

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Chen Chen
Heard on:	Friday 16 June 2023
Location:	Remotely via MS Teams
Committee:	Mr Andrew Popat CBE (Chairman) Ms Andrea White (Accountant) Mr Andy Skelton (Lay)
Legal Advisers:	Mr Alastair McFarlane
Persons present and capacity:	Ms Michelle Terry (Case Presenter) Ms Anna Packowska (Hearings Officer)
Summary:	Exclusion from membership with immediate effect and costs awarded of £3783.33.

1. ACCA was represented by Ms Terry. Miss Chen did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1-246, an additional bundle, numbered pages 1-9, a tabled additional bundle numbered pages 1-2 and a service bundle numbered pages 1-16.

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SERVICE/PROCEEDING IN ABSENCE

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Miss Chen in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).
3. Ms Terry, for ACCA, made an application for the hearing to continue in the absence of Miss Chen.
4. The Committee accepted the advice of the Legal Adviser.
5. The Committee noted that following the service of the Notice of Hearing on 19 May 2023, the Hearings Officer had made repeated attempts to telephone Miss Chen on 12 June without success and had sent chasing emails on 09 and 12 June regarding whether she would be attending the hearing. There has been no response. There was evidence that her registered e-mail address was still being accessed in March 2023. It also noted that Miss Chen has not engaged with the case at all.
6. The Committee was satisfied that Miss Chen’s non-responses and her non-engagement with ACCA amounted to a voluntary waiving of her right to attend this hearing. It was satisfied that an adjournment would be very unlikely to secure her participation. It was mindful of the duty on all professionals to co-operate with their regulator and the public interest in the expeditious discharge of the Committee’s regulatory function. In all the circumstances it was just to proceed with the hearing in her absence.

ALLEGATIONS

Chen Chen (‘Miss Chen’), at all material times an ACCA trainee,

1. Applied for membership to ACCA on or about 10 January 2021 and in doing so purported to confirm in relation to her ACCA Practical Experience training record:

a) Her Practical Experience Supervisor in respect of her practical experience training in the period from 08 August 2014 to 10 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) She had achieved the following Performance Objectives which was not true:

- Performance Objective 2: Stakeholder relationship management;
- Performance Objective 3: Strategy and innovation;
- Performance Objective 5: Leadership and management;
- Performance Objective 10: Manage and control working capital;

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

a) In respect of Allegation 1a), dishonest, in that Miss Chen sought to confirm her Practical Experience Supervisor did supervise her practical experience training in accordance with ACCA's requirements or otherwise which she knew to be untrue.

b) In respect of allegation 1b) dishonest, in that Miss Chen knew she 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 Miss Chen paid no or insufficient regard to ACCA's requirements to ensure:

a) Her practical experience was supervised;

- b) Her Practical Experience Supervisor was able to personally verify the achievement of the performance objectives she 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. Failed to co-operate with ACCA's Investigating Officer in breach of Complaints and Disciplinary Regulation 3(1) in that She failed to respond fully or at all to any or all of ACCA's correspondence dated:

- (a) 25 August 2022;
- (b) 09 September 2022;
- (c) 26 September 2022.

5. By reason of her conduct, Miss Chen is

- a) Guilty of misconduct pursuant to ACCA bye-law 8(a)(i) in respect of any or all the matters set out at 1 to 4 above; in the alternative in respect of allegation 4 only;
- b) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

BACKGROUND

- 7. Miss Chen became an ACCA member on 14 January 2021.
- 8. Regulation 3(a) of ACCA's Membership Regulations provides that an ACCA trainee cannot become a member of ACCA until they have completed three years of approved work experience, in accordance with ACCA's Practical Experience Requirement ("PER"). The PER requires trainees to achieve nine Performance Objectives ("POs"). For each PO the trainee must complete a personal statement. Each PO must be signed off by the trainee's Practical Experience Supervisor ("PES"). It is a trainee's responsibility to find a PES who must be a qualified accountant recognised by law in the trainee's country and/or

a member of an IFAC body with knowledge of the trainee's work. A PES will therefore be either a trainee's line manager or an external, qualified accountant, who liaises with the employer about the trainee's work experience.

