

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Sam Kung Shing Yu

Heard on: Tuesday, 27 February 2024

Location: Remotely via MS Teams

Committee: Mr Andrew Popat CBE (Chair)
Ms Andrea White (Accountant)
Mr Nigel Pilkington (Lay)

Legal Adviser: Miss Juliet Gibbon

**Persons present
and Capacity:** Mr Christopher Saad (ACCA Case Presenter)
Miss Mary Okunowo (Hearings Officer)

Outcome: Allegations 1, 2, 3a, 3b, 3c and 4a (misconduct) proved.

Sanction: Exclusion from membership of ACCA with immediate effect.

Costs: £5,800.00

PRELIMINARY

1. The Disciplinary Committee (“the Committee”) convened to hear a number of allegations of misconduct against Mr Sam Kung Shing Yu (“Mr Yu”). The hearing was conducted remotely through Microsoft Teams. The Committee had a bundle of papers numbered pages 1-81, and a service bundle, numbered pages 1 to 23. The Committee was also provided with a detailed and a simple cost schedule.
2. Mr Christopher Saad represented ACCA. Mr Yu did not attend the hearing and was not represented.

SERVICE AND PROCEEDING IN ABSENCE

3. The notice of hearing, containing all the requisite information about the hearing, was sent by email on 30 January 2024 to the email address notified by Mr Yu to ACCA. The Committee had sight of a receipt confirming delivery of the email to that address.
4. There had been no response to the notice of hearing from Mr Yu.
5. The Committee was satisfied that the requirements of Regulations 10(1) and 22(1) of the Regulations had been complied with.
6. Having satisfied itself that service had been effected in accordance with the Regulations, the Committee went on to consider whether to proceed in the absence of Mr Yu. It accepted the advice of the Legal Adviser. The Committee bore in mind that whilst it had a discretion to conduct a hearing in the absence of the relevant person, it should exercise that discretion with the utmost care and caution. The Committee paid due regard to the factors set out in the cases of *Hayward & Others* [2001] 3 WLR 125 and *R v Jones* [2002] UKHL 5 and to the case of *The General Medical Council v Adeogba and Visvardis* [2016] EWCA Civ 162.
7. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously. It noted that Mr Yu had agreed for the hearing to be heard in his absence; he had not asked for an adjournment and the Committee was of the view that there was no evidence before it to suggest that an adjournment of today’s hearing would result in Mr Yu’s attendance on a future date.

8. The Committee determined that it was in the public interest for the hearing to proceed in Mr Yu's absence.

ALLEGATIONS

1. Pursuant to bye-law 8(a)(vi), ACCA Fellow, Mr Sam Kung Shing Yu (Mr Yu) is liable to disciplinary action by virtue of the disciplinary finding against him on 31 March 2021 by the Hong Kong Institute of Certified Public Accountants (HKICPA).
2. Pursuant to bye-law 10(b) Mr Yu failed to notify ACCA that he may have become liable to disciplinary action by virtue of the disciplinary finding against him on 31 March 2021 by HKICPA.
3. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014, Mr Yu has failed to co-operate fully with the investigation of a complaint in that he failed to respond fully or at all to any or all of ACCA's correspondence dated:
 - a. 11 February 2022;
 - b. 03 March 2022; and
 - c. 25 March 2022
4. By reason of his conduct at 2 and 3 above Mr Yu is:
 - a. Guilty of misconduct, pursuant to bye-law 8(a)(i); or
 - b. Liable to disciplinary action, pursuant to bye-law 8(a)(iii).

BACKGROUND

9. Mr Yu was admitted as a member of ACCA on 15 July 1999 and became a Fellow of ACCA on 15 July 2004.
10. The Hong Kong Institute of Certified Public Accountants ("the HKICPA") is the statutory body established by the Professional Accountants Ordinance responsible for the

professional training, development, and regulation of certified public accountants in Hong Kong.

