

HEARING

**DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS****REASONS FOR DECISION**

In the matter of: Mr Yan Nie

Heard on: Wednesday, 16 October 2024

Location: Remotely, via Microsoft Teams

Committee: Mrs Valerie Paterson (Chair)
Ms Wanda Rossiter (Accountant)
Ms Samantha Lipkowska (Lay)

Legal Adviser: Ms Valerie Charbit

**Persons present
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)
Miss Sofia Tumburi (Hearings Officer)

Summary Allegations 1, 2(a), 4(a)(b)(c) and 5(a) found proved.
Exclusion from membership with immediate effect.

Costs: £5500 payable by Mr Nie to ACCA

PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

1. The Disciplinary Committee (the Committee) convened to consider the case of Mr Yan Nie (Mr Nie).
2. Mr Benjamin Jowett represented the Association of Chartered Certified Accountants (ACCA). Mr Nie did not attend and he was not represented.

3. The Committee had before it the following documents:
 - i) A Service Bundle numbering 1-22
 - ii) A Report of Disciplinary Allegations numbering 1-239
 - iii) A Bundle of documents relating to the complaint against Mr Nie numbering 1-86
 - iv) An Additional Bundle numbering 1-8.

NOTICE AND PROCEEDING IN ABSENCE

4. The Committee considered whether the appropriate documents had been served on Mr Nie in accordance with the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (amended 1 April 2024) ("CDR").
5. The Committee accepted the advice of the Legal Adviser, who referred it to CDR 10(1)(b)(iv) and CDR 10(7) and CDR 22, and in particular the requirement that notice of the hearing must be served no later than 28 days before the date of the hearing unless there are exceptional circumstances.
6. The Committee noted the written notice of the hearing scheduled for today is dated 18 September 2024 and that it had been sent by electronic mail (email) to Mr Nie's registered email address on that date. It also noted the subsequent emails sent to him dated 25 September 2024, 09 October 2024 and 15 October 2024. It noted that he was also telephoned on the number registered with ACCA by ACCA's Hearings Officer, but he did not answer and there was no option to leave a voicemail.
7. As the notice of hearing was sent by email, the Committee noted that service may be proven by confirmation of delivery of the notice, which had been provided to the Committee, and that the notice would be deemed as having been served on the day that it was sent, that is, 18 September 2024. On the basis of that documentation, the Committee was satisfied that the Notice of Hearing had been served on Mr Nie on 18 September 2024, 28 days before the date of today's hearing.
8. The Committee noted the contents of the Notice of Hearing and was satisfied that it contained all of the information required by Regulation 10 of the Regulations.

9. The Committee concluded that service of the Notice of Hearing had been effected in accordance with ACCA's CDRs and that Mr Nie had been properly notified of the date and time of the hearing.
10. The Committee, went on to consider whether to proceed in the absence of Mr Nie.
11. The Committee took into account the submissions of Mr Jowett, that it should do so, and the guidance set out in ACCA's 'Guidance for Disciplinary Committee hearings' between paragraphs 46-51 and the relevant principles from the cases of R v Jones [2002] UKHL 5, GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162.
12. The Committee took into consideration that its discretion to proceed in the absence of Mr Nie must be exercised with the utmost care and caution.
13. The Committee noted that ACCA had sent a notice of hearing and further correspondence to Mr Nie at his registered email address, and that ACCA's Hearings Officer had tried to telephone him but there had not been any response from Mr Nie or any engagement or response to the allegations.
14. The Committee was satisfied that ACCA had made reasonable efforts to notify Mr Nie about today's Hearing and it concluded that Mr Nie knew or ought to know about the hearing.
15. The Committee noted that Mr Nie had not applied for an adjournment of today's Hearing and there was no indication that such an adjournment would secure his attendance on another date. Furthermore, there was no evidence that Mr Nie was absent due to incapacity or illness. The Committee therefore concluded that Mr Nie had voluntarily absented himself from the Hearing.
16. The Committee considered that any disadvantage to Mr Nie in not being present to provide his account of the relevant events could be addressed by the Committee's thorough assessment of the evidence presented by ACCA.
17. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously.
18. Having balanced the public interest with Mr Nie's own interests, the Committee decided that it was fair and in the interests of justice to proceed in Mr Nie's absence.

