

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Ms Xiao Fen Wan
Heard on:	Tuesday, 13 February 2024 - Wednesday 14 February 2024 and 2 April 2024
Location:	Remotely by Microsoft Teams
Committee:	Mr Martin Winter (Chair) Mr George Wood (Accountant) Ms Yvonne Walsh (Lay)
Legal Adviser:	Ms Tope Adeyemi
Persons present and capacity:	Mr Adam Slack (ACCA Case Presenter) Miss Nicole Boateng (Hearings Officer) Miss Xiao Fen Wan (Member) Ms Sophie Sanders (Interpreter, 13 – 14 February 2024) Ms Junling Gao (Interpreter, 2 April 2024)
Summary:	Removal from the Membership register
Costs:	£2,801.25

INTRODUCTION

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

1. The Disciplinary Committee (“the Committee”) met to hear allegations against Ms Wan. Ms Wan was present on all days of the hearing but not represented. ACCA was represented by Mr Adam Slack. The papers initially before the Committee consisted of a Main Bundle numbered 1 – 248, an Additional Bundle numbered 1 – 101, a Bundle of performance objectives numbered 1 - 71, a Service Bundle numbered 1 -20 and a two-page Memorandum and Agenda. At the reconvening hearing on 2 April, the Panel were provided with a further Service Bundle numbered 1 -14.

PRELIMINARY MATTERS

Attendance of an interpreter

2. Following introductions from the panel on day one of the hearing, Ms Wan explained that as her English was poor, she wished for the assistance of a Mandarin interpreter. No objection to this request was made by ACCA and the panel agreed that an interpreter was necessary. An interpreter was subsequently secured by ACCA and attended the hearing from day two.

Service of papers

3. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the comments made by Ms Wan, the submissions made by Mr Slack on behalf of ACCA and the advice of the Legal Adviser.
4. Included within the Bundle was the Notice of Hearing dated 16 January 2024, thereby satisfying the 28-day notice requirement, which had been sent to Ms Wan’s email address as it appears on the ACCA register. The Notice included correct details about the time, date and remote venue of the hearing. It also notified Ms Wan of the option to attend the hearing by telephone and to be represented if she wished. Additionally, the Notice provided a link to the hearing documents, details about applying for an adjournment and the Committee’s

power to proceed in her absence if considered appropriate. A delivery receipt dated 16 January 2024, confirming delivery of the Notice, was also provided. The Committee also had sight of two emails dated 08 February and 12 February 2024 which provided information on the details of the hearing. Further, Ms Wan was asked directly whether she had received the Notice of Hearing dated 16 January 2024 and she confirmed that she had.

5. The Committee, having considered the relevant documents and the information provided by Ms Wan, were satisfied that Notice had been served in compliance with the Regulations.

BACKGROUND

6. Ms Wan became an ACCA registered student in 2013. She became an affiliate in July 2019 and a registered ACCA member on 27 August 2020. In order to apply for membership, Ms Wan was required to obtain at least 36 months' practical experience in a relevant role ('practical experience'). The practical experience involves the completion of 9 performance objectives (POs). The experience obtained was to be recorded in a Practical Experience Requirement (PER) training record.
7. In 2021 the Professional Development team of ACCA became aware that 100 ACCA trainees had claimed in their completed PER training records that their PO had been approved by the same supervisor, Person A. Miss Wan was among the 100. During the course of the investigation a review of the available records was conducted. The review indicated that the PO Statements had been copied amongst a large number of the 100 trainees.
8. Person A when contacted denied having supervised any of the 100 trainees including Ms Wan. The matter was therefore referred to ACCA's investigations teams. By this point Ms Wan had been admitted to ACCA membership.
9. In respect of Ms Wan's own PO statements, the content of 7 of them were considered by ACCA to include identical or significantly similar content to the

PO's contained in the PER's of many other ACCA trainees who claimed to have been supervised by Person A.

