

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Miss Yuanmengxue Gong
Heard on:	Thursday, 09 November 2023
Location:	Remotely via MS Teams
Committee:	Mr Andrew Gell (Chairman) Ms Andrea White (Accountant) Mr Damian Kearney (Lay)
Legal Advisers:	Mr Alastair McFarlane
Persons present and capacity:	Mr Ben Jowett (Case presenter on behalf of ACCA) Miss Anna Packowska (Hearings Officer)
Summary:	Exclusion from membership with immediate effect and costs awarded of £5,000.00.

1. ACCA was represented by Mr Jowett. Miss Gong did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1-240, and an additional bundle, numbered pages 1-29, a mini bundle numbered pages 1-146, 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 Gong 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 Gong.
4. The Committee accepted the advice of the Legal Adviser.
5. The Committee noted that following the service of the Notice of Hearing on 12 October 2023, the Hearings Officer had made attempts to telephone Miss Gong on 7 November without success and had sent chasing emails on 2 and 7 November regarding whether she would be attending the hearing. Miss Gong made no response.
6. The Committee also noted that a hearing link has been sent to Miss Gong in any event on 7 November 2023 and that she had not substantively engaged with the case at all.
7. The Committee was satisfied that Miss Gong’s non-responses and non-engagement 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 Yuanmengxue GONG (‘Miss Gong’), at all material times an ACCA trainee,

1. *Applied for membership to ACCA on or about 24 November 2020 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 19 August 2013 to 27 November 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*

b) *she 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 8: Analyse and interpret financial reports*
- *Performance Objective 11: Identify and manage financial risk*
- *Performance Objective 15: Tax computations and assessments*
- *Performance Objective 17: Tax planning and advice*

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

a) *In respect of Allegation 1a), dishonest, in that Miss Gong 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 Gong 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 Gong 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) 12 August 2022;

(b) 30 August 2022;

(c) 14 September 2022.

5. By reason of her conduct, Miss Gong 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

8. Miss Gong became an ACCA member on 30 November 2020.

9. 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.

10. ACCA's primary case against Miss Gong 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 Gong 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 Gong, 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, that she has never had an email address containing "manchesterunite" (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

11. ACCA submitted that Allegations 1a) and 1b) are capable of proof by reference to the following:

- Person's B (Manager of ACCA's Professional Development Team) statement which describes ACCA's Practical Experience Requirements.
- Miss Gong's completed PER training record which was completed on or about 27 November 2020 which then permitted Miss Gong to apply for membership. Miss Gong became registered as an ACCA member on 30 November 2020.
- Miss Gong's Supervisor details which record Person A was her 'IFAC qualified external supervisor', and therefore her practical experience supervisor.
- Miss Gong's PER training record which records Person A approved all Miss Gong's POs, as set out in Allegation 1b.
- The statement from Person A obtained by ACCA in which she denies acting as supervisor for any ACCA trainee, being the subject of ACCA's investigation.
- That all nine of Miss Gong's PO statements were the same or significantly similar as other trainees suggesting at the very least, she had not achieved the objective in the way claimed or possibly at all.

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

12. ACCA's primary case was that Miss Gong was dishonest when she submitted her Practical Experience Training Record to ACCA because Miss Gong 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 Gong knew she had not achieved the performance objectives referred to in paragraph 1b above as described in the corresponding performance objective statement 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 Gong was unaware her practical experience had

to be supervised or that the statement supporting her POs had to be in her own words and describing the experience she had actually gained to meet the relevant Performance Objective.

13. In order to achieve membership, it is submitted Miss Gong 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 1,2,3,4,5,8,11,15 and 17 with the use of a supporting statement, which she also must have known had not been written in her own words. All nine of her statements were identical or significantly similar to those of other trainees who claim to have been supervised by Person A. None of Miss Gong's PO statements were the first in time. She therefore knew she had not achieved the POs as described in the statement or at all.
14. 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

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

Allegation 3 – Recklessness

16. ACCA submitted in the further alternative that Miss Gong'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 statement should truthfully and accurately set out how the relevant objective had been met.

Allegation 4 – Failure to co-operate

17. ACCA submitted Miss Gong 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

18. ACCA submitted that Miss Gong'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 was liability to disciplinary action.

MISS GONG'S SUBMISSIONS

19. There were no submissions from Miss Gong.

DECISION ON ALLEGATIONS AND REASONS

20. 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.
21. The Committee heard that there had been no previous findings against Miss Gong and accepted that it was relevant to put her good character into the balance in her favour.

DECISION ON FACTS

22. 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 Gong's absence added nothing to ACCA's case and was not indicative of guilt.