11. The Disciplinary Committee of the HKICPA made a number of disciplinary findings against Mr Yu that are set out in the Order and Reasons for Decision, dated 31 March 2021 (“the Order”) and the Corrigendum to the Order and Reasons, dated 13 May 2021 (“the Corrigendum”).
12. At the time of the disciplinary findings Mr Yu was the sole proprietor of Firm A (“the firm”). As such, he was responsible for the Firm’s quality control system and the quality of its audit engagements.
13. A practice review (“the review”) was conducted on the Firm when two audit engagements were reviewed by the practice reviewer. During the course of the review, the reviewer selected three other engagements in spot checks in order to assess the Firm’s audit methodology.
14. The reviewer identified a number of issues with the Firm’s quality control system and audit engagements. The reviewer also found that Mr Yu had provided false answers in the 2016 practice review self-assessment questionnaire that was submitted on 27 June 2016. In addition, the reviewer also found that Mr Yu had made false representations to the reviewer and created documents retrospectively in an attempt to support his false representations. Mr Yu did not dispute the reviewer’s findings.
15. In light of the findings of the reviewer the Practice Review Committee (“the PRC”) considered that Mr Yu had committed serious professional misconduct and raised a number of complaints against him.
16. The first complaint was that Mr Yu had failed or neglected to observe, maintain, or otherwise apply a professional standard for having made false or misleading statements in relation to the review conducted on the Firm.

17. The second complaint was that Mr Yu had failed or neglected to observe, maintain, or otherwise apply a professional standard in respect of his audit of a client for the year ended 31 March 2016.
18. The third complaint was that Mr Yu had failed or neglected to observe, maintain, or otherwise apply a professional standard in respect of his audit of a client for the year ended 31 December 2016.
19. The fourth complaint was that Mr Yu had failed or neglected to observe, maintain, or otherwise apply a professional standard for his failure to maintain an adequate quality control system.
20. The fifth complaint was that Mr Yu had failed or neglected to observe, maintain, or otherwise apply a professional standard for his failure to comply with multiple professional standards.
21. The five complaints, therefore, involved findings by the PRC of multiple breaches by Mr Yu of professional standards set out in the Code of Ethics for Professional Accountants (“the COE”), the Hong Kong Standard on Quality Control 1 (“the HKSQC 1”) and other professional standards promulgated by the HKICPA.
22. Mr Yu made early admissions to all the complaints raised by the PRC.
23. The Disciplinary Committee of the HKICPA (“the DC”) found the following:
 - a. Mr Yu’s acts of making false representations during the review and creating working papers to mislead the reviewer were not only unprofessional but also cast serious doubts on his integrity, contrary to section 100.5(a) of the COE;
 - b. The numerous deficiencies found in the Firm’s quality control system and audit engagements indicated that Mr Yu had failed to uphold the fundamental principle of professional competence and due care in ensuring that his professional work had complied with professional standards, contrary to section 100.5(c) of the COE;

- c. Mr Yu had breached HKSQC 1 Quality Control for Firms that Perform Audit and Reviews of Financial Statements, and Other Assurance and Related Services Engagements.
24. The DC further found that Mr Yu's conduct in the practice review and the multiple audit deficiencies demonstrated is blatant disregard of professional standards, which amounted to misconduct.
25. The DC reprimanded Mr Yu on 31 March 2021 for his failure or neglect to observe, maintain or otherwise apply professional standards issued by the HKICPA and ordered the cancellation of his practising certificate, with no issuance of a practising certificate to him for a period of 24 months, with effect from 12 May 2021. In addition, the DC made a costs order against Mr Yu.
26. There is no evidence that Mr Yu informed ACCA of the disciplinary findings made against him by the HKICPA. The matter was brought to the attention of ACCA when HKICPA sent ACCA in Hong Kong a press release in relation to the disciplinary action taken against Mr Yu and the Firm.
27. ACCA sent a letter to Mr Yu by email on 11 February 2022 asking him a number of questions about the disciplinary findings made against him by the HKICPA. He was asked to provide a response by 25 February 2022. Mr Yu was also reminded of his duty to co-operate with the investigation under Regulation 3(1) of the Regulations. Mr Yu did not respond to ACCA.
28. ACCA sent a further letter by email to Mr Yu on 03 March 2022 asking for a response to the questions set out in the letter of 11 February 2022 by 17 March 2022. Mr Yu was again reminded of his duty to co-operate with the ACCA investigation against him. No response was received from Mr Yu.
29. A further letter was sent by email to Mr Yu on 25 March 2022 informing him that if a satisfactory response to the previous letters was not received by 01 April 2022, then an allegation under Regulation 3(a) would be raised against him. Again, there was no response from Mr Yu.