ALLEGATIONS

19. Mr Nie faced the following allegations:

Mr Yan NIE ('Mr Nie'), at all material times an ACCA trainee:

1. Whether by himself or through a third party applied for membership to ACCA on or about 18 January 2022 and in doing so purported to confirm in relation to his ACCA Practical Experience training record he had achieved the following Performance Objectives:
 - 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 6: Record and process transactions and events
 - Performance Objective 7: Prepare external financial reports
 - Performance Objective 9: Evaluate investment and financing decisions
 - Performance Objective 13: Plan and control performance
2. Mr Nie's conduct in respect of the matters described in Allegation 1 above was: -
 - a) Dishonest in that Mr Nie knew he had not achieved all or any of the performance objectives referred to in Allegation 1 above as described in the corresponding performance objective statements or at all.
 - b) 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) and 2b) above, such conduct was reckless in that Mr Nie paid no or insufficient regard to ACCA's requirements to ensure that the statements corresponding with the performance objectives referred to in Allegation 1 accurately set out how each 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 he failed to respond fully or at all to any or all of ACCA's correspondence dated: -

- a) 28 March 2024
 - b) 12 April 2024
 - c) 30 April 2024.
5. By reason of his conduct, Mr Nie 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

20. Upon an ACCA student completing all their ACCA exams, they become an ACCA affiliate. However, in order to apply for membership, they are required to obtain at least 36 months' practical experience in a relevant role ('practical experience'). It is permissible for some or all of that practical experience to be obtained before completion of ACCA's written exams.
21. A person undertaking practical experience is often referred to as an ACCA trainee being the term used to describe Mr Nie's status in the allegations, the report and the supporting evidence bundle. An ACCA trainee's practical experience is recorded in that trainee's Practical Experience Requirement training record (PER), which is completed using an online tool called 'MyExperience' which is accessed via the student's MyACCA portal.
22. As part of their practical experience, each trainee is required to complete nine performance objectives (PO's) under the supervision of a qualified accountant. An accountant is recognised by ACCA as a qualified accountant if they are a qualified accountant recognised by law in the trainee's country and or a member of an IFAC body (International Federation of Accountants). Once a trainee believes they have completed a PO, they are required to provide a statement in their PER training record describing the experience they have gained in order to meet the objective. Given this is a description of their own experience, the statement should be unique to them.

Through the online tool, the trainee then requests that their practical experience supervisor approves that PO.

23. In addition to approval of their PO's, the trainee must ensure their employment where they have gained relevant practical experience (being a minimum of 36 months) has been confirmed by the trainee's line manager who is usually also the trainee's qualified supervisor. This means the same person can and often does approve both the trainee's time and achievement of PO's.
24. If the trainee's line manager is not qualified, the trainee can nominate a supervisor who is external to the firm to supervise their work and approve their PO's. This external supervisor must have some connection with the trainee's firm, for example as an external accountant or auditor.
25. Once all nine PO's have been approved by the trainee's practical experience supervisor (whether internal or external) and their minimum 36 months of practical experience has been approved, the trainee is eligible to apply for membership - assuming they have also passed all their ACCA exams and successfully completed ACCA's Ethics module.
26. During 2023 it came to the attention of ACCA's Professional Development Team that the practical experience supervisors registered to 91 ACCA trainees, shared one of three email addresses despite the names of such supervisors being different. It would not be expected for a supervisor to share an email address with any other supervisor or person.
27. Further analysis of this cohort of 91 trainees confirmed the following:
 - Most of these trainees were registered with ACCA as resident in China.
 - Although each statement supporting a PO should be a description of a trainee's experience and therefore unique, many of such statements within this cohort of 91 trainees were the same. These ACCA trainees had therefore copied their PO statements from others.
 - Of these 91 trainees, the earliest date a supervisor with one of these three email addresses is recorded as approving a trainee's PER training record was August 2021 with the latest date being March 2023.

