

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Ms Fan Fei

Heard on: Thursday, 04 April 2024

Location: Held remotely by Microsoft Teams

Committee: Mr Neil Dalton (Chair)
Mr David Horne (Accountant)
Mr Geoffrey Baines (Lay)

Legal Adviser: Ms Giovanna Palmiero

Persons present

and capacity: Ms Fan Fei (Member)
Ms Junling Gao (Interpreter)
Ms Elaine Skittrell (ACCA Case Presenter)
Miss Nicole Boateng (Hearings Officer)

Observers: Ms Jackie Alexander (Appointments Board)

Summary: Exclusion from membership

Costs: £3000.00

1. The Disciplinary Committee (“the Committee”) convened in public to hear the allegations against Ms Fei. Ms Fei was present but not represented. An

Interpreter, Ms Gao, was in attendance to assist Ms Fei. ACCA was represented by Ms Skittrell. The allegations were read to Ms Fei and all matters were denied.

2. The papers before the Committee ('the documents') comprised:
 - (i) A Main Hearing Bundle (pp 1-256),
 - (ii) An Additional Bundle (pp1-96),
 - (iii) A Bundle of performance objectives (pp1-12), and
 - (iv) A Service Bundle (pp1-32).

BACKGROUND

3. Upon a student completing all their ACCA exams, they become an ACCA affiliate (also known as an ACCA trainee). However, in order to apply for membership, they are required to obtain at least 36 months' practical experience in a relevant role ('practical experience').
4. The detail of the process to be followed to satisfy ACCA's practical experience requirement is set out clearly, and in detail, in written guidance readily available online to all ACCA students and affiliates. Further assistance is available by way of ACCA interactive webinars (where there is a Q&A facility) and by the ACCA's *WeChat* facility.
5. At its essence, though, obtaining and demonstrating practical experience involves the affiliate completing nine performance objectives (POs) under the supervision of a 'qualified accountant'. The ACCA recognises a person as a 'qualified accountant' if they are a qualified accountant recognised by law in the trainee's country and/or a member of an International Federation of Accountants (IFAC) body.
6. Once a trainee considers they have completed a particular Performance Objective (PO), they must then provide evidence of this in the form of a statement in their Practical Experience Requirement (PER) training record. That training record is completed using an online tool called 'MyExperience', accessed via the student's 'MyACCA' portal.

7. The statement itself should describe the experience they have gained in order to meet the particular PO. Given that it should be a description of their own experience, ACCA's published guidance makes plain that the statement should be unique to the particular affiliate.
8. In addition to obtaining approval of their POs, a trainee must also ensure that the employment where they have gained relevant practical experience has been confirmed by their line manager - who is usually also the trainee's 'qualified accountant' supervisor. This means that the same person can, and often does, approve both the trainee's time and achievement of PO's.
9. Through the online tool, the trainee requests that their practical experience supervisor approves the POs. If the trainee's line manager is not a qualified accountant, the trainee can nominate a supervisor who is external to the firm to supervise their work and approve their POs. However, this external supervisor must still have some connection with the trainee's firm - for example, as an external accountant or auditor.
10. Once all nine POs have been approved by the trainee's practical experience supervisor (whether internal or external), and their minimum 36 months of practical experience has been signed off, the trainee is eligible to apply for membership of ACCA.

MS FEI

11. Ms Fei registered as a student member of the ACCA on 28 August 2017 and was admitted as an affiliate member on the 14 October 2019. Following submission of her PER training record on or about 1 April 2020, she was admitted as a full member on 9 April 2020.
12. In 2021 ACCA's Professional Development team became aware that 100 ACCA trainees had claimed in their completed PER training records that their Performance Objectives ('PO') had been approved by the same supervisor, Person A. Ms Fei was among those 100 trainees. During the course of a subsequent investigation, a review of the available records was conducted. This review indicated that the PO Statements had been copied amongst a large

number of the 100 trainees. ACCA's investigative work also revealed that Person A had not supervised any of these trainees.

13. Resultantly, ACCA made enquiry of Ms Fei in relation to these matters. The ACCA's concern was that:

- Person A had never supervised Ms Fei; and that
- Three of the POs provided by Ms Fei in her training record were not truly her own. This was on the basis that these particular POs duplicated, in substance, those from other trainees which had previously been submitted to the ACCA.

