

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Yuxin Yao

Heard on: Tuesday, 26 November 2024

Location: Remotely via Microsoft Teams

Committee: Mr Maurice Cohen (Chair)
Ms Wanda Rossiter (Accountant)
Ms Caroline Robertson (Lay)

Legal Adviser: Ms Giovanna Palmiero

**Persons present
and capacity:** Mr Ryan Ross (Case Presenter on behalf of ACCA)
Miss Nicole Boateng (Hearings Officer)

Summary Exclusion from membership

Costs: £6,000

INTRODUCTION

1. The Disciplinary Committee (“the Committee”) convened to hear allegations of misconduct against Mr Yuxin Yao (Mr Yao).
2. Mr Ryan Ross (Mr Ross) presented the case on behalf of ACCA.
3. Mr Yao did not attend and was not represented.

4. The Committee had confirmed that it was not aware of any conflicts of interest in relation to the case.
5. In accordance with Regulation 11(1)(a) of the Chartered Certificate Accountants Complaints and Disciplinary Regulations 2014 (the Regulations), the hearing was conducted in public.
6. The hearing was conducted remotely via Microsoft Teams.
7. The Committee was provided with, and considered in advance, the following documents:
 - (i) A Report & Hearing Bundle with pages numbered 1-241;
 - (ii) A Separate Bundle with pages numbered 1-85;
 - (iii) An Additional Bundle with pages numbered 1-7;
 - (iv) A Memorandum & Agenda with pages numbered 1-2;
 - (v) A Service Bundle numbered with pages numbered 1-20.
 - (vi) Cost Schedules were provided to the Committee at the sanction stage.

PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

8. The Committee was informed that Mr Yao had been served with a notice of today's hearing, together with the necessary papers via electronic mail on 22 October 2024.
9. The Committee was satisfied that notice had been sent to Mr Yao's registered email address in accordance with Regulation 22 of the Regulations 2014 as amended. The Committee noted that the email had been delivered successfully. Regulation 22(8) stipulates that, when a notice has been sent by email, it is deemed to have been served on the day it was sent. Accordingly, the Committee was satisfied that Mr Yao has been given 28 days' notice with the necessary information required in accordance with Regulation 10.

10. The Committee decided that Mr Yao had been properly served with Notice of Proceedings.

PROCEEDING IN ABSENCE

11. The Committee were informed that the ACCA Hearings Officer (HO) had attempted to contact Mr Yao by telephone, on the telephone number registered with the ACCA, on 20 November 2024 to confirm his attendance at the hearing. Mr Yao did not answer the call and there was no opportunity to leave a message. An email was sent by the HO to confirm the attempted contact.
12. On 25 November 2024 the HO attempted to call Mr Yao again on the same telephone number. Again, this call was not answered and no facility to leave a message. This was followed up by an email confirming attempted contact.
13. The Committee considered that ACCA had taken reasonable steps to encourage Mr Yao to attend the hearing. The Committee was satisfied that the emails had been sent to the email address on the ACCA's register and that there was a record of the emails having been delivered successfully. The Committee noted that Mr Yao had been given sufficient notice of the hearing and notified that if he did not attend then the Committee could proceed in his absence. The Committee concluded, on the balance of probabilities, that Mr Yao was aware of today's hearing, had voluntarily absented himself from the hearing and had disengaged with the process.
14. The Committee was also satisfied that taking the seriousness of the allegations into account, it was in the public interest to proceed expeditiously. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made and Mr Yao had not engaged in any of the process.

ALLEGATIONS

Yuxin Yao ('Mr Yao'), at all material times an ACCA trainee,

1. Whether by himself or through a third party applied for membership to ACCA on or about 30 October 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 1: Ethics and professionalism
 - 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 Yao's conduct in respect of the matters described in Allegation 1 above was: -
 - a) Dishonest in that Mr Yao 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 Yao 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) 15 March 2024
 - b) 2 April 2024
 - c) 17 April 2024

5. By reason of his conduct, Mr Yao is:
 - a) Guilty of misconduct pursuant to ACCA bye-law 8(a)(i) in respect of any 4 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)

BRIEF BACKGROUND

15. 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.

