

HEARING

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

In the matter of:	Ms Minghui Xu
Heard on:	Friday, 28 June 2024
Location:	Remotely by Microsoft Teams.
Committee:	Ms Colette Lang (Chair) Mr Abdul Samad (Accountant) Mr Geoff Baines (Lay)
Legal Adviser:	Mr Charles Apthorp
Persons present and capacity:	Mr Ryan Ross (ACCA Case Presenter) Ms Sofia Tumburi (Hearings Officer)
Summary:	Allegations 1, 2 (a) and 4 found proved.
Sanction:	Excluded from Members Register, order to take immediate effect.
Costs:	£1,500

1. The Committee heard an allegation of misconduct against Ms Minghui Xu ("Ms Xu"). Mr Ryan Ross appeared for ACCA, Ms Xu was not present and was not represented.

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2. Ms Xu in her case management form applied to have the case heard in private. The Committee heard submissions made on behalf of ACCA and accepted the advice of the Legal Assessor. It took into account the public interest in hearings taking place in public and the interests of Ms Xu. The Committee noted that no documentary evidence in support of a [PRIVATE] had been adduced by Ms Xu. The Committee also noted that neither party was relying on any [PRIVATE] submission. The Committee determined that the entirety of the hearing should take place in public.

SERVICE OF PAPERS

3. Ms Xu was neither present nor represented.
4. The Committee considered the service bundle (1) with pages numbered 1- 17 in order to determine whether the Notice of Hearing ("the Notice") dated 31 May 2024 had been served in accordance with the provisions of the Complaints and Disciplinary Regulations 2014 (amended 2020) ("the Regulations")
5. The Notice had been sent to Ms Xu's registered email address held on file by ACCA and in the Committee's view complied with the other requirements of the Regulations.
6. The Committee was satisfied that this was effective service under the Regulations.

PROCEEDING IN ABSENCE

7. The Committee considered whether it should proceed in Ms Xu's absence and recognised it could only do so with care and caution.
8. The Committee noted that Ms Xu had responded to the case management form and to emails sent by ACCA. No application had been made by her to adjourn the hearing to another date. The Committee noted in an email dated 01 June 2024 Ms Xu stated that she did not intend to

attend at the hearing. Ms Xu in addition stated in a second pro forma case management form dated April 2024 that she did not object to the case continuing in her absence.

9. The Committee recognised that there was a strong public interest in regulatory proceedings being considered and concluded expeditiously, particularly given the serious nature of the allegations. The Committee concluded that Ms Xu was aware of the date and place of the hearing and had voluntarily absented herself.
10. The Committee determined that it was fair and just to proceed in Ms Xu's absence in accordance with its discretionary power at regulation 10(7) and that a fair hearing could take place in her absence.
11. The Committee were provided with the following bundles: Hearing bundle (1-271), Additional Bundles (1-44), Service Bundle (1-17) and a bundle of Performance Objectives (1-100).
12. The Committee had read the papers prior to the hearing.

BRIEF BACKGROUND

13. Ms Xu was registered as an ACCA member, referred to here as a trainee, on the 27 January 2022.
14. Ms Xu after completing her exams is required to obtain at least 36 months of practical experience, which is recorded in her Personal Experience Requirement ("PER") training record. The record is completed using an online tool, 'MyExperience'.
15. It is a requirement that the relevant practical experience is signed off by a qualified supervisor. In addition the description of the experience in the trainee's record should be unique to each trainee. Ms Xu's PER was compared to other trainees and were found to be similar or identical to other trainees.

16. Ms Xu was notified of the allegations. She completed two case management forms and in those forms made admissions to Allegation 1 and 2(a) and (b).
17. Ms Xu faced the following allegations:

ALLEGATIONS

Minghui Xu ("Ms Xu"), at all material times an ACCA trainee,

1. Applied for membership to ACCA on or about 18 January 2022 and in doing so claimed in her ACCA Practical experience training record that she had achieved the following six Performance objectives:
 - Performance Objective 1: Ethics and professionalism
 - Performance Objective 5: Leadership and management
 - Performance Objective 8: Analyse and interpret financial risk
 - Performance Objective 11: Identify and manage financial risk
 - Performance Objective 12: Evaluate management accounting systems
 - Performance Objective 17: Tax planning and advice
2. Miss Xu's conduct in respect of the matters described in Allegation 1 above was: -
 - (a) Dishonest, in that Miss Xu knew she had not achieved all or any of the performance objectives referred to in Allegation 1 above in the manner claimed in the corresponding performance objective statements or at all.
 - (b) In the alternative, 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 Miss Xu paid no or insufficient regard to ACCA's requirements to ensure the performance objective statement referred to in Allegation 1 accurately set out how the corresponding objective had been met.

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

DECISION ON FACTS/ALLEGATION(S) AND REASONS

18. Mr Ross invited the Committee to conclude that clear and unequivocal admissions had been made by Ms Xu to allegations 1 and 2(a) and that allegations 2(b) and 3 were put in the alternative and would fall away if the admissions to allegations 1 and 2(a) were accepted.
19. Mr Ross also relied on the witness statements and documentary evidence exhibited in the bundle and the admissions in the case management forms. Ms Xu had not requested that any witnesses should attend to provide oral evidence and had not served any evidence.
20. The Committee accepted the advice of the Legal Adviser in respect of the obligation to show that the admissions were clear and unequivocal, which included reference to Regulation 5(5). The Committee determined that the admissions made by Ms Xu were clear and unequivocal and consistent with the contents of an email sent by Ms Xu dated 24 March 2024. It therefore found allegations 1 and 2(a) found proved by admission. It accepted the submission that allegations 2(b) and 3 were alternatives and fell away once allegations 1 and 2(a) were found proved.