14. Ms Fei was contacted by ACCA to address these concerns. Although Ms Fei was obligated to cooperate fully with the ACCA's investigation into these matters, it is alleged she has failed to do so on four occasions.

SCHEDULE OF ALLEGATIONS

15. Against that background, it is alleged that:

Fan Fei ('Ms Fei'), at all material times an ACCA trainee,

1. Applied for membership to ACCA on or about 1 April 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 2 September 2019 to 1 April 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 4: Governance, risk and control
- Performance Objective 17: Tax planning and advice

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

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- a) In respect of Allegation 1a), dishonest, in that Ms Fei 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 Ms Fei 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 Ms Fei 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 fully 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) 7 September 2022;
 - (c) 22 September 2022
 - (d) 7 October 2022
5. By reason of her conduct, Ms Fei 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)

DECISION ON FACTS, ALLEGATIONS AND REASONS

16. In reaching its decisions, the Committee considered all the documents set out in paragraph 2 above and took into account all oral submissions made by both Ms Skittrell and by Ms Fei.
17. Throughout its deliberations, the Committee also bore in mind the unchallenged advice provided in open session by the legal advisor. The Committee reminded itself that the burden of proof fell upon the ACCA, and that the standard of proof was the 'civil' standard – in other words, the committee asked itself whether the facts alleged by the ACCA were 'more likely than not' to be true, based upon all the materials before it.
18. Ms Fei did not challenge ACCA's evidence; she challenged only the conclusions ACCA was inviting the Committee to draw from it.
19. In consequence, no ACCA witness was required to give oral evidence, and the Committee considered the accuracy and truthfulness of the statements from ACCA's witnesses to be unchallenged by Ms Fei.
20. Those statements include:

- Person A: She confirms she has not supervised any of the 100 trainees under consideration, and that the email address attributed to her was not hers.
 - Person B: (Senior administrator in ACCA's member Support Team): They explain ACCA's membership application process.
 - Person C: (ACCA Professional Development Manager): They explain in detail, and with reference to a large number of exhibited documents, the requirements upon ACCA affiliates in terms of completion of POs and identity and role of supervisors. She also explains where the many sources of information relating to such matters were to be found for someone in Ms Fei's position.
21. For her part, Ms Fei chose not to give evidence herself, but instead to rely upon oral submissions. As indicated, the Committee considered those submissions fully, together with such written representations as made by Ms Fei prior to the hearing, as contained in the documents. It bore in mind at all times that Ms Fei was of previous good character, and the advice it had received from the Legal Advisor in this regard.

Allegation 1a - proved

22. The uncontested evidence from the ACCA established that:
- Ms Fei did indeed apply for membership to ACCA on or about 1 April 2020; and that
 - Within her ACCA Practical Experience training record, Ms Fei had explicitly stated her Practical Experience Supervisor in respect of her practical experience training in the period from 2 September 2019 to 1 April 2020 was Person 'A'.
23. Person A has, though, provided written evidence which establishes that they did not supervise Ms Fei's practical experience training - either in accordance with ACCA's requirements as published from time to time by ACCA, or at all.

24. Ms Fei does not dispute Person A's evidence.

25. Accordingly, the Committee found 1a proved.

Allegation 1b – proved

26. The Committee had regard to the evidence Ms Fei produced in her training record to demonstrate her achievement of Performance Objectives 1, 4 and 17. The Committee determined that this evidence was identical, or substantially identical, to evidence produced by other trainees on previous occasions in relation to each of those objectives.

27. The Committee reminded itself of the advice provided to trainees/affiliates in ACCA's guidance document 'PER – Practical experience requirements':

"[...] Your situation and experience are unique to you, so we do not expect to see duplicated wording, whether from statement to statement, or from other trainees. If such duplication occurs then it may be referred to ACCA's Disciplinary Committee"

28. For her part, Ms Fei did not deny her PO evidence was identical to that of others, nor did she challenge the ACCA's assertion that other trainees had produced that same evidence to ACCA before she had done.

