

HEARING
DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Ziyu Xiong
Heard on:	Wednesday 2 November 2023
Location:	Remotely via MS Teams
Committee:	Mr Andrew Popat CBE (Chair) Ms Fiona MacNamara (Accountant) Ms Samantha Lipkowska (Lay)
Legal Advisers:	Mr Alastair McFarlane
Persons present and capacity:	Mr Ben Jowett (ACCA Case presenter) Miss Lauren Clayton (Hearings Officer)
Summary:	Exclusion from membership with immediate effect
Costs:	£5,764.

1. ACCA was represented by Mr Jowett. Miss Xiong did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 259, and an additional bundle 1, numbered pages 1-16, an additional bundle 2, numbered pages 1 – 37, and a service bundle numbered pages 1-19.

SERVICE/PROCEEDING IN ABSENCE

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Miss Xiong in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).
3. Mr Jowett, for ACCA, made an application for the hearing to continue in the absence of Miss Xiong.
4. The Committee accepted the advice of the Legal Adviser.
5. The Committee noted that following the service of the Notice of Hearing on 5 October 2023, the Hearings Officer had made an attempt to telephone Miss Xiong on 31 October without success and had sent chasing emails on 27 and 31 October and 1 November regarding whether she would be attending the hearing. There has been no response. It also noted that Miss Xiong had not substantively engaged with the ACCA since March 2022.
6. The Committee was satisfied that Miss Xiong’s 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

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

1. **Applied for membership to ACCA on an unknown date between 5 March 2020 and 3 April 2020 and in doing so purported to confirm in relation to her ACCA Practical Experience training record that her Practical Experience Supervisor in respect of her practical experience training in the period from 1 July 2016 to 5 March 2020 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.

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

a) Was dishonest, in that Miss Xiong sought to confirm her Practical Experience Supervisor did supervise her practical experience training in accordance with ACCA's requirements or otherwise and/or her Supervisor had personally verified the achievement of the performance objectives claimed and/or that they had been achieved in the manner claimed in any or in all respects she knew to be untrue.

b) Demonstrates a failure to act with Integrity.

3. In the further alternative to Allegations 2a) and 2b) above, such conduct was reckless in that Miss Xiong 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;

4. Failed to sufficiently 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) 16 September 2022;

(c) 03 October 2022.

5. By reason of her conduct, Miss Xiong is

- a) **Guilty of misconduct pursuant to ACCA byelaw 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 byelaw 8(a)(iii)**

BACKGROUND

7. Miss Xiong became an ACCA member on 9 April 2020.

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 Xiong 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 record in which they claimed their PO's had been approved by Person A. Miss Xiong 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 they had only acted as supervisor for 1 trainee, who was not Miss Xiong, and who was not included in the 100 cases under investigation. They had only supervised that trainee in respect of signing off a single PO. They denied supervising any of the 100 trainees, pointing out that their email address was totally different to the one used by "Person A" for the 100 trainees, that they have never had an email address containing [private] (which was in the email address for the hundred 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 Allegation 1 is capable of proof by reference to the following:
 - Person B's (Senior Administrator in ACCA's Member Support Team), statement explaining ACCA's membership application process
 - Person C's (Manager of ACCA's Professional Development Team) statement which describes ACCA's Practical Experience Requirements.
 - Miss Xiong's completed PER training record which was completed on or about 5 March 2020 which then permitted Miss Xiong to apply for membership. Miss Xiong became registered as an ACCA member on 9 April 2020.
 - Miss Xiong's Supervisor details which record Person A was her 'IFAC qualified external supervisor', and therefore her practical experience supervisor.
 - Miss Xiong's PER training record which records Person A approved all Miss Xiong's PO's.
 - The statements from Person A obtained by ACCA in which they deny acting as supervisor for any ACCA trainee, being the subject of ACCA's investigation. The training record refers to two supervisors, Person A, who was authorised to approve Miss Xiong's PO's only, and a Person D who was authorised to approve Miss Xiong's experience / time claim and also her PO's.
 - In relation to the PO's, the PER training record records that Miss Xiong requested Person A to approve all nine PO's on 5 March 2020 and Person

A apparently approved all nine PO's the same day. Therefore, although Person D was authorised to approve Miss Xiong's PO's, they did not in fact do so.