16. A person undertaking practical experience is often referred to as an ACCA trainee being the term used to describe Mr Yao's status in the allegations, the Report and the supporting Evidence Bundle.

17. 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.

18. As part of their practical experience, each trainee is required to complete nine performance objectives (POs) 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.

19. In addition to approval of their POs, 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 POs.
20. 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 POs. This external supervisor must have some connection with the trainee's firm, for example as an external accountant or auditor.
21. Once all nine POs have been approved by the trainee's practical experience supervisor (whether internal or external) and their minimum 36 months of practical experience has been 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.
22. 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.
23. 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.
24. Consequently, all 91 trainees were referred to ACCA's Investigations Team. Mr Yao is one such trainee.

Facts of the Case – Allegation 1

25. Karen Watson, Senior Administrator in ACCA's Member Support Team, has provided a statement explaining ACCA's membership application process. She states that once an application is received, this is recorded in ACCA's PROD database by an automated process. Ms Waston exhibits a sample record. The corresponding record for Mr Yao records his application was received on 30 October 2022. Mr Yao was admitted to membership on 3 November 2022.
26. Linda Calder provides an overview of the PER process in her statement as follows:
- POs 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 POs are also closely related to the type of work they will undertake on a regular basis in an accounting or finance role.
 - Each PO comprises 3 parts; (i) a summary of what the PO relates to; (ii) 5 elements outlining the tasks and behaviours a trainee must demonstrate to be able to achieve the PO; and (iii) a 200- to 500-word concise personal statement in which a trainee must summarise how they achieved the PO.

- In total a trainee is required to complete nine POs. The POs numbered 1 to 5 are compulsory. There are then a number of option 'Technical' POs from which the trainee needs to choose 4. ACCA recommends to trainees that they choose the technical POs 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 Linda Calder's statement states:

'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 POs 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 Ms Calder's statement is a copy of this registration card.
27. Information has been obtained from one of ACCA's 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.
 - There is a list of webinars (translated using Google translate) relating to ACCA's membership application process dated from 14 December 2016 to 27 August 2022. There are a number dated in 2019 including one dated 30 May 2019, (translated using Google translate). The details include reference to:

'...Record 36 months of accounting-related work experience in myACCA, and complete 9 Performance Objectives, which will be confirmed online by your Supervisor...'
 - 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 of their regional service group and provides details how to

join. All the webinars listed include the same details about these WeChat groups. ('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. There is a list of those articles (translated using Google translate). This includes an article '*How to become an ACCA Member Series 1/ Practical Experience Requirement (PER) Quick Guide*', dated 15 January 2020. A copy of the article is in the bundle (translated using Google translate). The article refers to a mentor, which is the same as a supervisor. Under the heading '*Find a mentor*' the article states in particular:

'Your experience must be under the supervision of a mentor to count towards PER. You must find a mentor with real work experience to monitor and confirm your work hours and performance goals...'

- Under the heading '*Determine performance goals*' the article states in particular:

'You have to choose which performance goals to accomplish, here are some points to keep in mind:

- *You need to complete 9 performance goals, including all 5 core goals and any 4 technical goals;*
- *Work with your practical experience mentor to develop a plan to achieve performance goals;*
- *Choose technical goals that are relevant to your day-to-day work, as they are easier to achieve....'*

The Practical Experience Requirement (PER) training record for Yuxin Yao

28. A copy of the PER training record shows he was employed by a single firm, namely Company A. In particular, it records the following:

- Mr Yao was employed from 5 September 2019 to 25 October 2022 in the role of 'audit'.
- The PER training record, in red text, 37 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 Yao record that Person C registered on 30 October 2022 as his 'IFAC qualified line manager'.
- The Supervisor details also record that Person C registered with one of the three common email addresses shared amongst this cohort of 91 cases.
- As Mr Yao's IFAC qualified line manager, Person C was authorised to approve both Mr Yao's time/ experience and all his POs and did so, as recorded in Mr Yao's PER. In that regard, Mr Yao requested that Person C approve his time/ experience of 37 months on 30 October 2022 and Person C did so on the same day. On 30 October 2022, Mr Yao requested that Person C approve all his nine POs and Person C did so on the same day.