28. Consequently, all 91 trainees were referred to ACCA's Investigations Team. Mr Nie is one such trainee.

29. Evidence in the DC bundle included a statement from ACCA's Professional Development Manager, Person B, who is part of the Quality and Recognition department within Professional Qualifications at ACCA. She states that part of her role includes the implementation and monitoring of ACCA's Practical Experience Requirement (PER) including managing ACCA's online PER recording tool for ACCA trainees, ACCA registered students and affiliates. She also states that all PO statements should be unique and must not be copied from other trainees or from templates as this undermines the PER training record element of the ACCA qualification.

30. Person B in her statement set out that PO's and ACCA's exams are closely linked so that the knowledge and techniques the trainee develops through their studies, are relevant in their workplace. The tasks and activities a trainee will be asked to demonstrate in the PO's are also closely related to the type of work they will undertake on a regular basis in an accounting or finance role. Part of the advice shown to the Committee for completion of the PER was:

- ACCA recommends to trainees that they choose the technical PO's that best align to their role so that it is easier to achieve the PO. In that regard the ACCA's requirements as published in the 2019 guide, and subsequently, explain the following:

'The performance objectives you choose should be agreed with your practical experience supervisor. You should consider the following points when selecting which performance objectives to target...

Match any business objectives you have been set at work with the performance objectives. This will allow you to work towards your business objectives and your PER at the same time.'

- In their personal statement for each PO, a trainee needs to provide a summary of the practical experience they gained. They must explain what they did, giving an example of a task. They must describe the skills they gained which helped them achieve the PO and they must reflect on what they have learned including what went well or what they would have done differently.

- A trainee's personal statement for each PO must be their own personal statement that is unique to them and their own experience. This has been consistently referred to in ACCA's published guides which Ms Calder exhibits to her statement. Trainees must not therefore use a precedent or template or another trainee's personal statement, which would undermine the PER training record element of the ACCA qualification. The 2019 published guide concludes:

'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.'

- ACCA's PER guides are available online in China. Although the Guides are printed in English, all Chinese trainees will have taken their exams in English and therefore it would follow that they have a reasonable command of the English language.
- A practical experience supervisor means a qualified accountant who has worked closely with the trainee and who knows the trainee's work. 'Qualified accountant' means a member of an IFAC (International Federation of Accountants) member body and or a body recognised by law in the trainee's country.
- A practical experience supervisor is usually the trainee's line manager. However, where the trainee's manager is not IFAC qualified, the trainee can appoint an external supervisor who is. In that regard, ACCA's PER guide as exhibited to Person B's statement states **(page 181)**:

'If your organisation does not employ a professionally qualified accountant who can sign-off your performance objectives then you could ask an external accountant or auditor who knows your work, to be your practical experience supervisor and work with your line manager to sign off your objectives.'

- Trainees must enter their practical experience supervisor's details using their ACCA MyExperience online recording tool which generates an invitation to

their nominated supervisor to act as their supervisor. If the supervisor accepts that invitation, the supervisor is required to record their details using the same recording tool.

- All practical experience supervisors have to be registered with ACCA. During the period the practical experience supervisors (most of whom claimed to be IFAC qualified line managers) approved the PO's for these 91 trainees, (being between August 2021 and March 2023), the requirement was for IFAC qualified supervisors to record the name of their IFAC member body and their membership number issued by that body. Most of the IFAC qualified line managers within this cohort of 91 trainees claimed to be members of the Chinese Institute of Certified Public Accountants (CICPA), an IFAC body, and, as required, went on to provide their membership number.
- Although not compulsory at the time, most of these supervisors also went on to upload what they claimed was their CICPA membership registration card. However, despite these supervisors providing different membership numbers when registering, the vast majority uploaded the same registration card with membership number B06140276. However, this membership number did not match with any of the CICPA membership numbers provided by the supervisors. Furthermore, the name recorded in this CICPA membership registration card is pixelated and therefore unidentifiable as is the photo. Exhibited to Person B's statement is a copy of this registration card.