9. ACCA's primary case against Miss Chen is that she knew that Person A had not supervised her practical experience training in accordance with ACCA's requirements. ACCA's case was that between December 2019 and January 2021, 100 ACCA trainees had completed their PER training records in which they claimed their POs had been approved by Person A. Miss Chen was one of these trainees. ACCA obtained a statement from Person A (an accountant registered with the Chinese Institute of Certified Public Accountants (CICPA)) who maintained that she had only acted as supervisor for 1 trainee, who was not Miss Chen, and who was not included in the 100 cases under investigation. She had only supervised that trainee in respect of signing off a single PO. She denied supervising any of the 100 trainees, pointing out that her email address was totally different to the one used by "Person A" for the 100 trainees and that whilst the CICPA registration card provided to ACCA was hers, she had not provided it to ACCA and did not know how this had occurred.

ACCA'S SUBMISSIONS

Allegation 1

10. ACCA submitted that Allegations 1a) and 1b) are capable of proof by reference to the following:
 - Linda Calder's (Manager of ACCA's Professional Development Team) statement which describes ACCA's Practical Experience Requirements.
 - Miss Chen's completed PER training record which was completed on or about 10 January 2021 which then permitted Miss Chen to apply for membership.
 - Miss Chen became registered as an ACCA member on 14 January 2021

- Miss Chen's Supervisor details which record Person A was her 'IFAC qualified external supervisor', and therefore her practical experience supervisor.
- Miss Chen's PER training record which records that Person A approved all Miss Chen's PO's.
- The statement from Person A obtained by ACCA in which she denies acting as supervisor for any of the ACCA trainees who are the subject of ACCA's investigation.
- That four of Miss Chen's PO statements were the same or significantly similar to that of another trainee suggesting at the very least, she had not achieved the objective in the way claimed or possibly at all.

Allegations 2(a) and 2(b) - Dishonesty

11. ACCA's primary case was that Miss Chen was dishonest when she submitted her Practical Experience Training Record to ACCA because Miss Chen sought to confirm her Practical Experience Supervisor did supervise her practical experience training in accordance with ACCA's requirements or otherwise which she knew to be untrue. Further, ACCA contended she was dishonest because Miss Chen knew she had not achieved the performance objectives referred to in paragraph 1b above as described in the corresponding performance objective statements or at all. Given the extensive advice available online as to how an ACCA trainee must complete their PER, ACCA contended that it is not credible that Miss Chen was unaware her practical experience had to be supervised or that the statement supporting her PO had to be in her own words and describing the experience she had actually gained to meet the relevant Performance Objectives.
12. In order to achieve membership, it is submitted Miss Chen claimed to have been supervised by Person A in her PER training record, which she must have known was untrue, and claimed to have achieved POs 2,3,5, and 10 with the use of a supporting statements, which she also must have known had not been

written in her own words. She therefore knew she had not achieved the POs as described in the statements or at all.

13. ACCA therefore submitted this conduct in either or both respects would be regarded as dishonest by the standards of ordinary decent people.

Allegation 2(c) – Integrity

14. In the alternative, ACCA submitted that if the conduct of Miss Chen is not found to be dishonest, the conduct in the alternative fails to demonstrate Integrity.

Allegation 3 – Recklessness

15. ACCA submitted in the further alternative that Miss Chen's conduct was reckless in the ordinary sense of the word in that she paid no or insufficient regard to the fact that she was required to ensure her practical experience was supervised, and the achievement of her POs should be verified by that supervisor. Finally, she paid no regard to the fact that her PO statements should truthfully and accurately set out how the relevant objectives had been met.

