

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Wenhui Yao

Heard on: Thursday, 07 December 2023

Location: Remote video hearing via MS Teams

Committee: Ms Wendy Yeadon (Chair)
Ms Fiona MacNamara (Accountant)
Ms Samantha Lipkowska (Lay)

Legal Adviser: Miss Judith Chrystie (Legal Adviser)

**Persons present
and capacity:** Mr Ben Jowett (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer)

Observers: Mr Charles Apthorp (newly appointed Legal Adviser)

Summary: Facts found proved; Dishonesty; Misconduct; Removal
from affiliate register

Costs: Awarded to ACCA - £5700

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SERVICE OF PAPERS

1. Mr Yao was neither present nor represented.
2. The Committee considered Service Bundle (1) with pages numbered 1-18 in order to determine whether the Notice of the Hearing ('the Notice') dated 9 November 2023 had been served in accordance with the provisions of the Complaints and Disciplinary Regulations 2014 (amended 2020) ('the Regulations').
3. The Notice had been sent to Mr Yao's registered address email and complied with the other requirements of the Regulations.
4. The Committee was satisfied that this was effective service under the Regulations.

PROCEEDING IN ABSENCE

5. The Committee considered whether it should proceed in Mr Yao's absence and recognised that it could only do so with the utmost care and caution.
6. The Committee identified that, on repeated occasions Mr Yao provided written confirmation that he did not intend to attend the hearing. In response to an email from ACCA dated 29 August 2023, Mr Yao stated that he would not attend his case. In the Case Management Form ('the Form') signed and dated 30 August 2023, Mr Yao indicated that he did not intend to attend or be represented at the hearing and that the Disciplinary Committee could deal with the case in his absence. In the Form he also provided a handwritten note stating, 'I, my witness and my representative will not attend any hearing'. Finally, in an email dated 30 November 2023 to the Hearing Officer, Mr Yao confirmed: 'I will not intend to attend the hearing'.
7. The Committee considered it was clear that Mr Yao did not wish to participate in the proceedings before the Disciplinary Committee through any mode (telephone or through MS Teams) nor that he needed an adjournment of

today's proceedings despite the hearing timings being set to accommodate the time difference. Given these unequivocal statements, which had been made at intervals over the last few months, the Committee determined that Mr Yao had chosen to absent himself and had voluntarily waived his right to attend the hearing. The Committee was satisfied that there was no purpose in adjourning the hearing as it was highly unlikely that Mr Yao would attend at a later date.

8. Further, the Committee recognised that there was a strong public interest in regulatory proceedings being considered and concluded expeditiously, particularly given the serious nature of the allegations.
9. In all the circumstances, the Committee determined that it was fair and just to proceed in Mr Yao's absence in accordance with its discretionary power at regulation 10(7) of the Regulations and that a fair hearing could take place in his absence.

ALLEGATIONS

10. The Committee considered the allegations set out below.

Mr Wenhui Yao ('Mr Yao'), at all material times an ACCA trainee,

1. Applied for membership to ACCA on or about 21 January 2021 and in doing so purported to confirm in relation to his ACCA Practical Experience training record:
 - a) his Practical Experience Supervisor in respect of his practical experience training in the period from 26 June 2017 to 23 January 2021 was Person 'A' when Person 'A' did not supervise that practical experience training in accordance with ACCA's requirements as published from time to time by ACCA or at all
 - b) he had achieved the following Performance Objectives which was not true:

- Performance Objective 1: Ethics and professionalism
- Performance Objective 2: Stakeholder relationship management
- Performance Objective 3: Strategy and innovation
- Performance Objective 4: Governance, risk and control
- Performance Objective 5: Leadership and management
- Performance Objective 6: Record and process transactions and events
- Performance Objective 7: Prepare external financial reports
- Performance Objective 8: Analyse and interpret financial reports
- Performance Objective 9: Evaluate investment and financing decisions

2. Mr Yao's conduct in respect of the matters described in Allegation 1 above was:

- a) In respect of Allegation 1a), dishonest, in that Mr Yao sought to confirm his Practical Experience Supervisor did supervise his practical experience training in accordance with ACCA's requirements or otherwise which he knew to be untrue.
- b) In respect of allegation 1b) dishonest, in that Mr Yao knew he had not achieved all or any of the performance objectives referred to in paragraph 1b) above as described in the corresponding performance objective statements or at all.
- c) In the alternative, any or all of the conduct referred to in Allegation 1 above demonstrates a failure to act with Integrity.