30. ACCA again wrote to Mr Yu on 08 April 2022 informing him that an allegation under Regulation 3(1) of failing to co-operate would be raised against him but that it would be in his interests to remedy the failure by responding to the questions outlined in the letter of 11 February 2022 by no later than 15 April 2022.
31. On 11 April 2022 Mr Yu contacted ACCA via myACCA in relation to his member annual subscription with ACCA. He wrote: '*It is too expensive to pay membership fee. Please cancel my membership*'. Under Regulation 10(3) of the Regulations an ACCA member cannot resign from ACCA's register while they are the subject of an ACCA investigation. Mr Yu was, therefore, unable to resign his membership of ACCA due to the current investigation.
32. Further correspondence in relation to the investigation and the assessor's decision was sent to Mr Yu but there was no response from him. Mr Yu also failed to return a completed Case Management Form to ACCA and has not responded to any of the emails sent to him by the Hearings Officer in relation to the hearing.

SUBMISSIONS

33. Mr Saad outlined the facts of the case to the Committee. In respect of Allegation 1, he submitted that the disciplinary findings made by the DC of the HKICPA were conclusive proof that Mr Yu had been disciplined by another professional or regulatory body and that he was, therefore, liable to disciplinary action under byelaw 8(a)(vi).
34. In respect of Allegation 2, Mr Saad submitted that there was no evidence that Mr Yu had informed ACCA of the disciplinary findings made by the DC of the HKICPA and he was, therefore, in breach of bye-law 10(b).
35. In respect of Allegation 3, Mr Saad referred the Committee to the relevant correspondence sent by ACCA to Mr Yu. He submitted that as Mr Yu had failed to respond to any of the correspondence he was in breach of his duty to co-operate under Regulation 3 of the Regulations.

36. Mr Saad submitted that Mr Yu's conduct in relation to Allegations 2 and 3 was a serious departure from the standards expected of a professional accountant and amounted to misconduct. He reminded the Committee that Mr Yu had not responded to any of ACCA's correspondence throughout the investigation. In fact, the only communication from Mr Yu during the investigation was on 11 April 2022 when he sent an email to ACCA indicating that he wished to resign his membership of ACCA.
37. Mr Saad drew the Committee's attention to the observations of Levenson J in the case of *Adeogba v General Medical Council* [2016] EWCA Civ 162: *'there is a burden on ... all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession'*.

DECISION ON FACTS

38. The Committee considered all of the documentary evidence presented to it and the submissions made by Mr Saad. The Committee accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove each of the allegations made against Mr Yu and that the standard of proof to be applied was on the balance of probabilities.

Allegation 1 - proved

39. The Committee was satisfied that at all material times Mr Yu was a fellow of ACCA. It noted that on applying for membership of ACCA, members sign an undertaking that if admitted and as long as they are members, they will observe ACCA's Charter, bye-laws and regulations for the time being in force. It also noted that bye-law 7(a) provides that the Charter, bye-laws and applicable regulations for the time being in force shall apply to each member on and following his admission.
40. The Committee noted the findings made against Mr Yu by a DC of the HKICPA as set out in the Order and the Corrigendum. These two documents are conclusive proof of the disciplinary findings made by the HKICPA against Mr Yu.

41. The Committee considered bye-law 8(a)(iv), which provides that a member shall be liable for disciplinary action if he has been disciplined by another professional or regulatory body.
42. The Committee was satisfied that the HKICPA is a professional regulatory body for accountants in Hong Kong. It was also satisfied that the HKICPA had made disciplinary findings against Mr Yu on 31 March 2021. Accordingly, it found that Mr Yu was in breach of bye-law 8(a)(vi) and was, therefore, liable to disciplinary action.
43. Accordingly, the Committee found Allegation 1 proved.

Allegation 2 - proved

44. The Committee noted that Mr Yu had an obligation under bye-law 10(b) to '*... bring promptly to the attention of the Secretary any facts or matters indicating that a member ... may have become liable to disciplinary action*'. Mr Yu had failed to inform ACCA of the disciplinary findings made against him by the HKICPA. The Committee determined that as a member of ACCA Mr Yu is bound by its bye-laws and regulations and, therefore, should have been aware of his obligation under bye-law 10(b) to inform ACCA of the findings made by the HKICPA. The Committee found that Mr Yu had breached bye-law 10(b) in failing to inform ACCA of the disciplinary findings made against him by the HKICPA.
45. The Committee therefore found Allegation 2 proved.

