

IN THE MATTER OF

The complaints made under section 34(1) of the Professional Accountants Ordinance (Cap.50) (“PAO”)

BETWEEN

The Practice Review Committee of the Hong Kong Institute of Certified Public Accountants COMPLAINANT

AND

Mr. CHOW, Yee (practising) RESPONDENT
(Membership no.: A08251)

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants (the “Committee”)

Members: Ms. LAU, Wan Ching (Chairman)
 Mr. CHAN, Chak Ming
 Mr. HUI, Cheuk Kit, Frederick
 Mr. LEE, Kwo Hang, Felix
 Mr. SO Kwok Kay

Date of the Complainant’s Written Submission on Sanctions & Costs: 29 November 2024
Date of the Respondent’s Written Submission on Sanctions & Costs: 23 December 2024
Date of Reasons for Decision: 19 November 2024

DECISION ON SANCTIONS AND COSTS

(A) INTRODUCTION

1. This Committee found on 19 November 2024 that the First Complaint and the Second Complaint against the Respondent were proved (the “**Decision**”) and directions were given to the parties to make written submissions on sanctions and costs.
2. This Committee will not repeat what were already set out in the Decision and will simply refer to the parts of the discussion in the Decision and will also adopt the same definitions and abbreviations in the Decision when it is appropriate.
3. In compliance with the direction to file written submissions on sanctions and costs, the Complainant filed the written Submission on Sanctions & Costs on 29 November 2024 while the Respondent filed his written Submission on Sanctions & Costs on 23 December 2024. This Committee has considered all parties’ submissions and precedents in relation to sanctions and costs, and does not propose to set out herein all their submissions made.
4. In gist, the Complainant submitted that in view of the precedents, aggravating factors and the seriousness of the complaints, the proposed appropriate sanctions should be:
 - (a) a public reprimand; and/or
 - (b) removal from the register for at least 36 months;
 - (c) cancellation of practising certificate and not reissued for at least 36 months; and/or
 - (d) payment of costs and incidentals.
5. In the submission on sanction and costs, the Respondent submitted that the proposed appropriate sanctions should be:
 - (a) a public reprimand; and
 - (b) no financial penalty because he could not afford it.

(B) DISCUSSION

(i) Approach in deciding sanctions

6. Section 35 of the previous version of PAO still applies to the present proceedings by virtue of section 73 of the Accounting and Financial Reporting Council (Transitional and Saving Provisions and Consequential Amendments) Regulation (Cap.588B) because the present proceedings have commenced prior to the regulatory reform on the accountancy profession that came into effect on 1 October 2022.
7. The Committee has a wide discretion on the sanctions it might impose under section 35(1) of PAO which include any one or more of the following orders:
 - (a) an order that the name of the certified public accountant be removed from the register, either permanently or for such period as it may think fit;
 - (b) an order that the certified public accountant be reprimanded;
 - (c) an order that the certified public accountant pay a penalty not exceeding \$500,000 to the Institute (Hong Kong Institute of Certified Public Accountants);
 - (d) an order that the certified public accountant pay the costs and expenses of and incidental to an investigation against him;
 - (e) an order that the practising certificate issued to the certified public accountant be cancelled;
 - (f) an order that a practising certificate shall not be issued to the certified public accountant either permanently or for such period as the Disciplinary Committee may think fit.

8. In addition, this Committee should bear in mind the objects of the Institute as set out in section 7 of PAO which include:
 - (a) to regulate the practice of the accountancy profession;
 - (b) to represent the views of the profession and to preserve and maintain its reputation, integrity and status; and
 - (c) to discourage dishonourable conduct and practices by certified public accountants, and for this purpose to hold inquiries into the conduct of certified public accountants, firms and corporate practices.
9. To ensure reasonable consistency and fairness in the disciplinary orders be imposed, this Committee should take reference to the Guideline to Disciplinary Committee for Determining Disciplinary Orders (“**Guideline**”) though it is not binding.
10. According to paragraph 1.4 of the Guideline, sanctions should not only be proportionate to the nature of the failure and the harm or potential harm caused by the breach, but also with the aim to:
 - (a) protect public interest;
 - (b) deter non-compliance with professional standards;
 - (c) maintain and promote public confidence in the profession; and
 - (d) declare and uphold proper standards of conduct and performance.

(ii) Seriousness of the complaints

11. Paragraph 4 of the Guideline sets out the three recommended steps in determining an appropriate disciplinary order:
 - (a) determine the seriousness of the offence (paragraph 5 of the Guideline);
 - (b) determine appropriate sanctions based on case severity before considering other factors, i.e. the starting point of sanctions (paragraph 6 of the Guideline);
 - (c) consider impact of other factors on sanctions (i.e. past similar cases, aggravating and/or mitigating factors) in determining a disciplinary order.
12. This Committee agreed with the Complainant that before taking into account of any aggravating factor, the totality of the complaints against the Respondent put the seriousness of the complaints to the upper end of “serious” for the following reasons:

First Complaint

- (1) As mentioned in the Decision, the First Complaint which concerned that the Respondent, without reasonable excuse, had failed or neglected to comply with the direction issued by the PRC on 30 July 2021 under section 32F(2)(b) of the PAO, was proved.
- (2) The PRC was a statutory committee established under the PAO, which was vested with the power to oversee practice review on practice units to ensure the quality of audit services provided to the public. It served a public interest function and to ensure the quality of accounting profession. As the Respondent was the only person to ensure the quality control of the Practice and, as a regulatee and a member of the Institute, the Respondent is expected to fully comply with the lawful and reasonable direction of the regulator, i.e. the Institute and the PRC in the present case.