10. In August 2022 ACCA wrote to Ms Wan to inform her that ACCA was currently investigating a complaint against her concerning her conduct in relation to her PER. In the letter she was asked a series of questions. Ms Wan responded by email on 17 August 2022, apologising and stating that she did not know Person A and that *"Because my English is poor, writing PO is difficult for me, I seek help online, but I don't actually know him/her."* In response to a question posed by ACCA regarding whether she accepted that in relation to her practical experience as recorded in her PER she was not supervised by Person A in accordance with the guidance, she responded by stating *"10: I agree. I will re-apply for Po recognition."*

11. Ms Wan completed a case management form dated 25 April 2023. Within the form, she denied all the allegations and set out amongst other points, the following:

"I acknowledge that I sought assistance from an agency to improve the clarity and coherence of my work experience description, and I take full responsibility for the oversight that led to the incorrect information being provided to ACCA. I want to emphasize that the content of the document was based on my own real work experience, and the agency failed to submit the right information I had provided. The misunderstanding was not intentional, and I apologize for any inconvenience caused."

12. She went on within the Case Management Form, to state that because of her poor English she sought help online with her writing. She added that this was not an excuse for the error that occurred, and she recognised she should have exercised better judgement and that she would like to provide additional information to prove that she has worked at the two companies mentioned in her work experience description.

13. Ms Wan denied any dishonesty in the form and set out the following:

“Allegation 1a) - Dishonest conduct: I did not seek to confirm that my Practical Experience Supervisor had supervised my practical experience training in accordance with ACCA's requirements or otherwise knew it to be untrue. The agency I had hired failed to submit the correct information I provided, which led to an incorrect supervisor's name being provided to ACCA. I acknowledge that I should have supervised the agency's work more closely, but I did not act dishonestly.”

“Allegation 1b) - Dishonest conduct: I did not know that I 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. I provided an accurate description of my work experience based on my understanding of the performance objectives. If there were any misunderstandings or discrepancies, they were unintentional and not made with dishonest intentions.”

14. Ms Wan did not agree that in the alternative she had failed to act with integrity: *“I respectfully disagree that the conduct referred to in Allegation 1 demonstrates a failure to act with integrity. On the contrary, I have always acted with integrity and sought to uphold the values of professionalism and ethical conduct in my work. I admit that I made mistakes and errors of judgment, but I never acted with the intention of deceiving or misleading ACCA or anyone else”.*
15. Ms Wan also denied any reckless behaviour and highlighted that she did work under supervision of a “competent supervisor” whose contact information had been provided. She also stated, *“I want to reiterate that the content of the document was based on my real work experience, and any discrepancies that may have arisen were not intentional.”*
16. Ms Wan ended her remarks on the Case Management Form by offering to address any concerns and by stating that she was committed to adhering to ACCA's standards of professionalism and ethics:

“To address any concerns that ACCA may have regarding my conduct, I am willing to take further actions to demonstrate my commitment to compliance

with ACCA' requirements. For instance, I can undertake additional training on ACCA's requirements to ensure that I fully understand them and can adhere to them moving forward.

In conclusion, I want to assure the panel members that I am fully committed to adhering to ACCA's standards of professionalism and ethics. Any mistakes made were not due to recklessness or disregard for these standards, but rather, an oversight that I take full responsibility for. I hope that this response has provided clarity on my position."

17. In July 2023, Ms Wan provided ACCA with more information regarding her work history, a completed statement of financial position, financial information, and a reference. In an email dated 27 November 2023, the ACCA asked Ms Wan further questions arising from the Responses she had given on the Case Management Form and in other correspondence. The questions included information about the agency she had referred to utilising, and whether she had completed the information on the case management form herself. Ms Wan stated that the case management form had been completed by her with the aid of google translate and that she could not provide details of the agency she used because their online store had been cancelled. Evidence of payment made to them was provided. Ms Wan also requested that if an interpreter was available, ACCA should help arrange one for her.

ALLEGATIONS

18. Miss Xiao Fen Wan ('Miss Wan'), at all material times an ACCA trainee,
 1. Applied for membership to ACCA on or about 15 July 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 22 August 2018 to 23 August 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:

- Performance Objective 1: Ethics and professionalism
- Performance Objective 2: Stakeholder relationship management
- Performance Objective 5: Leadership and management
- Performance Objective 17: Tax planning and advice
- Performance Objective 18: Prepare for and plan the audit and assurance process
- Performance Objective 19: Collect and evaluate evidence for an audit or assurance engagement
- Performance Objective 20: Review and report on the findings of an audit or assurance engagement

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

- a) In respect of Allegation 1a), dishonest, in that Miss Wan sought to confirm her Practical Experience Supervisor did supervise her practical experience training in accordance with ACCA's requirements or otherwise which they knew to be untrue.
- b) In respect of Allegation 1b) dishonest, in that Miss Wan 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 Wan 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 it had been achieved in the manner claimed;
 - c) That the performance objective statements referred to in paragraph 1b) accurately set out how the corresponding objective had been met.