Allegation 4 – Failure to Co-operate

16. ACCA contended that by not responding to ACCA's correspondence dated 25 August 2022, 09 September 2022 and 26 September 2022, Miss Chen breached her duty to co-operate under Regulation 3(1) of the Complaints and Disciplinary Regulations.
17. ACCA contended Miss Chen's conduct at allegations 1-4 amounted to misconduct. As an alternative, in relation to allegation 4 only, the failure to co-operate rendered her liable to disciplinary action.

MISS CHEN'S SUBMISSIONS

18. There were no submissions from Miss Chen.

DECISION ON ALLEGATIONS AND REASONS

19. The Committee accepted the advice of the Legal Adviser. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the balance of probabilities. It reminded itself of Collins J's observations in Lawrance v. GMC [2015] EWHC 581 (Admin) to the effect that in cases of dishonesty, cogent evidence was required to reach the civil standard of proof.
20. The Committee heard that there had been no previous findings against Miss Chen and accepted that it was relevant to put her good character into the balance in her favour.

DECISION ON FACTS

21. The Committee accepted the advice of the Legal Adviser. It reminded itself to exercise caution as it was working from documents alone. It noted the submissions of Ms Terry for ACCA. It reminded itself that the burden of proof was on ACCA alone and that Miss Chen's absence added nothing to ACCA's case and was not indicative of guilt.

Allegation 1.

1. Applied for membership to ACCA on or about 10 January 2021 and in doing so purported to confirm in relation to her ACCA Practical Experience training record:
 - a. her Practical Experience Supervisor in respect of her practical experience training in the period 28 August 2014 to 10 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. she had achieved the following Performance Objectives which was not true:

- Performance Objective 2: Stakeholder relationship management;
- Performance Objective 3: Strategy and innovation;
- Performance Objective 5: Leadership and management;
- Performance Objective 10: Manage and control working capital;

22. The Committee was satisfied on the basis of the practical experience training record contained in the bundle and produced from ACCA's records that Miss Chen had submitted it to ACCA in January 2021. Further, the Committee accepted on the face of the document that it purported to confirm that Person A was her PES and that Miss Chen had entered Person A as her supervisor. It was satisfied by Person A's statement, which it found to be credible and accurate, that she did not supervise Miss Chen. It noted that Person A was a registered professional accountant and that she had corrected herself when, on reflection, she had recalled that she had supervised one ACCA student in respect of a single PO. She confirmed that the email address Miss Chen provided as Person A's was not hers. Further, the Committee noted that the purported email address was clearly not a professional e-mail address and was duplicated as the address for another of her purported supervisors. In addition, the Committee noted that Person A also had a different supervisor registration number to that of Miss Chen's purported supervisor. These matters, in the Committee's view, further undermined the possibility that Person A was in fact Miss Chen's supervisor. In the Committee's judgment this added to her credibility. Accordingly, the Committee was satisfied that Allegation 1 a) was proved.
23. The Committee accepted ACCA's evidence that the Training Record that Miss Chen submitted to ACCA contained PO statements for POs 2,3,5,10. The Committee undertook a comparison between the statements submitted by Miss Chen and the statements submitted earlier by other students. The Committee thought it more likely than not that the significant similarities between them indicated that Miss Chen had copied her statement from other trainee's records. It rejected as wholly implausible that properly compiled statements could be so similar. The Committee noted that the requirements for such statements are that they "should be in your own words". It noted that ACCA guidance stated that ACCA did not expect to see "duplicated wording".

The Committee therefore concluded that it was more likely than not that it was not true that she had achieved PO 2,3,5 and 10. Accordingly, the Committee was satisfied that Allegation 1 b) was proved.

2. Miss Chen's conduct in respect of the matters described in allegation 1 above was:

a. In respect of allegation 1a, dishonest, in that Miss Chen sought to confirm her Practical Experience Supervisor did supervise her practical experience training in accordance with ACCA's requirements or otherwise which she knew to be untrue.

b. In respect of allegation 1b dishonest, in that Miss Chen knew she 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.