29. Rather, she submitted (in terms) that this was coincidental and had arisen for two reasons. Namely,

- The innately generic nature of the PO criteria against which she was required to provide evidence; and
- Her use of 'templates and online prompts' to fill in the three PO's.

30. Reflecting upon these matters, the Committee determined that there was insufficient evidence to establish that Ms Fei had ever achieved POs 1, 4 and 17; and that the particular evidence relied upon by Ms Fei in the examples in

her training record simply was not true, having been substantively copied from other sources. It therefore found Allegation 1(b) proved.

Allegations 2 (a) and (b) – Proved

31. Having found the facts against Ms Fei proved in relation 1(a) and 1(b), the Committee had to determine whether Ms Fei's actions were dishonest. It considered this having regard to the test for dishonesty set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67* ("Ivey"). The test was expressed at paragraph 76 of the court's judgement in the following terms:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

32. In her initial response to ACCA in relation to those matters set out in paragraph 1(a) and 1(b) of the Allegation, Ms Fei had simply asserted, '*I think my account might have been stolen [...].*'

33. Later, her position changed. She then offered the following explanation in relation the issue forming the subject of Allegation1(a),

'[...] since my leader is not a member of CICPA, he is not qualified to authenticate my 'PO', so he introduced a friend to help me authenticate. According to ACCA regulations, if my supervisor does not have qualification certificate, I can ask someone for help. So I contacted this so-called [Person A] and obtained certification with her help.'

34. Essentially, Ms Fei submitted that the reason she had identified Person A as her supervisor in her training record was because that was who the supervisory person had falsely identified herself to be. Ms Fei claimed that person, who she later names as Person D, also circumscribed the narrow supervisory role to be undertaken, which Ms Fei had accepted. (Ms Fei added in oral submissions that ACCA processes were not as readily available to Chinese affiliates as to their UK counterparts, and that the requirements upon her were not as clear at the time she applied for membership as they are now.)
35. The Committee did not find Ms Fei's account plausible. It was satisfied that she must have been aware of ACCA's training requirements. They were widely published, and there were also numerous training and discussion events made available through ACCA's WeChat group for affiliates/ trainees. Ms Fei would have known accountancy to be a rules-based profession, and the Committee did not consider that it was credible that Ms Fei would take no steps to inform herself of ACCA's particular 'practical experience' requirements.
36. Moreover, even on her own account, it is clear that the person who she says called herself Person A was not in any sense 'supervising' her. The Committee considered the everyday meaning of the word "supervise" and concluded that any ordinary person in Ms Fei's position would be aware of what this entailed – and, if they had any doubt, clarity was readily available from ACCA.
37. Ms Fei was responsible for submitting her application for membership and could only do so through her MyACCA portal. The Committee did not accept that it was credible that Ms Fei was a victim of another individual who had deceived her or that she did not know the content of her application.
38. In short, the Committee was satisfied that Ms Fei knew she had not been supervised, whether by Person A or anyone else, and therefore to claim otherwise was untrue. It determined that Ms Fei's actions in Allegation 1(a) were intended to deceive ACCA into believing that she had been supervised during her practical experience. The Committee was satisfied that this would be regarded as dishonest by ordinary and honest people. Accordingly, the Committee found Allegation 2(a) proved.

39. In considering Allegation 2(b), the Committee turned to the circumstances giving rise to Allegation 1(b), and the fact that Ms Fei's POs (1,4 and 17) mirrored those of other affiliates who had already previously submitted them; Ms Fei's written comment to the ACCA during the investigative stage was that she had written those POs *'with reference to the prompts, and also referred to some materials on the internet.'* She added, *'I am sorry for the repetition.'*
40. The Committee noted that, in advance of the hearing, ACCA had formally requested further elaboration from Ms Fei regarding the reference to *'prompts'* but nothing had been forthcoming. In her oral submissions to the Committee, Ms Fei simply added the general observation already set out in paragraph 34 (parenthesis) above.
41. Reflecting upon this, the Committee determined that the requirement upon Ms Fei to produce her *own* evidence of having completed the performance objectives was entirely clear from ACCA guidance readily available to her at the time. As per paragraphs 34-35 above, it did not find plausible her claim to the contrary.
42. In all the circumstances, the Committee determined that Ms Fei's actions in relation to Allegation 1(b) were intended to deceive ACCA into believing that that POs 1, 4 and 17 had been completed by her in the way she had described in the training record. Instead, she had actually copied or adopted evidence of these three POs from other affiliates, knowing that they were not her own words, yet using them to complete the application for membership. The Committee was satisfied that this would be regarded as dishonest by ordinary and honest people. Therefore, it found Allegation 2(b) proved.