Analysis of Mr Yao's PO statements as contained in his PER training record compared with those of other ACCA trainees being part of this cohort.

29. As referred to by Linda Calder, 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. Where PO statements are the same or significantly similar to the PO statements of any other trainee, this would suggest at the very least, the trainee has not met the objective in the way claimed or possibly at all. That further, the practical experience claimed, has not been supervised by a practical

experience supervisor, who would or should have knowledge of the trainee's work.

31. 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.
32. The 'first in time date' is the date the trainee requested that their IFAC qualified line manager approves 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 POs on the same day or if not very soon thereafter.
33. In relation to Mr Yao the analysis revealed:
 - None of his PO statements were first in time and
 - All nine 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.

Allegation 4 – Facts of the Case

34. Following referral of this matter to ACCA's Investigations Team, a member of that team sent an email to Mr Yao on 15 March 2024 attached to which was a letter, and other documents, which clearly set out the complaint and requested that Mr Yao respond to a number of questions by 29 March 2024.
35. The letter also referred to Complaints and Disciplinary Regulation 3(1) requiring Mr Yao to cooperate with the investigation by responding to the questions by the deadline.
36. This email was sent encrypted with a password which is recorded in the email 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 confirmed the email was delivered successfully.

37. An extract taken from ACCA's records for Mr Yao on the day the above emails were sent records that the email address for Mr Yao used for these emails was the email address on ACCA's system that day.
38. On 20 March 2024, ACCA's China office sent a mobile message to Mr Yao. The extracts from ACCA's database for Mr Yao referred to above include a telephone number.
39. Shortly after this message was sent, an Outlook email was sent to Mr Yao. 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 successfully delivered to Mr Yao's mobile number that day. No response has been received following this message. Given Mr Yao did not respond by the above deadline, a further encrypted email was sent on 2 April 2024 (the first reminder) with a copy of the letter attached to the previous email. In the covering email Mr Yao was reminded of his obligation to cooperate by responding to the questions in the letter and to do so by 16 April 2024.
40. Shortly after this encrypted email was sent, an Outlook email was sent to Mr Yao 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 confirmed the email was delivered successfully.
41. In relation to this first reminder, an extract taken from ACCA's records for Mr Yao on the day the email was sent records that the email address for Mr Yao used for these emails was the email address on ACCA's system that day.
42. No response was received to this first reminder and therefore a second and final email was sent to Mr Yao on 17 April 2024 with a copy of the letter attached to the initial email. In the covering email Mr Yao was again reminded of his obligation to cooperate by responding to the questions by 1 May 2024 and that if he failed to do so ACCA would raise an allegation of failure to cooperate against him.
43. Shortly after this encrypted email was sent, an Outlook email was sent to Mr Yao on the same day asking him to check if he had received the encrypted

email and if not to let ACCA know. There is a delivery receipt confirming the email was delivered successfully.

44. In relation to this second and final reminder, an extract taken from ACCA's records for Mr Yao on the day the above email was sent records that the email address for Mr Yao used for these emails was the email address on ACCA's system that day.
45. ACCA's Investigations Officer attempted to telephone Mr Yao on 18 April 2024 using his registered telephone number as recorded in the above extract. However, no one answered the call. In relation to the telephone call, an extract taken from ACCA's records for Mr Yao on the day the above telephone call was made records that the telephone number for Mr Yao used for this telephone call was the telephone number on ACCA's system that day.
46. 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, the first reminder and second reminder emails were opened.
47. The documents disclosed to Mr Yao in ACCA's emails referred to above, included Mr Yao'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 Yao:
 - 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 Yao's supervisor.
 - ii. Supervisor's registration details.
 - iii. CICPA registration card uploaded by Mr Yao's Supervisor.
48. The inclusion in the Evidence Bundle of those documents listed above numbered i to iii are considered relevant by ACCA to the extent that these show the full nature of the complaint and the importance for Mr Yao to have co-

operated by responding to questions about the identity of his registered supervisor. Those documents listed above numbered i to iii are therefore relevant to Allegation 4 relating to Mr Yao's failure to cooperate.