31. Information has been obtained from one of ACCA's China offices in China about the support given to ACCA trainees in China, as follows:

- ACCA's Customer Services Team in China email all ACCA affiliates in China inviting them to regular webinars provided by ACCA staff who can advise on the PER process.
- These are live webinars and therefore trainees can ask ACCA staff based in China any questions they may have.
- The webinar details refer to encouraging affiliates to join the ACCA WeChat group. ('WeChat' is a social media app available globally but used extensively in China). In these WeChat groups, ACCA trainees can ask ACCA China staff questions including about the PER process.

- In addition to the WeChat groups, ACCA China uploads to its WeChat platform articles relevant to the ACCA membership process. A copy of the PER training record for Mr Nie records he was employed by a single firm, namely Firm A. In particular, it records the following:
 - Mr Nie was employed from 23 October 2016 to 24 November 2021 in the role of accounting assistant
 - In the PER training record, 61 months of relevant practical experience has been claimed, which relates to the period of employment referred to in the paragraph immediately above. This is therefore in excess of the minimum requirement of 36 months.
 - The Supervisor details for Mr Nie record that Person A registered on 02 December 2021 as his 'IFAC qualified line manager'.
 - The Supervisor details also record that Person A registered with one of the three common email addresses shared amongst this cohort of 91 cases.
 - As Mr Nie's IFAC qualified line manager, Person A was authorised to approve both Mr Nie's time / experience and all his POs and did so, as recorded in Mr Nie's PER. In that regard, Mr Nie requested that Person A approve his time / experience of 61 months on 02 December 2021 and Person A did so on the same day, 02 December 2021. On 02 December 2021, Mr Nie requested that Person A approve all his nine PO's and Person A did so on the same day, 02 December 2021.
 - Analysis of Mr Nie's PO statements as contained in his PER training record compared with those of other ACCA trainees being part of this cohort.

32. Person B states where PO statements are the same or significantly similar to the PO statements of any other trainees, this would suggest at the very least, the trainee has not met the objective in the way claimed or possibly at all. She further states in such a circumstance the practical experience claimed, there would be a serious

suspicion that the training has not been supervised by a practical experience supervisor, who would or should have knowledge of the trainee's work.

33. The PO's of Mr Nie were analysed. In carrying out this analysis, ACCA has been careful to record the PO statement for any one PO which was first in time, on the basis this statement may be original and therefore written by the trainee based on their actual experience, unless there is evidence suggesting otherwise.
34. The 'first in time date' is the date the trainee requested that their IFAC qualified line manager approve the PO in question within their PER. This is on the basis that as soon as the PO narrative had been uploaded to the PER, the trainee would have then requested approval. In most of the cases within this cohort, the supervisor approved the PO's on the same day or if not very soon thereafter.
35. In relation to Mr Nie the analysis revealed:
 - None of his PO statements were first in time; and
 - Eight of his PO statements were identical or significantly similar to the PO statements contained in the PER's of many other ACCA trainees from this cohort.
36. The analysis relating to Mr Nie was summarised by ACCA. As well as the evidence bundle attached to this report, there is the separate evidence bundle with just the PO statements from these other trainees.
37. Mr Nie's PO2 statement in his PER training record is identical or significantly similar to the PO2 statement in the PER training record for five of the following trainees, the identification number for ACCA is used: NC4, NC5, NC7, NC8 and NC9.
38. Further the analysis also revealed that Mr Nie's PO3 statement in his PER training record is identical or significantly similar to the PO3 statement in the PER training record for five of the following trainees, the identification number for ACCA is used: NC3, NC4, NC5, NC7 and NC8.
39. Mr Nie's PO4 statement in his PER training record is identical or significantly similar to the PO4 statement in the PER training record for five of the following trainees, the identification number for ACCA is used: NC13, NC14, NC14A, NC15, NC26.