[For completeness, the Committee also noted, regarding the dates of her relevant work experience, that there were significant inconsistencies between the information Ms Fei provided when she initially applied for membership, and the paperwork she subsequently relied upon to support her claim. It was not necessary, however, to resolve these inconsistencies to reach decisions in relation to Allegation 2(a) and (2(b).]

Allegations 2(c) and 3(a), (b), and (c)

43. Having found Allegations 2(a), and 2(b) proved, it was not necessary for the Committee to consider Allegations 2(c) or 3(a), (b), and (c) which had been alleged in the alternative.

Allegation 4

44. The position here can be stated shortly.
45. In email correspondence dated 25 August 2022, ACCA wrote to Ms Fei at her registered address. Therein, she was asked a series of ten questions pertaining to those matters set out in the paragraphs 3-13 above. The Committee considers those questions to be clear, cogent, and directly germane to the matters under consideration, including addressing ambiguities in Ms Fei's paperwork. In the correspondence, ACCA reminded Ms Fei of her duty to cooperate fully with its investigation.
46. Although Ms Fei provided a written response, the Committee has determined that her response only addresses some of ACCA's questions, and then only in a partial sense.
47. Based upon her partial response, ACCA nevertheless wrote to Ms Fei again on 7 September 2022, seeking clarification upon a number of her earlier remarks, as well as seeking information in relation to those questions she had not answered at all. Ms Fei responded - but again in a way which does not, in the Committee's judgement, amount to full cooperation.
48. ACCA went on to write to Ms Fei on two further occasions (22 September 2022 and 7 October 2022) seeking the outstanding information. Ms Fei did not respond to these email communications at all.
49. The Committee was unpersuaded by Ms Fei's submission that she had responded to the ACCA as fully as possible – whether at the time or, later, by reason of her correspondence in summer/ autumn 2023. It was likewise unpersuaded by her assertion that she had been wary of opening some of the emails in case they were 'spam'. The emails were plainly from her regulator - who she knew at the time was engaged in making enquiries with her. She was under a duty to cooperate fully with ACCA's enquiries and, in the Committee's

judgment, Ms Fei had failed to discharge that duty. Accordingly, Allegation 4 was found proved.

Allegation 5a – proved

50. Having found the facts proved in Allegations 1(a),1(b), 2(a), 2(b) and 4, the Committee then considered whether those facts amounted to misconduct.
51. The Committee determined that in dishonestly submitting false information to ACCA in her PER training record, Ms Fei's conduct had fallen far short of what would be expected of an ACCA member. It demonstrated a complete disregard for ACCA's membership process and seriously undermined the integrity of that process. As such, it brought discredit upon Ms Fei, the ACCA, and the profession. The Committee considered this behaviour to be very serious and was in no doubt that it amounted to misconduct.
52. The Committee also found that, in failing to co-operate fully with ACCA's investigation, Ms Fei's conduct had fallen far short of what would be expected of an ACCA member and was of itself sufficiently serious to amount to misconduct. This failure had the potential to undermine ACCA's ability to function as a regulator and therefore risked bringing both ACCA and the profession into disrepute.
53. The Committee therefore found Allegation 5(a) proved in relation to the matters set out at 1(a), 1(b), 2(a), 2(b) and 4 of the Allegation.
54. Given this decision, it was not necessary for the Committee to consider Allegation 5(b) which had been drafted in the alternative.

SANCTION AND REASONS

55. In reaching its decision on sanction, the Committee took into account the submissions made by Ms Fei and by Ms Skittrell. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA effective from February 2024 and had in mind the fact that the purpose of sanctions was not to punish Ms Fei but to protect the public. Furthermore, any sanction must be

proportionate. The Committee accepted the advice of the Legal Adviser and considered the sanctions, starting with the least serious sanction first.