49. Allegation 1 refers to either Mr Yao applying for membership or a third party applying for membership on Mr Yao's behalf. Although Mr Yao has not cooperated, many of those trainees within this cohort who have co-operated have indicated they engaged a third party to apply for membership on their behalf. It is therefore accepted that it is possible a third party applied for membership on Mr Yao's behalf.

ACCA SUBMISSIONS

Allegation 1

50. It is submitted that Allegation 1 is capable of proof by reference to the following:
- Linda Calder's statement which describes ACCA's Practical Experience Requirements;
 - Mr Yao's completed PER training record which was completed on or about 30 October 2022 which then permitted Mr Yao to apply for membership which he did on the same date. Mr Yao was granted membership on 3 November 2022.
 - Mr Yao's Supervisor details which record Person C was his 'IFAC qualified line manager', and therefore his practical experience supervisor;
 - Mr Yao's PER training record which records Person C approved Mr Yao's time/ experience of 37 months;
 - Mr Yao's PER training record which records Person C approved all Mr Yao's POs;
 - That all nine of Mr Yao'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.

Dishonesty – Allegation 2(a)

51. In *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 at para 74 since approved in *R v Barton and another* [2020] EWCA Crim 575 it was said:

‘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 factfinder 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.’

52. There is extensive advice online in English and in Mandarin on how an ACCA trainee must complete their PER training record. This makes it clear the statements supporting their POs have to be written by trainees in their own words and as such must be unique. This, it is submitted, would surely be obvious given the trainee’s experience will be unique to them.
53. Given the extensive advice available online, it is not credible that Mr Yao was unaware his POs had to be in his own words and describe the experience he had actually, gained to meet the relevant Performance Objective.
54. In applying for ACCA membership, it is submitted Mr Yao claimed to have achieved the POs with the use of supporting statements which he must have known had not been written by him. Mr Yao therefore knew he had not achieved the POs as described in these statements or at all.
55. ACCA therefore submits this conduct would be regarded as dishonest by the standards of ordinary decent people, as per Allegation 2(a).

Integrity – Allegation 2(b)

56. In *Wingate and Evans v The Solicitors Regulation Authority* [2018] EWCA Civ366, the Court of Appeal addressed what was required in a professional disciplinary context by the standard of integrity. At paras 95-97, Jackson LJ expressed the matter in a way that applied to regulated professions generally and said this:

'95. Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty...

96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.

97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.'

57. If the conduct of Mr Yao is not found to be dishonest, it will be submitted, that the conduct in the alternative fails to demonstrate Integrity.

Recklessness – Allegation 3

58. It is ACCA's submission that in the further alternative Mr Yao's conduct was reckless in that he paid no or insufficient regard to the fact that his PO statements should truthfully and accurately set out, how the relevant objective had been met.

59. In *R v G* [2003] Lord Bingham approved the following definition of recklessness (para 41).

'A person acts recklessly within the meaning of section 1 of the Criminal Damage Act 1971 with respect to —

(i) a circumstance when he is aware of a risk that it exists or will exist;
(ii) a result when he is aware of a risk that it will occur;
And it is, in the circumstances known to him, unreasonable to take the risk.'

60. Mr Yao in not having any or sufficient regard to the matters referred to above must have appreciated the risk (which it was unreasonable in the circumstances for him to take) that he had not completed the practical experience element of his training correctly and was therefore ineligible for membership.

Failure to cooperate – Allegation 4

61. Based on the evidence above, it is submitted that, more likely than not, the above emails came to Mr Yao'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 Yao's apparent achievement of ACCA's Practical Experience Requirement which formed the basis of his application for ACCA membership.
63. ACCA acts in the public interest by ensuring its students, affiliates and members uphold proper standards, thereby maintaining public confidence in the accountancy profession.
64. It is submitted the failure by Mr Yao 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.