Allegations 3a, 3b and 3c - proved

46. On the evidence before it the Committee was satisfied that ACCA had sent letters to Mr Yu by email to his registered email address on 11 February, 03 March, and 25 March 2022 and that they had been delivered successfully.
47. The Committee was also satisfied that Mr Yu had failed to respond to the letters. The Committee determined that Mr Yu's failure to respond was a failure by him to co-operate with an ACCA investigation. Indeed, he had been warned by ACCA in each of the letters that he had a duty under Regulation 3(1) of the Regulations to co-operate with ACCA and there had been a requirement for him to respond.

48. Accordingly, the Committee found Allegations 3a, 3b and 3c proved.

Allegation 4a – misconduct found

49. Having found Allegations 2 and 3 proved, the Committee then considered whether the facts it had found proved amounted to misconduct.

50. The Committee determined that Mr Yu's conduct fell far below the standards expected of a member of ACCA and had brought discredit to him, the accountancy profession and ACCA. The Committee considered that Mr Yu's conduct in failing to inform ACCA of the disciplinary findings made against him by the HKICPA was very serious and clearly amounted to misconduct. It also considered that Mr Yu's failure to co-operate with the investigation was very serious and it undermined the integrity of ACCA's investigatory process. It determined that this also amounted to misconduct.

51. The Committee, therefore, found Mr Yu guilty of misconduct by reason of the conduct found proved in relation to Allegation 2 and Allegation 3.

52. Having found Allegation 4a proved, the Committee did not go on to consider Allegation 4b, which was drafted in the alternative.

SUBMISSIONS ON SANCTION AND COSTS

53. Mr Saad informed the Committee that Mr Yu had no previous findings recorded against him.

54. Mr Saad referred the Committee to ACCA's 'Guidance for Disciplinary Sanctions' and, in particular, section E1 in relation to sanctions imposed by another professional body and section F which provides guidance on factors relevant to seriousness. Mr Saad informed the Committee that there were no previous findings against Mr Yu. He submitted, however, that there was also no evidence of remorse or insight on Mr Yu's part. Mr Saad reminded the Committee that the investigation was frustrated by Mr Yu's failure to engage with ACCA and that his misconduct, in failing to co-operate, had continued over a long period of time.

55. Mr Saad submitted that were the Committee to make an order excluding Mr Yu from membership of ACCA then it would be in the interests of the public for the order to have immediate effect.
56. In respect of costs, Mr Saad referred the Committee to the two costs schedules. ACCA claimed costs in the sum of £6,578.00. Mr Saad reminded the Committee that all the allegations had been found proved against Mr Yu. He submitted that the costs claimed by ACCA had been reasonably incurred but accepted that there should be some adjustment as the hearing had taken less time than allowed for in the two cost schedules. Mr Saad informed the Committee that Mr Yu had not completed and returned a statement of financial means to ACCA.

SANCTION AND REASONS

57. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Saad. The Committee referred to ACCA's Guidance for Disciplinary Sanctions (effective date 14 February 2024) and it had in mind the fact that the purpose of a sanction was not to punish Mr Yu, but to protect the public, maintain public confidence in the profession and proper standards of conduct, and that any sanction it imposed must be proportionate. The Committee accepted the advice of the Legal Adviser.
58. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features of the case.
59. The Committee considered that the only mitigating feature was that Mr Yu had no previous disciplinary findings recorded against him in the 24 years that he has been a member of ACCA.
60. The Committee considered that Mr Yu's misconduct involved the following aggravating features:
 - a. There is no evidence of any insight and no evidence of any regret or remorse on the part of Mr Yu.