40. Mr Nie's PO5 statement in his PER training record is identical or significantly similar to the PO5 statement in the PER training record for five of the following trainees, the identification number for ACCA is used: NC13, NC14A, NC5, NC17, NC20.
41. Mr Nie's PO6 statement in his PER training record is identical or significantly similar to the PO6 statement in the PER training record for five of the following trainees, the identification number for ACCA is used: NC13, NC14A, NC15, NC17, NC 20.
42. Mr Nie's PO7 statement in his PER training record is identical or significantly similar to the PO7 statement in the PER training record for five of the following trainees, the identification number for ACCA is used: NC3, NC5, NC7, NC8 and NC9.
43. Mr Nie's PO9 statement in his PER training record is identical or significantly similar to the PO9 statement in the PER training record for five of the following trainees, the identification number for ACCA is used: NC3, NC5, NC6, NC7 and NC8.
44. Mr Nie's PO13 statement in his PER training record is identical or significantly similar to the PO13 statement in the PER training record for five of the following trainees, the identification number for ACCA is used: NC3, NC7, NC20, NC21, NC23.
45. Following referral of this matter to ACCA's Investigations Team, a member of that team sent an email to Mr Nie on 28 March 2024 attached to which was a letter, and other documents, which clearly set out the complaint and requested that Mr Nie respond to a number of questions by 11 April 2024.] The letter also referred to Complaints and Disciplinary Regulation 3(1) requiring Mr Nie to cooperate with the investigation by responding to the questions by the deadline. This email was sent encrypted with a password which was recorded in the email.
46. Shortly after this encrypted email was sent, an Outlook email was sent to Mr Nie on the same day asking him to check if he had received the encrypted email and if not to let ACCA know. A delivery receipt confirming the email was delivered successfully was contained in the DC bundle.
47. An extract taken from ACCA's records for Mr Nie on the day the above emails were sent records that the email address for Mr Nie used for these emails was the email address on ACCA's system that day.

48. Given Mr Nie did not respond by the above deadline, a further encrypted email was sent on 12 April 2024 with a copy of the letter attached to the previous email. In the covering email Mr Nie was reminded of his obligation to cooperate by responding to the questions in the letter and to do so by 26 April 2024.
49. Shortly after this encrypted email was sent, an Outlook email was sent to Mr Nie on the same day asking him to check if he had received the encrypted email and if not to let ACCA know. A delivery receipt confirming the email was delivered successfully was in the DC bundle.
50. In relation to this first reminder, an extract taken from ACCA's records for Mr Nie on the day the email was sent records that the email address for Mr Nie used for these emails was the email address on ACCA's system that day.
51. No response was received to this first reminder and therefore a second and final email was sent to Mr Nie on 30 April 2024 with a copy of the letter attached to the initial email. In the covering email Mr Nie was again reminded of his obligation to cooperate by responding to the questions by 14 May 2024 and that if he failed to do so ACCA would raise an allegation of failure to cooperate against him.
52. Shortly after this encrypted email was sent, an Outlook email was sent to Mr Nie on the same day asking him to check if he had received the encrypted email and if not to let ACCA know. A delivery receipt confirming the email was delivered successfully was contained in ACCA's DC bundle.
53. In relation to this second and final reminder, it was intended that an extract be downloaded from ACCA's records on the same day showing that the email address used for these emails was the email address on ACCA's system that day. However, this was overlooked but an extract from ACCA's records was downloaded the following day which records the email address remained unchanged.
54. All the above encrypted emails were sent through ACCA's Case management system. On this system a 'clasped hand' icon appears next to the email if the email has been opened. The date and time the email was opened, is revealed by hovering the mouse cursor over the icon. A screenshot has been taken showing that the initial email was opened.