MISCONDUCT AND LIABILITY TO DISCIPLINARY ACTION

21. The Committee went on to consider misconduct and liability to disciplinary action. Mr Ross made submissions on the issue of misconduct and referred the Committee to the case of Roylance and byelaw 8(a).
22. In relation to Allegations 1 and 2(a) the Committee considered that Ms Xu's dishonest conduct undermined the process of the qualification to become a member of ACCA. In addition, Ms Xu had become a member of the accountancy profession by dishonest means. This was in the Committee's view a serious breach of the regulations striking at the core role of the Regulator, to

maintain standards and public confidence in the profession. In addition, this conduct brought discredit upon Ms Xu, the profession and undermined public confidence in the ACCA. The Committee noted that Ms Xu was working for a bank holding herself out, based on her qualifications, as an ACCA member which in the Committee's view was a risk to the public and engaged public protection.

23. The Committee determined that copying the Performance Objectives ("PO") of other members, submitting it to ACCA purporting to be her own work to obtain membership, was an act of serious dishonesty. In the Committee's view it was a breach of a fundamental expectation of the profession to be open and honest and undermined the protections put in place to protect the public.
24. The Committee found that allegations 1 and 2(a) taken together amounted to serious misconduct.
25. The Committee concluded that Ms Xu was liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of allegations 1 and 2(a) and found misconduct proved in respect of Allegation 4.

SANCTION(S) AND REASONS

26. Mr Ross, the case presenter, made submissions on the appropriate and proportionate sanction. The Committee received advice from the Legal Adviser and in determining the appropriate and proportionate sanction considered the least restrictive sanctions first before moving onto the more serious ones.

ALLEGATIONS 1, 2(A) AND 4

27. The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions (2024). It first sought to identify aggravating and mitigating factors.
28. In respect of mitigating factors Ms Xu had no previous disciplinary findings against her. That was a mitigating factor, although not a strong one given her

status as an ACCA member of less than a year standing. It also took account of her engagement in the investigatory process and her previous good character. In the Committee's view there was limited mitigation.

29. The Committee considered the aggravating factors in relation to these allegations. In the Committee's view it was an aggravating factor that there was limited evidence of remorse or insight into what the Committee considered to be serious breaches. It took into account that the dishonesty was a one off over a short period of time, but it was not a spur of the moment breach, as the conduct was premeditated. In addition, it was an aggravating factor that Ms Xu had sought to undermine the integrity of the application process to be a member and a deliberate course of conduct for personal benefit and has deceived her regulator to work as a professional accountant.
30. The Committee considered that the dishonesty was at the more serious end of the scale of dishonest conduct and that there was a continuing risk to the public.
31. The Committee also took into account section E2 of the ACCA Guidance for Disciplinary Sanctions regarding findings of dishonesty.
32. The Committee considered that taking no further action or imposing an admonishment did not reflect the seriousness of the conduct and noted that there was limited evidence of insight.
33. In respect of a reprimand the Committee considered the dishonest conduct to be serious and not minor. Given the lack of significant insight the Committee considered that a Severe Reprimand was not a sufficient sanction as there was a continuing risk to public confidence, the potential risk of harm and the risk to validity of the ACCA qualification process.
34. The Committee considered the factors listed at C5.1 in the guidance. It noted that in addition to showing limited insight or remorse there was no reflection. The Committee also took into account the admissions made by Ms Xu.
35. The Committee took account of the guidance at E2.3 and concluded that there

was no remarkable or exceptional mitigation presented by Ms Xu which would warrant anything less than exclusion from membership. It also took into account the importance of protecting the integrity of the profession's qualification process and therefore determined that the only proportionate sanction was to direct that Ms Xu be excluded from membership.

COSTS AND REASONS

36. Mr Ross applied for costs totalling £5,704.50.
37. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to its costs. The Committee also recognised that it needed to consider the principle that the majority of those paying ACCA's fees should not be required to subsidise the minority who, through their own misconduct, have found themselves subject to disciplinary proceedings. The Committee considered that the time spent, and the sums claimed were reasonable. It was not appropriate to make a reduction as the hearing had run for a full day. Therefore the reasonable costs are assessed to be £5,704.50.
38. There was information before the Committee about Ms Xu's means, [PRIVATE]. The Committee noted Ms Xu's statement of Financial Position, which showed [PRIVATE]. The Committee noted that Ms Xu [PRIVATE].
39. The Committee took account of paragraph 27 of the Guidance of Costs Orders and noted that a Statement of Financial Position had been provided. The Committee having considered the submissions and the Statement of Financial Position determined that a full order for costs would cause Ms Xu significant financial hardship. The Committee directed that she pay £1,500 towards ACCA's costs.

IMMEDIATE ORDER

40. Mr Ross invited the Committee to direct that the order come into effect immediately. He submitted it was necessary to protect the public and in the

public interest and referred to the findings of the Committee in support.

41. The Committee directed that the order should come into effect immediately as it was necessary to protect the public. The Committee concluded that there was an identified and continuing risk to the public and to the validity of ACCA's process due to Ms Xu's ability to continue holding herself out as member of the ACCA.

ORDER

42. The Committee **ordered** as follows:
 - (c) Ms Xu shall be excluded from the ACCA Register.
 - (d) The order is directed to come into effect immediately.
 - (e) Ms Xu shall make a contribution to ACCA's costs of £1,500.

Ms Colette Lang
Chair
28 June 2024