- 1. Applied for membership to ACCA on or about 24 November 2020 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 19 August 2013 to 27 November 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

b) She 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 8: Analyse and interpret financial reports**
- Performance Objective 11: Identify and manage financial risk**
- Performance Objective 15: Tax computations and assessments**
- Performance Objective 17: Tax planning and advice**

23. 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 Gong 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 Gong 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 Gong. 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 and that person was not Miss Gong. She confirmed that the email address Miss Gong provided as Person A's was not hers. In addition, the Committee noted that Person A also had a different supervisor registration number to that of Miss Gong's purported supervisor. These matters, in the Committee's view, further undermined the possibility that Person A was in fact Miss Gong's supervisor. In the Committee's judgment this, and Person A's willingness to

attend to give oral evidence, added to Person A's credibility. Accordingly, the Committee was satisfied that Allegation 1 a) was proved.

24. The Committee accepted ACCA's evidence that the Training Record that Miss Gong submitted to ACCA contained a PO statement for POs 1,2,3,4,5,8,11,15,17. The Committee undertook a comparison between the statements submitted by Miss Gong and the statements submitted earlier by other students. It noted that all nine PO statements were identical or significantly similar to the PO's contained in the PERs of many other ACCA trainees who claimed to have been supervised by Person A. The Committee thought it more likely than not that this indicated that Miss Gong had copied her statements from other trainees' record. It also noted that none of her statements were first in time. It rejected as wholly implausible that properly compiled statements could be identical or 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 POs 1,2,3,4,5,8,11,15 and 17 as documented. Accordingly, the Committee was satisfied that Allegation 1 b) was proved.

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

- a) In respect of Allegation 1a), dishonest, in that Miss Gong 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.**

25. The Committee next asked itself whether the proven conduct in Allegation 1 a) was dishonest.
26. In accordance with the case of *Ivey v Genting Casinos (UK) Ltd T/A Crockfords [2017] UKSC67* the Committee first considered what Miss Gong'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 Gong 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 Gong 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 wholly implausible, the possibility that Miss Gong 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 Gong 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 POs were signed off by the purported supervisor on 24 November 2020 and submitted together on 27 November 2020. In these circumstances the Committee considered it highly unlikely that Miss Gong 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 Gong was taking a short cut to registration by presenting a false training record. In the circumstances the Committee was satisfied that Miss Gong 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.

b) In respect of allegation 1b) dishonest, in that Miss Gong 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.

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

28. The Committee considered what Miss Gong's belief was, as to the facts. It was satisfied that Miss Gong's statement for PO 1,2,3,4,5,8,11,15 and 17 was identical to statements completed by other trainees, who also claimed to be supervised by Person A and which was submitted before Miss Gong's submission of her PO statements. It compared Miss Gong's statement with that of the other trainees contained in the documents and noted that they were identical in content. The Committee was therefore satisfied that Miss Gong 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 Gong 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.

c) In the alternative, any or all of the conduct referred to in Allegation 1 above demonstrates a failure to act with Integrity.

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

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

30. Given the Committee's findings in relation to Allegation 2 a) and 2 b) it did not consider the alternative of Allegation 3. This was therefore not proved.

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) 12 August 2022;**
- (b) 30 August 2022;**
- (c) 14 September 2022.**

31. The Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Miss Gong to cooperate fully with ACCA in the investigation of any complaint. It was satisfied that Miss Gong's email address was an active e-mail address. It was satisfied that Miss Gong made no response to ACCA's correspondence requesting her cooperation on, 12 August 2022 and 30 August 2022, and 14 September 2022. It was satisfied that these non-responses amounted to failures as Miss Gong had a duty to respond and that therefore she breached the obligation under the Regulations and that Allegation 4 was proved.

5. By reason of her conduct, Miss Gong 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)

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

33. 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 Gong'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. Her conduct enabled Miss Gong 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.

34. Further, the Committee was satisfied that Miss Gong'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 Bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Miss Gong's actions brought discredit on her, the Association and the accountancy profession. For these reasons the Committee was satisfied that Miss Gong's failure to cooperate was sufficiently serious to amount to misconduct.
35. Given the Committee's judgment that her failure amounted to misconduct, the Committee did not need to consider the alternative of liability to disciplinary action.

SANCTIONS AND REASONS

36. 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.
37. The Committee accepted the advice of the Legal Adviser.
38. 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.

39. The aggravating factors the Committee identified were:

- The behaviour involved sustained dishonesty which was for personal gain for membership which was pre-meditated 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.
- No evidence of insight.

40. The only mitigating factor the Committee identified were:

- A previous good character with no disciplinary record.

41. 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 Gong 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.

42. 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 Gong remaining on the register of ACCA. Miss Gong should never have been a member of ACCA. It

considered that the only appropriate and proportionate sanction was that she be excluded from membership.

COSTS AND REASONS

43. ACCA claimed costs of £5,847.50 and provided a detailed schedule of costs. Miss Gong 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, subject to a reduction for the Case Presenter and Hearing Officer's time for today's hearing, which lasted less time than estimated. It did not have sufficient information as to Miss Gong's means to enable it to make any further reduction. Accordingly, the Committee concluded that the sum of £5,000 was appropriate and proportionate. It ordered that Miss Gong pay ACCA's costs in the amount of £5,000.00.

EFFECTIVE DATE OF ORDER

44. 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 Gell
Chair
09 November 2023