- b. The misconduct continued over a prolonged period of time as Mr Yu failed to respond to any of ACCA's correspondence throughout the investigation.
 - c. ACCA's investigation was clearly frustrated by Mr Yu's failure to co-operate.
61. The Committee went on to consider what, if any, was the appropriate and proportionate sanction to impose in this case. The Committee did not think it appropriate, or in the public interest, to take no further action or order an admonishment in a case where a member had disregarded ACCA's bye-laws and Regulations.
62. The Committee then considered whether to reprimand Mr Yu. The guidance indicates that a reprimand would be appropriate in cases where the misconduct is of a minor nature; there appears to be no continuing risk to the public and there has been sufficient evidence of an individual's understanding; together with genuine insight into the misconduct found proved. The Committee did not consider Mr Yu's misconduct to be of a minor nature and there was no evidence of any insight into his behaviour or the impact thereof on the reputation of the profession and ACCA. The Committee noted that when addressing factors relevant to seriousness in specific case types, ACCA's Guidance indicates that being disciplined by another professional body and a failure to co-operate with a disciplinary investigation are both considered as being '*very serious*'. Accordingly, the Committee concluded that a reprimand would not adequately reflect the seriousness of the misconduct in this case.
63. The Committee then considered 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 there is evidence of the individual's understanding and appreciation of the conduct found proved. The guidance suggests that this sanction may be appropriate where most of the following factors are present:
- a. The misconduct was not intentional and no longer continuing;
 - b. Evidence that the conduct would not have caused direct or indirect harm;
 - c. Insight into failings;
 - d. Genuine expression of regret/apologies;
 - e. Previous good record;

- f. No repetition of failure/conduct since the matters alleged;
 - g. Rehabilitative/corrective steps taken to cure the conduct and ensure future errors do not occur;
 - h. Relevant and appropriate references;
 - i. Co-operation during the investigation stage.
64. The Committee considered that the only applicable factor was Mr Yu's previous good record. None of the other factors were present, save that there had been no repetition of the conduct, but there had also not been any opportunity for repetition. Accordingly, the Committee considered that a severe reprimand would not adequately reflect the seriousness of Mr Yu's misconduct.
65. The Committee considered the factors that it should take into account when considering exclusion from membership of ACCA. It noted that this particular case included the following factors:
- a. A failure on the part of Mr Yu to inform ACCA of disciplinary findings made against him;
 - b. A failure by Mr Yu to co-operate with ACCA's investigation on more than one occasion;
 - c. No evidence of any insight or remorse on the part of Mr Yu;
 - d. Mr Yu's misconduct had the potential to undermine ACCA as a regulator.
66. The Committee was mindful that the sanction of exclusion from membership was the most serious sanction that could be imposed. The Committee took into account the guidance that this sanction was likely to be appropriate when the behaviour of the member was fundamentally incompatible with being a member of ACCA. The Committee was satisfied that Mr Yu's misconduct had reached that high threshold. There was no mitigation before the Committee from Mr Yu, for example evidence of insight and remorse, to warrant anything other than exclusion from membership.
67. The Committee also considered that a failure to exclude a member who had behaved in this way with his regulator would seriously undermine public confidence in the profession and

in ACCA as its regulator. The public needs to know that it can rely on the integrity, ability, and professionalism of those who are members of ACCA.

68. The Committee therefore ordered that Mr Yu be excluded from membership of ACCA.
69. The Committee did not deem it necessary to impose a specified period before which Mr Yu can make an application for readmission as a member of ACCA.

DECISION ON COSTS AND REASONS

70. The Committee was provided with two schedules of costs. ACCA applied for costs in the sum of £6,578.00 in respect of the investigation against Mr Yu and the hearing.
71. The Committee was satisfied that the costs sought by ACCA were appropriate and had been reasonably incurred. The Committee determined that the costs claimed should be reduced to £5,800.00, however, to reflect the fact that the hearing had taken less time than accounted for in the two schedules of costs.
72. The Committee noted that Mr Yu had not completed a statement of financial position and so it had no information about his current financial circumstances. It took into account paragraph 28 of the Guidance for Costs Orders that states: *'If a relevant person does not provide proof of financial means, the Committee is entitled to infer that the relevant person is able to meet the costs that it orders'* and paragraph 29 of the guidance that states: *'In the absence of evidence or proof, Committees should not speculate as to the relevant person's means'*.
73. The Committee determined that, in all the circumstances, it would be fair and proportionate to order Mr Yu to pay ACCA's costs in the sum of £5,800.00.

EFFECTIVE DATE OF ORDER

74. The Committee directed that it was in the interests of the public for the order for Mr Yu to be excluded from membership of ACCA to have immediate effect, subject to the order being varied or rescinded on appeal as described in the Appeal Regulations.

ORDER

- i. Mr Yu shall be excluded from membership of ACCA with immediate effect.
- ii. Mr Yu shall pay a contribution to ACCA's costs in the sum of £5,800.00.

Mr Andrew Papat CBE
Chair
27 February 2024