- The Supervisor details for Miss Xiong records that Person A was an 'IFAC qualified external supervisor'. Given they were external to the firm Miss Xiong was working in, Person A was only permitted to approve Miss Xiong's achievement of her PO's and not the period of her employment in the firm referred to.
- Person D approved Miss Xiong's period of her employment at the firm on 5 March 2020
- The Supervisor details for Miss Xiong record that Person D was an 'IFAC qualified internal supervisor'. Given they were 'internal' they were authorised to approve Miss Xiong's time / experience claim. They would also have been permitted to approve the achievement of Miss Xiong's PO's, though for reasons not known, did not in fact do so

Allegation 2(a) - Dishonesty

11. ACCA's primary case was that Miss Xiong was dishonest when she submitted her Practical Experience Training Record to ACCA because Miss Xiong 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. 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 Xiong was unaware her practical experience had to be supervised.
12. In order to achieve membership, it is submitted Miss Xiong claimed to have been supervised by Person A in her PER training record, which she must have known was untrue.
13. ACCA therefore submitted this conduct would be regarded as dishonest by the standards of ordinary decent people.

Allegation 2(b) – Integrity

14. In the alternative, ACCA submitted that if the conduct of Miss Xiong 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 Xiong'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 that 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.

Allegation 4 – Failure to co-operate

16. ACCA submitted Miss Xiong had a duty to cooperate under the regulations and by not responding to the correspondence had breached this duty.

Allegation 5 – Misconduct/ Liability to disciplinary action

17. ACCA submitted that Miss Xiong's conduct whether dishonest or lacking integrity or reckless and her failure to cooperate was sufficiently serious to reach the threshold for misconduct. The alternative for failing to co-operate only was liability to disciplinary action.

MISS XIONG'S SUBMISSIONS

18. Miss Xiong responded firstly to ACCA by email on 15 February 2022

'...Since my English is not very well, and it was my first time to apply ACCA member online, there were lots of things and ACCA discipline I did not understand. Therefore, I seek help on the internet and someone said he/she was Tan and would like to guide me to complete the application. I accepted that person's help and was just realizing that I might be cheated. I felt very sorry for all the things happened and can I re-apply PO? Thanks very much...[sic]'

Miss Xiong responded to further questions from ACCA by email on 31 March 2022 repeating each enquiry and then providing her response. In particular she stated:

'...2) You state 'I seek help on the internet and someone said he/she was Tan [being reference to Person A] and would like to guide me to complete the application'. Please explain why you did not contact ACCA if you did not know how your PER should be completed. In particular you could have contacted one of ACCA's China offices. I also understand there is a PER guide in Chinese.

RE: I'm very sorry. I didn't know there was such a way at that time.

5) 'Person A' as your practical experience supervisor should have had knowledge of the work carried out by you and should have been someone with whom you worked closely, who knew the type of work you were doing and the quality of your work. This would have enabled Person A as your supervisor to assess your work and ultimately decide whether or not to sign off your objectives in your PER. Please advise whether or not Person A supervised you in such a manner.

RE: No, I realize my mistake now. I think I should do it again.

6) If Person A did supervise you in such a manner, please advise why you appear to be unaware as to whether Person A is a man or woman given in your email to me you state 'someone said he/she was Person A'.

RE : Not in such a manner.

8) As an external supervisor, Person A would have to have been an external accountant or auditor appointed by your employer, Company A and Company B. Please therefore advise me the name of Person A's firm and the type of work undertaken by Person A on behalf of your employer.

Re: I don't know Person A's information. I guess Person A has nothing to do with my employer. Through your question, I think I know now that Person A should not be my supervisor. If you allow, I'm willing to do PER again...[sic]'.

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 Xiong 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 Mr Jowett for ACCA. It reminded itself that the burden of proof was on ACCA alone and that Miss Xiong's absence added nothing to ACCA's case and was not indicative of guilt.

Allegation 1

1. **Applied for membership to ACCA on an unknown date between 5 March 2020 and 3 April 2020 and in doing so purported to confirm in relation to her ACCA Practical Experience training record that her Practical Experience Supervisor in respect of her practical experience training in the period from 1 July 2016 to 5 March 2020 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.**
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

Xiong had submitted it to ACCA. Further, the Committee accepted on the face of the document that it purported to confirm that Person A was her PES and that Miss Xiong had entered Person A as her supervisor. It was satisfied by Person A's statements, which it found to be credible and accurate, that they did not supervise Miss Xiong. It noted that Person A was a registered professional accountant and that they had corrected themselves when, on reflection, they had recalled that they had supervised one ACCA student in respect of a single PO and that person was not Miss Xiong. They confirmed that the email address Miss Xiong provided as Person A's was not theirs. In addition, the Committee noted that Person A also had a different supervisor registration number to that of Miss Xiong's purported supervisor. These matters, in the Committee's view, further undermined the possibility that Person A was in fact Miss Xiong's supervisor. In the Committee's judgment this added to Person A's credibility. Accordingly, the Committee was satisfied that Allegation 1 was proved.