3. In the further alternative to Allegations 2a), 2b) and or 2c) above, such conduct was reckless in that Mr Yao paid no or insufficient regard to ACCA's requirements to ensure:

- a) his practical experience was supervised;

b) his Practical Experience Supervisor was able to personally verify the achievement of the performance objectives he claimed and/or verify they had been achieved in the manner claimed;

c) that the performance objective statements referred to in paragraph 1b) accurately set out how the corresponding objective had been met.

4. By reason of his conduct, Mr Yao is guilty of misconduct pursuant to ACCA bye-law 8(a)(i) in respect of any or all the matters set out at 1 to 3 above.

11. In considering the allegations, the Committee had regard to the following papers:

a. Disciplinary Committee report and bundle with page numbers 1-267,

b. Additional bundle with page numbers 1-58,

c. Mini bundle with page numbers 1-129.

BRIEF BACKGROUND

12. Mr Yao registered as a student on 31 March 2016 and having completed all of his ACCA exams, was admitted as an affiliate on 18 January 2021.

13. Following completion of all ACCA's exams, an ACCA affiliate can apply for membership. Eligibility for membership is set out in the Membership Regulations 2014 (as amended) and includes gaining practical experience.

14. The paragraphs below identify the key features of the evidence contained within the bundles considered by the Committee and presented by ACCA at the hearing.

Becoming an ACCA member – Person C's statement

15. In a statement dated 13 October 2022, Person C, Manager of ACCA's Professional Development Team, provided further details about ACCA's requirements and expectations for practical experience.
16. Person C stated that an individual seeking membership – also known as an ACCA trainee - must complete relevant practical experience consisting of:
 - a. professional objectives (POs) – described as benchmarks of effective performance - including five essential POs and four technical POs, under the supervision of a qualified accountant, and
 - b. at least 36 months supervising practical experience in a relevant accounting and/or finance role.
17. Person C explained that, on completion of a PO, a trainee needed to submit a statement in their PER training record to describe the experience they have gained to meet the objective, including giving an example of a task, identifying the skills they gained to help them achieve the PO and reflecting on the learning. Person C stated that:
 - a. given each PO statement describes the trainee's individual experience, each statement within a PER training record should be unique and must not be copied from other trainees or from templates or precedents – these expectations are consistently referenced in ACCA's published training guides, including online in China;
 - b. statements that are the same or significantly similar to those of any other trainees, would suggest:
 - i. the trainee had not met the objective in the way claimed or possibly at all,
 - ii. the practical experience claimed had not been supervised by a practical experience supervisor with knowledge of the trainee's work.

18. In respect of the trainee's practical experience supervisor, Ms Calder stated that:
- a. The practical experience supervisor has the professional responsibility of supervising a trainee's work and deciding whether or not the trainee has met the required standard;
 - b. The practical experience supervisor means a qualified accountant who has worked closely with the trainee and knows their work;
 - c. A qualified accountant means an individual who is member of a:
 - i. body recognised by law in the trainee's country or
 - ii. member body of the International Federation of Accountants (IFAC),
 - d. A supervisor would not normally be expected to have more than two or three trainees at any one time,
 - e. A trainee can nominate an external supervisor (for example, if the trainee's line manager is not a qualified accountant). The external supervisor must have some connection with the trainee's firm – for example as an external accountant or auditor and cannot be a friend who happens to be a qualified accountant or an accountant who has no connection with the trainee's place of work and who has not liaised with the trainee's manager about the trainee's work,
 - f. All practical experience supervisors provide evidence that they are a qualified accountant and registered with ACCA,
 - g. Trainees must enter their practical experience supervisor's details using the MyExperience online recording tool. This act generates an invitation to their nominated supervisor to act as their supervisor.