24. The Committee next asked itself whether the proven conduct in Allegation 1 a) was dishonest.

25. In accordance with the case of *Ivey v Genting Casinos (UK) Ltd T/A Crockfords [2017] UKSC67* the Committee first considered what Miss Chen's belief was, as to the facts. There is clearly manifold guidance as to the PER system published and online and the Committee had little doubt that Miss Chen would have been aware of those requirements. Whilst mindful the burden of proof was on ACCA, it considered that Miss Chen had provided no details about what Person A allegedly did for her as her supervisor or what checks or enquiries she had made as to the suitability of Person A being a supervisor at the relevant time. Further, and in any event, the Committee rejected as implausible, the possibility that Miss Chen could have believed that Person A had in fact supervised her PE training in accordance with the requirements. Whilst mindful that the burden of proof was on ACCA, the Committee noted that Miss Chen had provided no information, despite it being requested by ACCA, about the alleged supervision. It is significant that the alleged supervision was over a period of 7 years. The email address

provided for her supervisor was not a professional one and should in the Committee's view have been a red flag. Further, the Committee noted that the same e-mail address was provided for another of her purported supervisors. Further, there is no evidence of a relationship over a sustained period of time which is indicative of a proper supervisor. All 9 PO's were signed off by the purported supervisor and submitted together on the same day at the very end of the process and all were dated 10 January 2021. In the Committee's view this would not be expected if Miss Chen's experience had been gained and supervised over a period of 7 years. In the Committee's view this further undermined the legitimacy of the submission. In these circumstances the Committee considered it highly unlikely that Miss Chen could have genuinely believed that she had been supervised by Person A. The Committee in the circumstances was able to reasonably infer that the more likely scenario was that Miss Chen was taking a short cut to registration. In the circumstances the Committee was satisfied that Miss Chen knew that it was untrue to confirm that Person A did supervise her. The Committee rejected any other basis such as mistake or carelessness as not credible. It was satisfied that this conduct was dishonest according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 2 a) was proved.

26. The Committee next asked itself whether the proven conduct in Allegation 1 b) was dishonest.
27. The Committee considered what Miss Chen's belief was, as to the facts. It was satisfied that Miss Chen's statements for POs 2,3,5,10 were nearly the same as the statements of other trainees, who also claimed to be supervised by Person A and which were submitted before Miss Chen's submission of her PO statements. It compared Miss Chen's statements with that of the other trainees contained in the documents and noted that they were nearly identical in content. The Committee was therefore satisfied that Miss Chen knew her statements were not her original work and did not reflect her work experience. The statements were therefore false and had more likely than not been copied from other trainees' statements or from a template. It made the reasonable inference on these finding of facts that Miss Chen had not done

the work for or “achieved” the PO as described. It was satisfied that this conduct was dishonest according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 2 b) was proved.

2 c. In the alternative, any or all of the conduct referred to in paragraph 1 above demonstrates a failure to be straightforward and honest and accordingly, is contrary to the Fundamental Principle of Integrity, as applicable 2018.

28. Given the Committee’s findings in relation to Allegation 2 a) and 2 b) it did not consider the alternative of Allegation 2 c).

3. In the further alternative to allegations 2a and or 2b above, such conduct was reckless in that Miss Chen paid no or insufficient regard to ACCA’s requirements to ensure:

- a. her practical experience was supervised;
- b. her Practical Experience Supervisor was able to personally verify the achievement of the performance objectives she 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.

29. Given the Committee’s findings in relation to Allegation 2 a) and 2 b) it did not consider the alternative of Allegation 3.