56. The Committee turned first to consideration of the aggravating and mitigating features in this case.
57. The Committee had not been made aware of any previous regulatory findings against Ms Fei, and this was to her credit. It also noted that she had attended and participated in the hearing, thereby assisting the process. However, the Committee considered that there were a number of aggravating features in this case. It considered that Ms Fei's dishonest conduct included collusion with others, and it had necessarily involved an element of pre-planning and premeditation. In addition, there had been no insight or understanding shown by Ms Fei about the potential impact of her behaviour. Her conduct had the potential to cause reputational harm to the profession as it had enabled her to undertake accountancy work, holding herself out as an ACCA member, in circumstances where she had not met the necessary 'practical experience' requirements. This posed a risk to the public.
58. Set against those mitigating and aggravating factors, the Committee did not think it was appropriate, nor in the public interest, to take no further action. Neither did it consider it would be appropriate to order an admonishment in a case where (as here) a member had disregarded aspects of the membership requirements and acted dishonestly.
59. The Committee then considered whether to reprimand Ms Fei. The guidance indicates that a reprimand would be appropriate in cases where the conduct is of a minor nature and there is sufficient evidence of an individual's understanding and genuine insight into the conduct found proved. The guidance goes on to state that a reprimand may be appropriate where the conduct was not in deliberate disregard of professional obligations, and the period of misconduct was stopped as soon as possible. The Committee did not find those factors to be present in the current instance. Ms Fei had not demonstrated any insight into what had occurred, and the Committee had found her conduct to be deliberate. It was also not considered to be minor in nature.

60. The Committee moved on to consider whether a severe reprimand would adequately reflect the seriousness of the case. The guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature but where there are particular circumstances of the case, or mitigation advanced, which satisfy the Committee that there is no continuing risk to the public and that corrective steps had been taken to cure the conduct and ensure such behaviour was not repeated. The Committee had not been provided with evidence to show these criteria were met. No evidence had been marshalled of any rehabilitative steps that had been taken by Ms Fei to ensure the behaviour would not re-occur and, overall, the conduct was considered too serious for a severe reprimand.
61. The Committee therefore went on to consider the guidance relating to exclusion from membership. The Committee reminded itself of the ACCA guidance on the approach to be taken in cases of dishonesty, wherein it is identified as a particularly serious matter because it undermines trust and confidence in the profession. The guidance also states 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 reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances.
62. Ms Fei had acted dishonestly, and the Committee was clear that the dishonesty in question had been particularly unconscionable. In addition, she had failed to cooperate fully with ACCA in its investigation of those matters. In all the circumstances, the Committee considered that Ms Fei's conduct was fundamentally incompatible with her continued membership and consequently the only appropriate and proportionate sanction was exclusion.

COSTS AND REASONS

63. ACCA applied for costs in the sum of £ 6,888.25, after amendment by Ms Skittrell. The application was supported by a Schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing.
64. The Committee was provided with information about Ms Fei's financial circumstances. On the information provided, [PRIVATE].

65. The Committee was satisfied that ACCA was entitled to claim its costs. The Committee carefully considered the information provided by Ms Fei about her limited means. It had regard to the important principle that in disciplinary proceedings the majority of its members should not subsidise the minority who find themselves within the disciplinary process. Nevertheless, in this case, the Committee considered that it was appropriate to order that Ms Fei should pay costs of £3000. It considered that this order was appropriate because a higher award of costs would cause severe financial hardship to Ms Fei.
66. The Committee therefore ordered Ms Fei to pay ACCA's costs in the sum of £3000.

EFFECTIVE DATE OF ORDER

67. The Committee determined that it would be in the public interest for the order to take immediate effect. It reached that view in light of the fact that Ms Fei otherwise remained potentially able to practise as an ACCA qualified accountant, having gained the qualification dishonestly. Therefore, pursuant to Regulation 20(1)(b), the order removing Ms Fei from membership will take effect immediately.

Mr Neil Dalton
Chair
12 April 2024