Mr Yao's PER training record

19. On 23 January 2021, Mr Yao submitted his Practical Experience Requirement (PER) training record. The record:
 - a. specified that from 26 June 2017 he had been employed by one firm ('the Firm') in the role of auditor,
 - b. claimed 43 months of relevant practical experience,
 - c. referred to two supervisors:
 - i. Person A, who was authorised to approve Mr Yao's POs having been specified as an external practical experience supervisor,
 - ii. Person B, who was authorised to approve the period of time claimed for Mr Yao's experience having been detailed as a 'non-IFAC qualified line manager'
20. The training record showed that Mr Yao requested Person A to approve all nine POs on 23 January 2021 and that Person A apparently approved all nine POs on that day.
21. Mr Yao's application for membership had not been processed owing to ACCA's investigation.

Investigation - general

22. During 2021, ACCA's Professional Development team became aware that between 16 December 2019 and 29 January 2021 one hundred ACCA trainees completed their PER training record claiming that their POs had been approved by Person A as an external supervisor (in all bar one case). Although all these trainees had different periods of training and some periods overlapped, it appeared Person A has supervised a very significant number of ACCA's training about the same time.
23. In a statement dated 18 October 2022 Person A stated as follows:

- a. She recalled supervising a single ACCA trainee to the limited extent of approving one of the nine POs – this trainee was not one of the 100 trainees identified within the bundle.
 - b. She had never had an email address containing the word ‘manchesterunite’ which was the address registered by the individual purported to supervise Mr Yao and the other trainees.
24. An individual purporting to be Person A registered as each trainee’s supervisor on the basis of her being a member of the Chinese Institute of Certified Public Accountants (CICPA) – an IFAC registered body.
25. In a supplementary statement dated 12 September 2023, Person A stated that the CICIPA registration card registered for the 100 trainees was her card, but she had not provided it to ACCA. She explained that she had passed it to the single ACCA trainee she had supervised (as mentioned above).

Investigation – Mr Yao

26. As part of its investigation, ACCA conducted an analysis of a spreadsheet comparing the PO statements for each of the trainees who purported to be supervised by Person A. This analysis was undertaken to determine whether any PO statements by one trainee were identical or significantly similar to the statements by other trainees and, if so, which PO statement was the ‘first in time’. The reason for identifying those that were ‘first in time’ was because this statement may be original and written by the trainee based on their actual experience, subject to evidence to the contrary.
27. In relation to Mr Yao, the analysis revealed:
- a. None of his PO statements were first in time;
 - b. All of his PO statements were identical or significantly similar to the POs contained in the PER’s of many other ACCA trainees who claimed to have been supervised by Person A.

Mr Yao's response

28. On 6 December 2021, Mr Yao emailed ACCA attaching an unsigned letter on his employer's letter-headed paper from an unknown individual. It asked why Mr Yao's membership was on hold and stated:

Person A is the CFO (partner) of a Certified Public Accountants Co. Ltd. The firm name is [anonymised], which provides audit and assurance to our company. Therefore, Wenhui Yao needs to provide financial information and report to Person A. At the same time Person A knows our company's business situation and work content of Wenhui Yao. Person A also provides guidance to financial knowledge of Wenhui Yao. Person A is a certified public accountant and knowledge of Wenhui Yao. Person A is a certified public accountant and external supervisor.

29. In an email to ACCA dated 24 May 2021 [anonymised] HR manager stated that there was no such person (Person A) in their HR system.
30. In a statement dated 20 October 2022 obtained by ACCA, Person A stated that she did not work, and had not worked, at any [anonymised] office in China.
31. In an email dated 8 September 2022, Mr Yao responded to letter from ACCA emailed to him on 25 August 2022 which set out the investigation. He provided his employment contract, wage slips and written confirmation from his employers. He stated that he did not know, 'what is going wrong' and that:
- a. Person A had deleted him from their friend list,
 - b. he could not connect with them,
 - c. they were his external auditor having said that they could help him,
 - d. he registered Person A as his practical experience supervisor on 23 January because, '*at that day I would know I need a practical experience supervisor*'.

