter dated 3 August 2016, he adopted an intemperate and unhelpful tone and made it plain that he would not answer ACCA's questions until his own demands for further information had been met. He then threatened to raise a complaint against the ACCA Senior Investigating Officer.

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54. On 19 September 2016, ACCA sent an email to Mr Wu. The Senior Investigations Officer again set out the issues raised by the complaint that had been made against Mr Wu and again posed the 6 straightforward questions for him to answer. He was again reminded of his duty to cooperate with his regulator and was given a deadline of 10 October 2016 for his response. On 10 October 2016, Mr Wu sent an email in reply, in which he again chose not to answer the questions and repeated his own requests for further information. He asked for an extension of time of 21 days to respond (i.e. until 1 November 2016).
55. ACCA subsequently sent a further email to Mr Wu. That email was (erroneously) dated 1 October 2016, but was clearly in response to Mr Wu's email dated 10 October 2016. ACCA granted the extension of time that had been requested by Mr Wu, and the email explained that it was imperative that the investigation was progressed expeditiously. Accordingly, Mr Wu was given a "final deadline" of 1 November 2016.
56. Mr Wu's response was by way of an email to ACCA dated 1 November 2016. He did not answer any of the questions that had previously been posed repeatedly by ACCA, he maintained his request for further details and again sought to criticise the conduct of the Senior Investigations Officer.
57. The Committee was in no doubt that Mr Wu had wilfully and repeatedly chosen not to cooperate with the investigation of the complaint that had been made against him. He failed to respond in any meaningful or constructive way to any and all of ACCA's correspondence set out in Schedule A, but rather adopted an unprofessional and obstructive approach. Each of the simple questions posed in each piece of correspondence could have been easily answered by Mr Wu, but he chose not to do so, despite repeated requests. The Committee was satisfied that even if Mr Wu had genuinely wanted to be provided with further information in relation to the allegation, that did not absolve him of his responsibility to fully respond to ACCA's requests for information during the course of the investigation. Accordingly, the Committee found Allegation 2(a) proved.

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Allegation 2(b)(i)

58. The Committee was satisfied that the body of correspondence before it demonstrated a failure by Mr Wu to provide any meaningful assistance or co-operation to his regulator in the investigation between July and October 2016. The Committee considered that by the time of the investigation in July 2016 Mr Wu had clearly chosen to have little regard for ACCA. The Committee was in no doubt that the public had a right to expect that a professional will respond promptly and fully to that professional's regulatory body, and that Mr Wu's behaviour giving rise to Allegation 2(a) was a sufficiently serious departure from proper professional standards as to amount to misconduct.
59. Having found Allegation 2(b)(i) proved, the Committee did not need to consider Allegation 2(b)(ii).

SANCTION AND REASONS

60. Miss Baljit, on behalf of ACCA, informed the Committee that there were no previous regulatory findings in respect of Mr Wu.
61. Mr Ogunbiyi, on behalf of Mr Wu, invited the Committee to have regard to the fact that, whilst the Committee had found that he had made a dishonest declaration as to who had supervised his training, the Committee had not been asked to consider whether the training set out in the PCTR had been undertaken by Mr Wu. Mr Ogunbiyi maintained that Mr Wu had not intended to mislead ACCA about the nature and extent of the training that he had undertaken. Mr Ogunbiyi sought to distance Mr Wu from his failure to co-operate with the investigation, and submitted that he had been wrongly advised to seek further disclosure rather than to answer the questions posed by the Investigations Officer. However, he expressed some, qualified remorse on behalf of Mr Wu, reminded the panel of his previous good character, and submitted that the damage caused by Mr Wu's misconduct had been "managed internally" by ACCA, and therefore the impact upon the general public was reputational rather than causing direct loss. Mr Ogunbiyi invited the Committee to deal with Mr Wu's case by imposing the sanction of a reprimand.

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62. The Committee had regard to ACCA's Guidance For Disciplinary Sanctions. It had at the forefront of its consideration the public interest, which included not only the protection of members of the public, but also the maintenance of public confidence in the profession and in ACCA, and the declaring and upholding of proper standards of conduct and behaviour. The Committee recognised that the purpose of sanctions was not to be punitive, although a sanction may have a punitive effect.
63. Mr Wu had not provided any references or testimonials at this stage, but the Committee bore in mind the positive evidence given as to Mr Wu's character by Person D and Person E at the fact-finding stage. Furthermore, the Committee considered the absence of any previous disciplinary findings amounted to mitigation for Mr Wu.
64. The Committee considered that there were no aggravating features over and above the serious misconduct itself.
65. The Committee first considered taking no further action in this case. It was in no doubt that to do so would fail properly to mark the misconduct of Mr Wu and would undermine confidence in ACCA as a regulator.
66. Having decided that it was necessary to impose a sanction in this case, it considered the question of sanction in ascending order, starting with the least restrictive.
67. The Committee first considered whether the appropriate sanction would be the Admonishment of Mr Wu. The dishonest misconduct in Allegation 1 arose from a deliberate attempt to deceive ACCA with the aim of professional advancement and thereafter the misconduct in Allegation 2 was a wilful refusal by Mr Wu to engage with his regulator in the investigation of his wrongdoing. The Committee determined that an Admonishment would not adequately reflect the nature of the misconduct in this case and would undermine public confidence in the regulatory process.
68. For the same reason, the Committee determined that neither a Reprimand nor a Severe Reprimand was appropriate by way of sanction and that to

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impose either of these sanctions would not publicly mark the nature and seriousness of the misconduct in this case, nor would it suitably declare and uphold proper standards of conduct.

69. The Committee considered that Mr Wu's misconduct, in particular his dishonesty, represented a fundamental departure from the standards expected of a member of ACCA. It found that Mr Wu had displayed little insight into the seriousness of his behaviour and a casual disregard for ACCA as his regulator. The Committee was satisfied that his dishonesty was fundamentally incompatible with being a member of ACCA and that no sanction short of exclusion from membership was appropriate in his case. The Committee considered that a failure to exclude a dishonest member from the register would fail properly to declare proper standards of professional behaviour and would seriously undermine public confidence in the profession and in ACCA as its regulator. Accordingly the Committee ordered that Mr Wu be excluded from membership of ACCA.

COSTS

70. ACCA claimed costs in the sum of £20,550.10 in accordance with the costs schedules at pages 386-390 of the hearing bundle.

71. Mr Ogunbiyi submitted that the assessment of costs to be paid should reflect the fact that "a number of matters were not found proved" by ACCA. He argued that the costs schedules had been insufficiently particularised to enable the Committee to be satisfied that work claimed had been reasonably undertaken in the preparation and presentation of this case. He invited the Committee to consider, generally, that some of the sums claimed within the costs schedule were excessive. Mr Ogunbiyi provided details of Mr Wu's financial circumstances.

72. The Committee decided that it was appropriate to award costs and that the sum claimed was fair and reasonable for work reasonably undertaken in furtherance of ACCA's overarching objective.

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73. The Committee had regard to Mr Ogunbiyi's submissions as to Mr Wu's means, but considered that there was no basis for significantly reducing the sum claimed. In the circumstances the Committee ordered that Mr Wu should pay the sum of £20,000 to ACCA by way of costs.

EFFECTIVE DATE OF ORDER

74. The Committee was satisfied in light of its findings above that it was necessary in the interest of the public that the order should have immediate effect.

Dr Jonathan Page

Chairman

2 March 2017

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