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

DECISION ON FACTS AND REASONS

19. The Committee considered with care all the evidence presented and the submissions made by Ms Wan and Mr Slack. It also accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities.

Allegation 1 (a) – Proved

20. Ms Wan had applied for membership on the basis that Person A was her supervisor. The Committee had been provided with a statement from Person A in which she asserted that she had only supervised the practical experience training of one individual, and that individual, was not Ms Wan. The Committee also took into account that Ms Wan accepted in her written submission prior to the hearing and in her oral evidence during the hearing, that Person A was not her supervisor. Taking all factors into account, the Committee was satisfied that

Person A had not supervised Ms Wan and therefore this allegation was found proved.

Allegation 1 (b) – Proved

21. A copy of Ms Wan's PER that included a statement describing the experience she gained to meet her POs was provided. Ms Wan accepted whilst giving oral evidence and in her written submissions, that the PO statements submitted in her name, were not submitted by her and that the content of those documents were not her own creation. Given Ms Wan's admissions and the evidence that the content of the relevant POs was strikingly similar to those submitted by other students purportedly supervised by Person A, the Committee found this charge proved to the requisite standard.

Allegations 2 (a) and (b) – Not Proved

22. The Committee moved on to consider whether Ms Wan acted dishonestly and considered her conduct having regard to the test for dishonesty as set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67* ("Ivey"), which at paragraph 76 of the court's judgement was expressed as follows:

"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."

23. During her evidence, Ms Wan explained that she had been working in a company within the period leading up to the submission of her PER training record and had her own Practical Experience Supervisor. She added that she had completed all the relevant exams up to the ACCA requirements and had completed her POs, however, because she considered her English to be poor, she had sought help from an agency she found online who she believed would correct her written English. Ms Wan emphasised that she did have a Practical Experience Supervisor named Person B and referred the Committee to the contact details and statement from Person B which she had provided to ACCA prior to the hearing.
24. It was noted that Ms Wan had not provided copies of the POs that she informed the Committee she had drafted and sent to the agency to correct. The Committee was mindful however that ACCA bore the burden of proving the allegations and that Ms Wan's evidence that Person B was her supervisor had not been challenged by ACCA. The panel also found that Ms Wan's account of what occurred in respect of her work experience supervision by Person B, the completion of her PO Statements and their subsequent submission had been consistent throughout all her communications with ACCA.
25. The Committee also bore in mind the evidence provided by Ms Wan in the form of a text message conversation she had with a representative of the agency that she stated had submitted her PER training record. The translation of the messages appeared to show Ms Wan providing genuine information in response to questions posed to her about her employment and her supervisors.
26. Overall, the Committee accepted Ms Wan's account about her interactions with the agency and her understanding of the service they would provide. It concluded that she had contacted the agency, providing them with PO statements she had prepared, together with details of her Practical Experience Supervisor, believing that the representatives of the agency would simply correct any errors in the written English. It did not find that Ms Wan believed the fundamentals of the information she provided would be changed, namely, the identity of her supervisor and the substance of her statements.

27. The Committee moved on to consider the second limb of *Ivey*, which is whether her conduct was honest or dishonest with reference to the standards of ordinary decent people. It concluded that ordinary decent people would not consider Ms Wan's conduct to be dishonest given her belief as to what would be submitted on her behalf. It follows therefore that the Committee did not find this allegation proved.

Allegation 2 (c) – Not Proved.