55. ACCA's investigations officer attempted to telephone Mr Nie on 03 May 2024. However, the call was not answered and the line eventually cut off. The file note of this attempted call includes an extract from ACCA's records showing that the telephone number used was that registered to Mr Nie's ACCA account that day.
56. On 03 April 2024, ACCA's China office sent a mobile message to Mr Nie. The extracts from ACCA's database for Mr Nie referred to above include a telephone number to which a message was sent by ACCA's China office. The message said:
- IMPORTANT: ACCA sent you a password protected email to your registered email on 28 March 2024 requiring a response. If you have not received this email or you have but cannot open the email, please immediately email ACCA at complaintassessment@accaglobal.com with your full name, ACCA ID and date of birth.*
57. ACCA's China office has provided a spreadsheet recording when this message was sent and whether or not it was successfully delivered. The message was sent on 04 March 2024 and was successfully delivered to Mr Nie's mobile number that day. No response has been received from Mr Nie following this message.
58. The documents disclosed to Mr Nie in ACCA's emails referred to above, included Mr Nie's PER training record and Supervisor details as well the Separate Bundle – all three documents having been already referred to in this report and relied on as evidence to support Allegations 1 to 3. In addition, the following documents were attached to ACCA's emails to Mr Nie:
- i) A bundle of documents with extracts of supervisor details for other ACCA Trainees whose supervisor's email addresses are the same as those of Mr Nie's supervisor
 - ii) Supervisor's registration details
 - iii) CICPA registration card uploaded by Mr Nie's Supervisor
59. The inclusion in the evidence bundle of those documents listed above by ACCA was to show Mr Nie the full nature of the complaint and the importance for Mr Nie to have co-operated by responding to questions about the identity of his registered supervisor.

SUMMARY OF ACCA'S SUBMISSIONS

60. ACCA submitted that Allegation 1 is capable of proof by reference to the following:
- Person B's statement which describes ACCA's Practical Experience Requirements;
 - Mr Nie's completed PER training record which was completed on or about 2 December 2021 which then permitted Mr Nie to apply for membership which he did on 18 January 2022. Mr Nie was subsequently admitted to membership on 27 January 2022;
 - Mr Nie's Supervisor details which record Person A was his 'IFAC qualified line manager', and therefore his practical experience supervisor
 - Mr Nie's PER training record which records Person A approved Mr Nie's time/ experience of 61 months
 - Mr Nie's PER training record which records Person A approved all Mr Nie's PO's;
 - That eight of Mr Nie's PO statements are the same as many other trainees, suggesting at the very least, he had not achieved the objectives in the way claimed or possibly at all.
61. ACCA submitted in respect of Allegation 4, it is more likely than not, the above emails came to Mr Nie's attention and, in not responding to any of these emails, he has made a conscious decision not to cooperate with ACCA's investigation.
62. The issues raised by the complaint are serious given they relate to Mr Nie's apparent achievement of ACCA's Practical Experience Requirement training record which formed the basis of his application for ACCA membership.
63. ACCA acts in the public interest by ensuring its student, affiliates and members uphold proper standards, thereby maintaining public confidence in the accountancy profession.

64. It is submitted the failure by Mr Nie to cooperate with this investigation has undermined ACCA's ability to act in the public interest in that it has prevented ACCA from fully investigating the complaint.

DECISION ON FACTS/ALLEGATIONS AND REASONS

ALLEGATION 1

65. The Committee found Allegation 1 proved. It decided that it was unlikely that the PER completed by Mr Nie or a third party accurately represented that Mr Nie had achieved the PO's that he had said he had. It noted that the PER was in parts identical or substantially similar to eight other PER's outlined by ACCA and five in relation to each Performance Objective set out in Allegation 1. The Committee concluded it was likely that Mr Nie or a third party had therefore copied those parts rather than setting out what his actual experience was to meet the Performance Objectives. It found that the experience set out in Mr Nie's PER was not unique to him and therefore likely to be false.
66. The Committee noted that the fact that it was unusual for supervisors to share email addresses or for a supervisor's details to not be identifiable by a photo and their membership number. It therefore concluded that the dubious identify of Mr Nie's supervisor meant it was unlikely he had been properly supervised in relation to his PER.
67. The Committee further noted that there was plenty of information to ensure that a trainee properly understood what was required in respect of filling out the PER. It concluded that any copied text within Mr Nie's PER demonstrated that he as a trainee had probably not done what the PER said. Further the fact that Mr Nie's PER postdated those other PER's which his was similar to, meant in the Committee's view that it was likely he or a third party had simply copied the PER from another source. This meant that it was not an accurate reflection of Mr Nie's experience.
68. Taking all of the evidence into account, the Committee was satisfied, on the balance of probabilities, that Mr Nie had purported to confirm that Person A had supervised his practical experience training in line with ACCA's requirements when, in fact, Person A had not supervised his practical experience training. It was also satisfied, on the balance of probabilities, that Mr Nie had purported to confirm that he had achieved POs 2, 3, 4, 5, 6, 7, 9 and 13.