Misconduct – Allegation 5

65. In *Roylance v. General Medical Council (No 2)* [2000] 1 AC 311, at p330, it was said in this Privy Council decision:

'Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily

required to be followed by a medical practitioner in the particular circumstances.'

66. Bye-law 8(c) states, *'For the purposes of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings or is likely to bring discredit to the individual or relevant firm or to the Association or to the accountancy profession.'*
67. Mr Yao's conduct described above is an attempt to subvert ACCA's Practical Experience Requirement process and undermines public confidence in ACCA's membership qualification process. The above conduct also brings the Association and accountancy profession into disrepute.
68. Although misconduct is a matter of judgment for a professional panel, it is ACCA's submission that misconduct is clearly made out in the event that dishonesty or a lack of integrity or recklessness are found proved.
69. Further, ACCA submits that in failing to co-operate with ACCA and reply to ACCA's correspondence, Mr Yao has breached Complaints & Disciplinary Regulation 3(1). In the event that misconduct is not found in respect of this allegation, if the committee finds the underlying allegation proved then bye law 8 (a) (iii) is automatically engaged.

DECISION ON ALLEGATIONS AND REASONS

70. The Committee considered ACCA's bundle of evidence, the written representations which were supplemented by Mr Ross orally. The Committee considered the legal advice from the Legal Adviser, which it accepted.
71. The Committee was aware that the burden of proving the facts was on ACCA. Mr Yao did not have to prove anything, and the allegations could only be found proved if the Committee was satisfied on the balance of probabilities.

Allegation 1

72. The issue for the Committee to determine in respect of this allegation was whether Mr Yao, or someone else had drafted the POs submitted by him in

applying for membership, and whether he thereby had achieved POs 1, 2, 3, 4, 5, 6, 7, 9 and 13.

73. In reaching its findings of fact in respect of Allegation 1, the Committee had considered carefully, and accepted, the evidence of the following witnesses: (i) Karen Watson, a Senior Administrator in ACCA's Member Support Team as contained and (ii) Linda Calder, Manager of ACCA's Professional Development Team.
74. The Committee had also considered the content of the documents provided by ACCA in support of its case, all of which were consistent with the written evidence of the witnesses.
75. The Committee found that, to comply with the PER all of a trainee's PO statements and experience should be unique to them. It would be highly unlikely that these trainees would have undertaken the same experience and used exactly the same phrases to describe them. The only logical conclusion that can be inferred is that these trainees have shared and copied from one another or from templates.
76. The Committee was satisfied that the evidence of the witnesses revealed that Mr Yao's PO statements were identical to the PO statements of the other ACCA trainees. As stated in the evidence there were 91 trainees who also had identical PO's.
77. The Committee found that in order to comply with the PER a trainee's PO statement and experience should be unique to them. It would be highly unlikely that these trainees would have undertaken the same experience. The only likely conclusion is that the trainees have shared or copied the PO statements.
78. The Committee was satisfied that, where PO statements of Mr Yao were the same or significantly similar to the POs of any other trainees, it was a reasonable inference that Mr Yao had not met the objective in the way claimed or possibly at all.
79. In carrying out its analysis of the evidence, the Committee noted ACCA had recorded which of the trainees was the first to submit the identical POs, on the basis that this statement may be the original.

80. In relation to Mr Yao, the analysis revealed, and the Committee found:
- None of his POs was first in time.
 - All nine of his PO statements were identical or significantly similar to the POs contained in the PERs of other ACCA trainees.
81. Also, 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.
82. The Committee found that the similarities in the description of the work experience submitted by Mr Yao and the other trainees meant that it was not credible that trainees would have undergone exactly the same work experience and then expressed it in effectively identical terms.
83. The Committee found that the only conclusion from the evidence was that Mr Yao had deliberately submitted PO statements which were identical, or significantly the same, to the PO statements of other trainees, when Mr Yao knew they did not accurately reflect the work that he had undertaken.
84. On this basis, the Committee found the facts of Allegation 1 proved, on a balance of probabilities.