4. Fail to cooperate with ACCA’s Investigating Officer in breach of the Complaints and Disciplinary Regulation 3(1) in that she failed to respond fully or at all to any or all of ACCA’s correspondence dated:

- a. 25 August 2022
- b. 9 September 2022
- c. 26 September 2022

30. The Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Miss Chen to cooperate fully with ACCA in the investigation of any complaint. It was satisfied that Miss Chen made no response to ACCA's correspondence requesting her cooperation on the 25 August 2022; 09 September 2022; and 26 September 2022. It was further satisfied that these non-responses amounted to failures as Miss Chen had a duty to respond and that therefore she had breached the obligation under the Regulations and that Allegation 4 was proved.

5. By reason of her conduct, Miss Chen is

a. guilty of misconduct pursuant to ACCA bye-law 8(a)(i) in respect of any or all the matters set out at 1 to 4 above; in the alternative in respect of allegation 4 only;

b. Liable to disciplinary action pursuant to bye- law 8(a)(iii)

31. The Committee next asked itself whether, by submitting a fraudulent Practical Experience Training Record, Miss Chen was guilty of misconduct.

32. The Committee had regard to the definition of misconduct in Bye-law 8(c) and the assistance provided by the case law on misconduct. To dishonestly gain membership and not undertake the work claimed, was, in the Committee's judgment, deplorable conduct. It was satisfied that Miss Chen's actions brought discredit on herself, the Association, and the accountancy profession. It was satisfied that her conduct undermined one of the fundamental tenets of the profession – to be honest and not associate oneself with false and misleading statements – and therefore had reached the threshold for misconduct.

33. Further, the Committee was satisfied that Miss Chen's duty to cooperate with her regulator is an important one, both to enable the regulator to properly and fairly discharge its regulatory function and to uphold public confidence in the regulatory system. For these reasons the Committee was satisfied her failure

to cooperate was sufficiently serious to amount to misconduct. Given the failure amounted to misconduct the Committee did not need to consider the alternative of liability to disciplinary action.

SANCTIONS AND REASONS

34. The Committee noted its powers on sanction were those set out in Regulation 13(1). It had regard to ACCA's Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate.
35. The Committee accepted the advice of the Legal Adviser.
36. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. The dishonest behaviour was serious. Trust and honesty are fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermines its reputation and public confidence in it.
37. The aggravating factors the Committee identified were:
 - The behaviour involved dishonesty which was designed to deceive her regulator;
 - Professional Membership was fraudulently obtained with a potential risk of harm to the public;
 - The serious impact on the reputation of the profession;
 - There was no evidence of insight into the seriousness of the conduct;
38. The only mitigating factor the Committee identified was:

- A previous good character with no disciplinary record
39. Given the Committee's view of the seriousness of the misconduct, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven misconduct. It further noted that Miss Chen was not, in fact qualified as an ACCA member as she had gained membership dishonestly, and that any sanction which would allow her to continue to practice would fail to protect the public.
40. The Committee reminded itself that it was dealing with a case of dishonesty. It had specific regard to Section E2 of the Guidance in relation to dishonesty and was mindful of the case law to the effect that dishonesty lies at the top of the spectrum of misconduct. The Committee determined that her dishonest behaviour and the non-cooperation was fundamentally incompatible with Miss Chen remaining on the register of ACCA and considered that the only appropriate and proportionate sanction was that she be excluded from membership.

COSTS AND REASONS

41. ACCA claimed costs of £3,783.33 and provided a detailed schedule of costs. The Committee noted Miss Chen has not provided any statement of means. The Committee decided that it was appropriate to award costs to ACCA in this case and considered that the sum claimed by them was a reasonable one in relation to the work undertaken. Accordingly, the Committee concluded that the sum of £3,783.33 was appropriate and proportionate. It ordered that Miss Chen pay ACCA's costs in the amount of £3,783.33.

EFFECTIVE DATE OF ORDER

42. The Committee was satisfied that, given the seriousness of the conduct and the potential risk to the public, an immediate order was necessary in the circumstances of this case.

Mr Andrew Popat CBE
Chairman
16 June 2023