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

- a) Was dishonest, in that Miss Xiong sought to confirm her Practical Experience Supervisor did supervise her practical experience training in accordance with ACCA's requirements or otherwise and/or her Supervisor had personally verified the achievement of the performance objectives claimed and/or that they had been achieved in the manner claimed in any or in all respects she knew to be untrue.**

23. The Committee next asked itself whether the proven conduct in Allegation 1 was dishonest.
24. The Committee noted Miss Xiong's responses, including her more detailed responses of 15 February 2022 and 31 March 2022 and noted their contents and that English was not her first language, but did not rely on them as any admission of wrongdoing.
25. In accordance with the case of *Ivey v Genting Casinos (UK) Ltd T/A Crockfords [2017] UKSC67* the Committee first considered what Miss Xiong'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 Xiong would have been aware of those requirements. The Committee accepted that ACCA's guidance as to its requirements was widely available and that there was also extensive advice available in both English and Mandarin as to the requirements. Whilst mindful the burden of proof was on ACCA, it considered that Miss Xiong had provided no details about 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 Xiong 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 Xiong had provided no information, despite it being requested by ACCA, about the alleged supervision. 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 and all were dated 5 March 2020. It rejected oversight, carelessness or acting recklessly as wholly implausible bases for her actions.

26. In these circumstances the Committee considered it highly unlikely that Miss Xiong 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 Xiong was taking a short cut to registration. In the circumstances the Committee was satisfied that Miss Xiong knew that it was untrue to confirm that Person A did supervise her. The Committee rejected any other basis such as mistake or carelessness or recklessness 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.

2 b) Demonstrates a failure to act with Integrity.

27. Given the Committee's findings in relation to Allegation 2 a) it did not consider the alternative of Allegation 2 b). This was therefore not proved.

3. In the further alternative to Allegations 2a) and 2b) above, such conduct was reckless in that Miss Xiong 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;**
28. Given the Committee's findings in relation to Allegation 2 a) it did not consider the alternative of Allegation 3. This was therefore not proved.
- 4. Failed to sufficiently 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) **16 September 2022;**
 - (c) **03 October 2022.**
29. The Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Miss Xiong to cooperate fully with ACCA in the investigation of any complaint. It was satisfied that Miss Xiong made no response to ACCA's correspondence requesting her cooperation on 25 August 2022, 16 September 2022 and 3 October 2022. It was satisfied that these non-responses amounted to failures as Miss Xiong had a duty to respond. It was not persuaded that earlier responses in February and March 2022 or her minimal responses on 30 March 2023 negated that duty. Therefore, Miss Xiong breached the obligation under the Regulations and that Allegation 4 was proved.
- 5. By reason of her conduct, Miss Xiong is**
- a) **Guilty of misconduct pursuant to ACCA byelaw 8(a)(i) in respect of any or all the matters set out at 1 to 3 above;**
 - b) **Liable to disciplinary action pursuant to byelaw 8(a)(iii)**

30. The Committee next asked itself whether, by submitting a fraudulent Practical Experience Training Record, Miss Xiong was guilty of misconduct?
31. The Committee had regard to the definition of misconduct in byelaw 8(c) and the assistance provided by the case law on misconduct. To dishonestly gain membership, was, in the Committee's judgment, deplorable conduct. It was satisfied that Miss Xiong'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 a false submission. Her conduct enabled Miss Xiong to secure membership when she was not entitled to it and it undermined the reputation of the profession. Therefore, had reached the threshold for misconduct.
32. Further, the Committee was satisfied that Miss Xiong'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. The Committee had regard to the definition of misconduct in byelaw 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Miss Xiong's actions brought discredit on her, the Association and the accountancy profession. For these reasons the Committee was satisfied that Miss Xiong's failure to cooperate was sufficiently serious to amount to misconduct.
33. Given the Committee's judgment 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 pre-planned and designed to deceive her regulator with her seeking the help of a third party.
 - 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 real insight into the dishonesty or the seriousness of the conduct.
38. The only mitigating factors the Committee identified were:
- 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 Xiong 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 practise would fail to protect the public. She had in addition failed to co-operate with her regulator, which was a fundamental obligation on any professional.
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 was fundamentally incompatible with Miss Xiong 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 £6,214.58 and provided a detailed schedule of costs. The Committee noted Miss Xiong 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 but made some reduction to £5,764 for the fact that the hearing did not take the one full day allocated. It did not have sufficient information as to Miss Xiong's means to enable it to make any further reduction. Accordingly, the Committee concluded that the sum of £5,764 was appropriate and proportionate. It ordered that Miss Xiong pay ACCA's costs in the amount of £5,764.

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
Chair
02 November 2023