Allegation 2(a)

85. The Committee relied upon its findings of fact under Allegation 1 above.
86. The Committee noted that following the Supreme Court decision in *Ivey v Genting Casinos* [2017] UKSC 67 the test for dishonesty is an objective test only. The Committee first had to determine Mr Yao's actual knowledge or belief and then determine whether his acts or omission were, on the balance of probabilities, dishonest by the ordinary standards of reasonable and honest people.

87. In reaching its decision in respect of this allegation, the Committee had applied the first part of the test for dishonesty. In relation to Allegation 1, the Committee had found that Mr Yao did not write the statements in support of his POs 1, 2, 3, 4, 5, 6,7, 9 and 13 in his own words. He had knowingly adopted words used by others and therefore the Committee was satisfied that he knew he had not achieved all or any of the POs in the manner claimed, nor that the description would match in any way his purported practical experience, if any. The only logical conclusion must be that he therefore knew that he had not achieved the performance objectives in respect of POs 1, 2, 3, 4, 5, 6, 7, 9 and 13 in the manner described in the statements.
88. The Committee was satisfied that Mr Yao must have known what ACCA's training requirements were. They are widely published and are available in his native tongue. When Mr Yao submitted his application for membership, he must have known that the POs were plagiarised and did not reflect the experience he purported to have gained. Mr Yao must have known that these actions were dishonest.
89. The Committee were also satisfied that, by the standards of ordinary decent people, such conduct would be viewed as being dishonest. Mr Yao had purported to have undertaken the necessary training in order to apply for membership of a professional body and would be interpreted as trying to cheat the system.
90. The Committee therefore found Allegation 2(a), proved on the balance of probabilities.
91. On the basis that Allegations 2(b) and 3 were pleaded in the alternative to Allegation 2(a), the Committee made no finding in respect of these allegations as it was not necessary for the Committee to consider Allegations 2(b) or 3, which were alleged in the alternative.

Allegation 4

92. The Committee considered Allegation 4, which referred to the fact that Mr Yao had not responded to three emails requesting information, during the ACCA investigation. The emails requesting information from Mr Yao were dated 15

March 2024, 2 April 2024 and 17 April 2024. These were sent to the registered email address registered with ACCA.

93. The email sent to Mr Yao on 15 March 2024 attached a letter, and other documents, which clearly set out the complaint and requested that Mr Yao respond to a number of questions by 29 March 2024. The letter also referred to Complaints and Disciplinary Regulation 3(1) requiring Mr Yao to cooperate with the investigation by responding to the questions by the deadline.
94. The other emails sent on 2 April 2024 and 17 April 2024, reiterated this request.
95. The Committee noted that there were delivery receipts for these emails confirming that delivery was successful. There was also evidence to support the fact that the emails had also been opened by the recipient.
96. The Committee was not provided with any evidence showing the emails had bounced back, or not been successfully delivered.
97. The Committee concluded that Mr Yao as an ACCA member, had a positive duty to cooperate with ACCA's investigation and on the balance of probabilities was convinced that he had not cooperated or discharged his duty. The Committee determined Mr Yao's failure to co-operate was deliberate.
98. It is for the above reasons that the Committee concluded that Allegation 4, on the balance of probabilities, was found proved.

Allegation 5

99. In relation to Allegation 5, the Committee applied the test for misconduct, as per the case of *Roylance v General Medical Council* [2001] 1 AC 311, in which it was decided that *'the meaning of [misconduct] is of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety in any given case may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances.'*
100. The Committee had found that Mr Yao's behaviour had been dishonest. His actions were serious and fundamentally fell short of the standards required of a

professional person. The Committee was satisfied that he was guilty of misconduct. Such conduct fell far below the standards expected of an accountant and member of ACCA and could properly be described as deplorable. In the Committee's judgement, it brought discredit to Mr Yao, the Association and the accountancy profession.