32. On 2 October 2022, Mr Yao responded to ACCA's further email dated 9 September (having been sent chasing emails dated 20 and 26 September) asking him:

- a. to provide evidence of the claimed supervision by Person A, to which he replied:

I asked [PERSON A] as my 'external auditor' to sign off my performance objectives in my PER and they did so in January 2021 then I am no longer able to contact [Person A] as 'they delete me from their friend list (picture 10)' from 2022.

- b. why he only registered his external supervisor shortly before submitting his PER training record rather than at the start of his work, to which he responded:

When I applied my membership around January 2021 then I know the detail what I need to apply to be an ACCA membership I need who is already an ACCA member to be my experience supervisor, [Person A] is the only one as an ACCA member I know so I asked them, and they agreed.

- c. about Person A's work at BDO:

ACCA should contact BDO, maybe they are fired maybe they switch their job [sic]

- d. why his internal and external supervisors share the same email address

Because Person B is a manager who would not do the daily trifles and Person B want to use a private email, [Person A] knows Person B, and asked Person B's email..., this email is a personal email, [Person A] applied the email for them to do this thing. This thng happened a lot in China [sic];

- e. about Person A's supervision:

I think [Person A] could supervised my practical experience. ... I need explain my work when they audited my company.... when I start work 2016 I do not know I need a practical experience supervisor.... I asked [Person A] how to describe my job and they helped me translate in some ways [sic].

33. In a case management form dated 30 August 2023, Mr Yao denied the allegations and states that he has already sent written confirmation stamped with the company seal and that his company has proven his work experience.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

Allegation 1

34. The Committee found allegation 1 (a) and (b) proved.
35. Prior to the hearing, the Committee had reviewed the extensive written evidence set out in its committee bundles. For the reasons set out below, the Committee considered the statements submitted on behalf of ACCA were credible and reliable. Recognising they were - as was all the evidence in the case - hearsay evidence, it was satisfied that significant weight could be attached to them. Further, the Committee considered that it was fair and reasonable for it could draw inferences from across the evidence in support of ACCA's case.
36. On the balance of probabilities, it regarded the evidence and explanations provided by Mr Yao as unreliable and lacking in credibility; the Committee considered that his evidence was fabricated, fictitious and designed to cover up his original false statements to ACCA about his practical trainee experience (PER).
37. The Committee reached the following conclusions.
- a. Person A had not supervised Mr Yao as purported in the PER training record – Person A had provided a clear statement to this effect and maintained this position in a number of other statements, including one specifically relating to Mr Yao's case.
 - b. The letter submitted from Mr Yao from his employers was unsigned - the Committee considered it was not authentic, particularly given that part of its

contents relating to Person A's relationship with BDO had been disproved by ACCA's investigations.

- c. The claim that Person A was a partner at BDO was demonstrably untrue - both Person A and BDO had confirmed to ACCA that Person A did not, and had never, worked at BDO and was not a partner.
- d. The email from April 2021 purported from Person A using an email address including 'manchesterunite' was not genuine - it was highly improbable that two supervisors (Person A and Person B) acting in their professional capacity from different organisations would share the same email address, particularly where that email address was a personal and not business one.
- e. The personal statements of experiences were not unique to Mr Yao. The Committee was satisfied that the statements were – as submitted by ACCA's Case Presenter – either identical or strikingly similar with only minor differences, which made it more likely than not that Mr Yao had not genuinely gained the experience set out in the statements.
- f. Mr Yao had accepted that the supervisor was added to MyExperience on the day he submitted his PO statements rather than when he started his work at the Firm. Given that Person A was identified as an external supervisor, she would have needed to be involved in advance to be able to supervise his work and experience properly.
- g. There had been considerable material offered by ACCA in China to identify the requirements for practical experience and, even if Mr Yao had not been familiar with the details from the start of his work, it was improbable that he would not have understood that a supervisor had to supervise his work and that his statements needed to be in his own words and reflect his genuine experience. The Committee noted in this regard the Mr Yao would have completed the ethics module as part of his ACCA qualification.