69. Accordingly it found Allegation 1 proved.

ALLEGATION 2(A)

70. The Committee had no credible explanation from Mr Nie as to why Mr Nie's PER was similar to other PERs and so it concluded that by advancing a PER that was similar to those other PERs it must have been copied from others.

71. Applying the test for dishonesty set out in the case of Ivey v Genting Casinos (UK) Limited [2017] UKSC 67, the Committee first considered what Mr Nie's subjective state of mind was at the relevant time. The Committee noted the previous good character of Mr Nie. It decided that Mr Nie knew he had not achieved the PO's as described in those statements.

72. The Committee further concluded Mr Nie would have been aware at the relevant time that the training record contained false information and that the false information could mislead ACCA.

73. The Committee further concluded that in knowingly submitting a PER record which was unlikely to have represented his own actual and personal experience, and one which was unlikely to have been properly supervised by an ACCA registered member, that ordinary decent people would consider such conduct to be dishonest because supplying a regulator with copied or replicated information was likely to be misleading.

74. The Committee therefore concluded that subjectively and objectively Mr Nie's conduct was dishonest.

75. It therefore concluded Mr Nie had acted dishonestly in relation to Allegation 1. Accordingly it found Allegation 2(a) proved.

ALLEGATION 4

76. The Committee decided that Mr Nie had had numerous opportunities to respond to contact made by ACCA about its investigation. It concluded that his failure to respond was deliberate and that he had purposefully not responded to ACCA.

77. The Committee noted that Mr Nie had been contacted using his ACCA registered email address and phone number and that he had been sent emails, a text message and he had been telephoned. In all instances it appeared that electronic communication had been successfully delivered. Mr Nie had made no effort to respond to ACCA in respect of its investigation or in response to the Allegations at all.
78. The Committee noted that CDR 3 states that a member had a duty to respond to ACCA in relation to its investigation of any complaint. CDR 3(1)(c) states that '*A failure or partial failure to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of these regulations*'.
79. The Committee concluded that Mr Nie had therefore purposefully failed to respond to ACCA, there being no other apparent reason for his failure to respond to all communications. The Committee also decided that Mr Nie had failed to respond specifically to the letters sent to him on 28 March 2024, 12 April 2024 and 30 April 2024.
80. It therefore found Allegations 4(a)(b) and (c) proved.

ALLEGATION 5(A)

81. The Committee decided that the matters it had found proved – Allegation 1, 2(a) and 4(a)(b)(c) cumulatively amounted to misconduct. It was satisfied that acting dishonestly and failing to respond to ACCA as a regulator were individually instances of conduct which fell far short of the standards to be expected of a member of ACCA. Such conduct was in the Committee's view discreditable to both the member, ACCA and the accountancy profession.
82. Mr Nie's dishonest behaviour had enabled him to obtain ACCA membership without completing the requisite approved practical experience. As such, his conduct had put members of the public at risk of harm and had the potential to undermine public confidence in ACCA qualifications and membership, and to bring the profession into disrepute.
83. Further Mr Nie's failure to respond to ACCA as part of its investigation sought to undermine ACCA in its regulation of its members.

84. Since Allegations 2(b), 3 and 5(b) were alternative allegations to those matters the Committee had found proved, the Committee made no findings in respect of them.