28. ACCA allege in the alternative that if Ms Wan was not dishonest her conduct demonstrated a failure to act with integrity.
29. In determining this allegation, the Committee accepted the advice of the Legal Adviser and took into account the definition of integrity set out in ACCA's Code of Ethics and Conduct (2015 - 2016), which states that integrity is the requirement to be "*straightforward and honest in all professional and business relationships*". The code goes on to set out that integrity "*implies fair dealing and truthfulness*". A further definition of integrity was provided by the court in the case of *Wingate and Evans v SRA; SRA V Malins [2018] EWCA Civ 366*, with integrity in the context of professional codes of conduct being described as a "*useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members*".
30. Based on the Committee's acceptance that Ms Wan submitted her application to ACCA in the way she described in her evidence and having considered the issues set out in the definitions objectively, the Committee considered there to be insufficient evidence to demonstrate Ms Wan had failed to act with integrity. It follows therefore that this allegation was not found proved.

Allegation 3 (a), (b) and (c) - Proved.

31. During her evidence, Ms Wan explained that the agency was able to submit the documents on her behalf as she had provided it with her ACCA login details. They had also informed her that they would send her a copy of the documents

following amendment and prior to any upload onto the portal. A copy of the document however was not provided to her by the agency prior to submission and Ms Wan stated she did not follow up as she was busy. Ms Wan also stated several times that she had not read the guidance provided by ACCA on the completion of the PER training record.

32. The Committee found that Ms Wan's failure to read the PER guidance demonstrated a lack of regard towards ensuring she understood ACCA's requirements around the practical experience supervision element of her training. Further, in not reading the guidance, failing to check the information that was submitted on her behalf and providing her login details to individuals she had found online, there was a risk that existed that Ms Wan would likely have foreseen, that the information submitted on her behalf would not be in line with ACCA's requirements. In particular the requirement to ensure her practical experience was supervised, that her Practical Experience Supervisor was able to personally verify the achievement of the POs and that the PO statements accurately set out how the corresponding objectives had been met.
33. In all the circumstances the Committee found Ms Wan to have acted recklessly and therefore found Allegations 3 (a), (b) and (c) proved.

Allegation 4 – Proved

34. The Committee considered whether Ms Wan's actions amounted to misconduct bearing in mind the test set out in ACCA Bye – Law 8(a) (c) and the definition provided by the court in *Roylance v. General Medical Council (No.2) [2000] 1 AC 311*.
35. The Committee was satisfied Ms Wan's actions in providing her ACCA login details to individuals she had found on online and by not checking the PER training submission uploaded on her behalf was irresponsible. Further, in allowing herself to be associated with statements regarding her experience and supervision that were inaccurate resulting from her recklessness, amounted to conduct that fell far below what was expected in the circumstances.

36. The submission of the PER represents a fundamental part of the membership process. As a result, Ms Wan's failings in this regard were very serious. For these reasons the Committee found Ms Wan's conduct referred to in Allegation 1 did amount to misconduct.

SANCTION AND REASONS

37. In reaching its decision on sanction, the Committee took into account the submissions made by Ms Wan and Mr Slack. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA and had in mind that the purpose of sanctions was not to punish Ms Wan but to protect the public. The Committee accepted the advice of the Legal Adviser and considered the sanctions, starting with the least serious sanction first.
38. The Committee first made an assessment of how serious the behaviour was, bearing in mind its task was to assess seriousness in light of risk of harm. It considered the behaviour was serious bearing in mind what Ms Wan had gained as a result – she had obtained admission to membership without complying with ACCA's Regulations. As a result, an assessment of her knowledge and skills in accordance with the Regulations could not be made. This presented a risk of harm to members of the public who might engage her services in the belief that she had obtained ACCA Membership properly.
39. The Committee next considered aggravating and mitigating features in this case. ACCA had not made the Committee aware of any previous regulatory findings against Ms Wan, and this was to her credit. It noted that Ms Wan had fully engaged with ACCA, had made some early admissions in respect of key aspects of the matters alleged against her and had played a full part in the hearing. Also of relevance was the Committee's view that Ms Wan had understood the nature of her wrongdoing and was frank and honest with ACCA and the Committee regarding her failing. She had demonstrated consistent insight throughout the proceedings, with her responses found to be credible, compelling and thoughtful. It was noted by the Committee that Ms Wan attributed her decision to seek assistance with the completion of her PER to her poor English. In view of this, she stated that she had taken steps to improve

her English. Finally, Ms Wan had provided a positive testimonial from a former colleague. The Committee considered all these factors to amount to mitigation.