101. The Committee had also found proved that Mr Yao had not engaged with the investigation and his regulator. If the regulator cannot conduct effective investigations into potential allegations of dishonesty or integrity of its members, then they cannot uphold the proper standards, which directly impacts upon the reputation of the regulator as a whole.
102. In the Committee's judgement, this amounted to very serious professional misconduct. The Committee determined that failing to co-operate with the regulator's investigation seriously undermines the integrity of the regulatory framework and the standing of ACCA. It brings discredit upon the profession and ACCA. The Committee considered Mr Yao's behaviour to be very serious and the Committee was in no doubt that it amounted to misconduct.
103. The Committee therefore found that the matters set out in Allegation 1, 2(a) and 4 amounted to misconduct, and that Mr Yao was liable to disciplinary action through his misconduct.
104. Having found Allegation 5 (a) proved it was not necessary for the Committee to consider Allegation 5(b), which was alleged in the alternative.

SANCTION AND REASONS

105. In reaching its decision on sanction, the Committee considered the oral submissions made by Mr Ross on behalf of ACCA. Mr Ross confirmed that there was no disciplinary record for Mr Yao prior to the hearing.
106. Mr Ross made no submission as to the actual sanction but referred to the Guidance for Disciplinary Sanctions (GDS) and in particular the summary of the general principles. He commented on potential mitigating and aggravating features of the case, referring to the fact that Mr Yao had no other known previous disciplinary findings. Mr Ross stated that Mr Yoa's conduct was

persistent in failing to respond, and his actions amounted to potential of harm, to the integrity of the regulatory framework, and to the public.

107. The Committee determined breaching membership regulations and failing to cooperate with an investigation are very serious.
108. The Committee considered whether any mitigating or aggravating factors featured in this case.
109. The Committee accepted that there were no previous findings against Mr Yao. There was no evidence of any other mitigating factors in this case.
110. As for aggravating features, the Committee concluded there was no evidence of insight, remorse or reflection. Furthermore, Mr Yao has not demonstrated any real understanding of the seriousness of his conduct by not engaging with the investigation process. His dishonest behaviour raised a serious risk of harm to the reputation of the profession and to the public. His departure from professional standards in not engaging with his regulator's investigation was deplorable.
111. For the reasons set out above, the Committee determined that a finding of dishonesty and not engaging with a regulatory body is a serious matter and therefore taking no further action, admonishment, reprimand or a severe reprimand would be insufficient and inappropriate. The Committee was particularly mindful there was no early admission, no evidence of understanding or insight, reflection, remorse or apology from Mr Yao. Given the serious nature of the misconduct, the Committee determined Mr Yao's behaviour was a serious departure from relevant professional standards. The Committee determined the only appropriate and proportionate sanction available is to order the removal of Mr Yao from the members register.
112. The Committee noted that the default period of exclusion is 12 months. The Committee decided not to extend this period, given the mechanisms in place at ACCA for readmission.

EFFECTIVE DATE OF ORDER

113. In light of its decision and reasons to exclude Mr Yao and the seriousness of his misconduct, the Committee decided it was in the interests of the public to order that the sanction have immediate effect. The Committee noted that Mr Yao had not been previously subject to an interim order, but it was of the view that there was a risk to the public. If no immediate order were to be imposed Mr Yao might hold himself out as an ACCA member when he may not be competent to do so.

COSTS AND REASONS

114. ACCA applied for costs in the sum of £6396.50. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable. However, the costs of the Case Presenter and Hearings Officer included in the sum quoted were based upon a full day when in fact the hearing took less than a whole day. Accordingly, the figure would be reduced to reflect this.
115. Despite being given the opportunity to do so, Mr Yao did not provide any details of his means or provide any representations about the costs requested by ACCA. There was, therefore, no evidential basis upon which the Committee could make any reduction on this ground.
116. The Committee had in mind the principle that members against whom an allegation has been proven should pay the reasonable and proportionate cost of ACCA in bringing the case. This was because the majority of members should not be required to subsidise the minority who, through their own failings, have found themselves subject to disciplinary proceedings.
117. In light of its observations above, the Committee reduced the amount requested to reflect the actual costs more likely to have been incurred and made an order in the sum of £6,000.

Mr Maurice Cohen
Chair
26 November 2024