SANCTION AND REASONS

85. The Committee took into account the Disciplinary Sanctions Guidance before deciding on a sanction. It considered the sanctions in order of severity, starting with the least severe first.
86. The Committee noted in mitigation that Mr Nie had no previous history of any disciplinary findings against him.
87. The Committee decided that taking no further action would be wholly inappropriate due to the seriousness of the matters it had found proved.
88. The Committee next considered imposing an admonishment on Mr Nie. The Committee noted that the DSG indicated that an admonishment would be appropriate in cases where most of the following are present: evidence of no loss or adverse effect on client / members of the public; early admission of the facts alleged; insight into failings; isolated incident; not deliberate; genuine expression of remorse/apology; corrective steps have been taken promptly; subsequent work satisfactory; and relevant and appropriate testimonials and references. The Committee considered that this was not a case where any of these factors were present. It therefore decided an admonishment was an inappropriate sanction.
89. The Committee next considered whether a reprimand was an appropriate sanction. It noted that the guidance indicated 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 conduct found proved. None of these features were present in Mr Nie's case.
90. The Committee next considered whether a severe reprimand was the appropriate or proportionate sanction. The factors set out in the (DSG) indicated that a severe reprimand would be appropriate in cases where the conduct is of a serious nature but where the circumstances of the case or mitigation advanced satisfies the Committee that there is no continuing risk to the public.

91. The Committee decided that the conduct found proved was of a serious nature noting that there was no mitigation that removed the continuing risk to the public. It noted that Mr Nie had shown no remorse or insight nor had he shown any rehabilitative steps had been taken to prevent such similar conduct taking place again. Similarly he had not shown any cooperation with ACCA's investigation. On that basis, the Committee concluded that a severe reprimand would be inappropriate because it would not provide adequate protection for the public, and nor would it adequately address public confidence and the need to maintain proper professional standards.
92. The Committee considered whether to exclude Mr Nie from membership. The Committee noted that Mr Nie's misconduct included dishonest conduct.
93. The Committee referred to the parts of the DSG that referred to dishonesty and noting that where the conduct found proved included dishonesty it was likely to lead to removal from membership. Further, the DSG stated:

"Dishonesty, even when it does not result in direct harm and/or loss, or is related to matters outside the professional sphere, undermines trust and confidence in the profession."
94. The Committee decided that the failure by Mr Nie to cooperate with ACCA's investigation had also undermined ACCA's ability to act in the public interest in that it has prevented ACCA from fully investigating the complaint.
95. Mr Nie's conduct was in the Committee's view an attempt to subvert ACCA's Practical Experience Requirement process. This attempt undermines public confidence in ACCA's membership qualification process. It also brings the Association and accountancy profession into disrepute.
96. The Committee noted that dishonesty coupled with a failure to respond to ACCA as a regulator was in the Committee's view serious misconduct which warranted a sanction of removal from the membership register. It concluded that the misconduct found proved was so serious as to be fundamentally incompatible with being an ACCA member.
97. The DSG stated and the Committee agreed *"the public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics"*.

98. Mr Nie's misconduct represented a significant and immediate risk to the public, in that Mr Nie was currently able to present himself as an ACCA Member with all of the requisite approved experience, when he did not, in fact, possess such approved experience. As such, potential employers and clients could be misled.
99. The Committee therefore decided that removal of Mr Nie from the membership register was the proportionate sanction in this case.

EFFECTIVE DATE OF ORDER

100. Since Mr Nie was a member of ACCA and could continue practising, the Committee decided it was in the public interest and necessary for the protection of the public that the sanction and order for removal take immediate effect.

COSTS AND REASONS

101. Mr Jowett applied for costs of £6226. He indicated that the Committee could make a proportionate reduction in the figure to take account of the fact that there was an estimate for the time used by the Hearings Officer and the Presenting Officer.
102. The member has not submitted documents relating to their financial position for the Committee to consider. The Committee having not received any documentary evidence from Mr Nie as to his financial circumstances, and having considered ACCA's guidance as to costs, accordingly, has inferred that the member is able to meet the costs as assessed by the Committee.
103. The Committee considered the costs schedule and ACCA's Guidance for Costs Orders and it decided that it was proportionate to order Mr Nie to pay ACCA £5500 in costs.
104. The Committee made a limited reduction in the costs applied for to take account of the fact that ACCA's Hearings Officer and ACCA's Presenting Officer were not required for the whole day.

ORDER

105. The Committee made the following order:

- a. Mr Nie shall be excluded from ACCA membership with immediate effect; and
- b. Mr Nie shall make a contribution to ACCA's costs in the sum of £5,500.

Valerie Paterson
Chair
16 October 2024