40. One aggravating factor was noted by the Committee, namely that Ms Wan's conduct found proved had led her to gain membership of ACCA, and the attendant benefits, in circumstances where she should have not gained such admission.
41. Set against those mitigating and aggravating factors and taking into account all the circumstances of the case, the Committee did not think it was appropriate, nor in the public interest, to take no further action. Neither did it consider that an order of admonishment was a sufficient sanction in a case where it had been determined that the misconduct found proved was serious involving a member's lack of adherence to membership requirements.
42. The Committee then considered whether to reprimand Ms Wan. The guidance states that a reprimand would usually be applied in situations where the conduct is minor in nature and there appears to be no continuing risk to the public. The Committee had found the misconduct to be serious. Further her resulting membership in circumstances where her capabilities had not been properly assessed posed an ongoing risk to the public.
43. The Committee moved on to consider whether a severe reprimand would adequately reflect the seriousness of the case. The guidance states that such a sanction would usually be applied in situations where the conduct is of a serious nature but there are circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved.
44. As outlined, the Committee had found that there was a continued risk to the public due to Ms Wan's continued ACCA membership. While some corrective steps had been taken by her in the form of improvement to her English, such steps were not considered sufficient to cure the risk posed by her continued membership.

45. The Committee went on to consider the guidance relating to exclusion from membership. Ms Wan had gained admission to membership through her recklessness and was currently able to enjoy all the benefits associated with ACCA membership. Her behaviour was considered to be fundamentally incompatible with continued membership and had the potential to affect members of the public. The Committee therefore concluded that exclusion was the appropriate sanction in all the circumstances. Further, the Committee considered that there was no need to extend the minimum period of 12 – months before Ms Wan could apply for re- admission to ACCA.

COSTS AND REASONS

46. ACCA applied for costs in the sum of £9,077.50. The application was supported by a schedule providing a detailed breakdown of the costs incurred by ACCA in connection with the hearing. A simplified breakdown was also provided. The Committee had from Ms Wan a completed Statement of Financial Position and other documents concerning her finances. She also provided oral evidence in which she stated, amongst other matters, that she could not afford the sums sought by ACCA in costs. Legal advice was received, with specific reference being made to paragraphs 41 and 42 of *Martin Florian Broomhead v Solicitors Regulation Authority [2014] EWHC 2772 (Broomhead)*. The case of *Broomhead* was referred to in regard to the question of whether a reduction could be made to costs by the Committee in circumstances where not all facts had been found proved.
47. The Committee was satisfied that ACCA was entitled to claim its costs. It did not however, consider it reasonable for Ms Wan to bear the costs of the hearing day which had been required due to ACCA's need to secure an interpreter. It considered it fair and reasonable that hearing costs be reduced to one day due to the additional time the hearing had taken, that was not the fault of Ms Wan.
48. The Committee determined to reduce the costs further in light of Ms Wan's successful defence of a number of the key charges. It bore into mind the submission made by ACCA regarding the propriety of making a reduction on

this basis. The Committee's attention was drawn by ACCA to paragraph 43 of *Levy v SRA [2011] EWHC 740 (Admin)*, referred to at paragraph 43 of *Broomhead*. The Committee also took into account ACCA's acceptance that based on the authorities that had been referred to, the Committee had a discretion as to whether to provide a further reduction with reference to allegations not found proved.

49. The Committee decided to exercise its discretion to further reduce the costs in light of Ms Wan's successful defence of the more serious allegations. Deciding that such a reduction should be in the amount of 50%. Taking all the reductions into the account, the remaining amount of costs was £2,801.25. The Committee considered Ms Wan's financial information in the context of her ability to pay. It was satisfied, in light of the information before it that she could meet costs of £2,801.25.

EFFECTIVE DATE OF ORDER

50. In accordance with Regulation 20(1)(a) of the Regulations, the order relating to Ms Wan's exclusion from membership will take effect at the expiry of the appeal period. ACCA sought an immediate order and the Committee considered this to be appropriate given the public protection concerns identified. Therefore, the sanction of Removal is to take effect immediately.

Mr Martin Winter
Chair
2 April 2024