Allegation 2

38. The Committee found allegations 2(a) and 2(b) proved. It applied the two-stage test set out in *Ivey* to determine whether Mr Yao was dishonest.
39. The Committee first sought to ascertain the actual state of Mr Yao's knowledge or belief as to the facts. The Committee considered that through the material published by ACCA to ensure that, as individuals transitioned from ACCA students to ACCA membership they were fully aware of the process for the PER and of ACCA's requirements for the practical experience. The Committee also considered that Mr Yao must have known that Person A – as an external supervisor – had not worked with him and had not supervised his work and that he must have known that the text against each of the nine PO statements were not his original drafting and did not relate to experience that he had genuinely gained.
40. The Committee considered it was plain that the ordinary person would regard Mr Yao's conduct as dishonest: he deliberately submitted an untrue formal training record to his regulator for the purposes of gaining membership.
41. Having found allegations 2(a) and 2(b) proved, the Committee did not go on to consider allegation 2(c) as it was pleaded in the alternative.

Allegation 3

42. The Committee did not consider allegation 3 as this was pleaded in the alternative.

Allegation 4

43. The Committee found allegation 4 proved in respect of the facts found proved at allegations 1 and 2.
44. The Committee regarded that honesty as a fundamental tenet of professionalism and Mr Yao had been dishonest on repeated occasions. His

dishonest conduct fell far short of the standards expected of a member of the accountancy profession. It could not be regarded as anything other than entirely unacceptable behaviour which brought the profession into disrepute and plainly constituted misconduct.

SANCTION AND REASONS

45. The Committee had regard to the Guidance for Disciplinary Sanctions ('the Guidance').
46. The Committee considered that the only element of mitigation was that Mr Yao had no previous disciplinary history as a student. The Committee considered there were aggravating circumstances, including a complete absence of any insight, remorse or regret.
47. The Committee also regarded Mr Yao's misconduct and, in particular, his related dishonesty as extremely serious; Mr Yao lied to ACCA on repeated occasions. There was a planned, active attempt to undermine the integrity of ACCA's qualification by falsifying training requirements and seeking to bypass the eligibility requirements set out in the membership process. Such behaviour – exacerbated by the linked efforts to cover up the deceit through further dishonesty – could have detrimentally impacted on the public's confidence in the integrity and credibility of ACCA's membership and the public's trust in its members. Mr Yao did not gain membership but, had his deception succeeded, there could have been financial loss to the public given that Mr Yao would have gained membership without the necessary practical experience.
48. The Committee considered that it would be wholly insufficient to impose no order or to conclude this matter with an admonishment, a reprimand or a severe reprimand. None of these orders would provide the necessary restrictions on practice needed to protect the public interest in this matter. The Committee recognised paragraph E2 of the Guidance for Disciplinary Sanctions 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. The Committee considered that none of these sanctions would properly recognise the seriousness of Mr Yao's

deliberate and dishonest intentions, nor would they be sufficient to reflect the damage to public confidence.

49. Mr Yao had sought to deceive ACCA by submitting false records. This was planned, pre-meditated conduct with the intention of gaining personal benefit through dishonest, deceptive steps. The Committee concluded that this behaviour was fundamentally incompatible with being an accountant and remaining an affiliate of ACCA.
50. The Committee, therefore, ordered that Mr Yao's name should be removed from the register of affiliates. This order shall come into effect in the usual way on expiry of the relevant appeal period.

COSTS AND REASONS

51. The Committee had regard to the Guidance on Cost Orders.
52. ACCA claimed costs in the sum of £5,918.75 set out in a schedule of costs. The Committee considered that this sum was reasonable and had been reasonably incurred. The Committee considered that additional investigative work had been required owing to the explanations – which it found to be false and fabricated – provided by Mr Yao. However, it considered that the claim for costs should be reduced to reflect that the hearing had concluded in less time than had been allocated in the schedule of costs.
53. 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. It reviewed the evidence regarding Mr Yao's financial circumstances in order to determine whether any further reduction for costs should be made to reflect Mr Yao's ability to pay an order for costs awarded to ACCA.
54. The Committee considered that the information provided by Mr Yao – whilst incomplete and questionable in some regards (such as the claim that he had

no household expenditure) – did demonstrate that he had income and the financial means to meet an order for costs.

55. Balancing all these considerations, 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 Yao pay ACCA's costs in the sum of £5700.00.

Ms Wendy Yeadon
Chair
07 December 2023