- (3) The Respondent contended that (1) he was not non-compliant with the PRC's directions ("**Direction**"); also (2) he had reasonable excuse not to comply with the Direction; (3) he had never heard of the PRC requiring him to submit so many documents and he did not receive any letters from the Institute by post; and (4) the allegation from Mr. Ko was totally false.
- (4) The Committee did not agree with any of the Respondent's contentions and found that none of the Respondent's submission or evidence in the substantive hearing could dispel the Complainant's case. From the evidence before the Committee, the Institute had provided the Respondent with sufficient time to cooperate before issuing the Direction and the requirements listed out in the Direction was reasonable and not onerous on the Respondent. And the Committee could not find any reasonable excuse as to the failure or negligence of the Respondent, being a professional accountant, to comply with the Direction. All the above tended to suggest a major concern as to whether the Respondent was capable of practising as an auditor.
- (5) The Committee accepted that regarding the First Complaint there was no evidence to show that the Respondent had received any financial gain from third parties due to his breach or violation.
- (6) However, non-cooperation and non-compliance with the Direction would undermine the public's expectation on professional accountants and corporate practices to discharge their duties and carry out their work to the highest standards of probity, independence and competence. If public confidence is shaken, the price to be paid by the entire accountancy profession is very high. Therefore, it is important that public confidence in the accountancy profession is maintained and that any sanctions imposed by the Committee should act as deterrence to others that non-compliance by accounting professionals to the high standards expected of them would be viewed seriously and would exact suitably severe sanctions.

Second Complaint

- (7) The Second Complaint concerned that the Institute, while handling the First Complaint, found that the registered office of the Practice in Tsim Sha Tsui Address was no longer in use. Despite repeated reminders since June 2021, the Respondent had not notified the Registrar of the change of address of its registered office. The Committee found the Second Complaint proved.
- (8) The Committee agreed with the Complainant that the importance of having a registered office is not only to facilitate communications with the Institute as between regulator and regulatee but also to provide a means for the public to contact an auditor. And the admission of the Respondent in the substantive hearing that the registered office of the Practice was not in Tsim Sha Tsui Address since 2001 indicate a lack of basic understanding of his duty as an auditor under the law of Hong Kong. It tended to suggest a major concern as to whether the Respondent was capable of practising as an auditor. The Committee agreed with the Complainant that the Second Complaint was serious because if this matter is brought to court, the Respondent would have been convicted and thus brought disrepute to the profession.

Totality of complaints before considering aggravating factor

13. From the above, this Committee accepted the totality of the complaints against the Respondent before considering any aggravating factor, and put the seriousness of the complaints to the upper end of “serious”.
14. Under section 6 of the Guideline, this Committee opined that the appropriate sanctions based on the case severity before considering other factors should be a public reprimand; financial penalty; and/or cancellation of practising certificate and not reissued up to 1 year; an/or temporary removal from the register; and/or payment of costs and incidentals.

(iii) Precedents submitted by the Complainant

15. To assist the Committee in exercising its discretion, the Complainant identified one previous decision with similar features to the current case, namely, Proceedings No. D-19-1549P Chiang Sin Mei, Cindy. The Committee noted these precedents would not be binding on our decision in sanctions and costs and each case has specific facts. And previous decisions as to sanctions imposed are of reference value only. The Committee has a margin of discretion in deciding the appropriate sanctions to maintain the standards of the profession, see *Registrar of the Hong Kong Institute of Certified Public Accountants v Leung Kam Man Victor* (CACV37/2016, unreported judgment on 17 January 2017).

Proceedings No. D-19-1549P Chiang Sin Mei, Cindy

16. Proceedings No. D-19-1549P Chiang Sin Mei, Cindy is a case concerned with two complaints. The first complaint was that the respondent was selected for a practice review but, in the course of two years, the respondent was continuously uncooperative and had disregarded the correspondence sent from the Institute with respect to the practice review, including a statutory direction of the PRC requiring the respondent to comply but the respondent had ignored that. As a result, the practice review could not take place. The second complaint was that the respondent had failed to maintain a valid registered office address as required under section 31(1) of PAO. During the disciplinary proceedings, the respondent in Chiang Sin Mei, Cindy case was non-responsive and had ignored the directions of the disciplinary committee. The complaints against the respondent were found to be proved without a substantive hearing. The disciplinary committee, in passing the sanctions noted that the respondent’s refusal to participate in the proceedings and the fact that she ignored all correspondence from the Institute and in the disciplinary proceedings. The disciplinary committee ordered that the respondent be reprimanded; her name be removed from the register of CPA for three years; her practising certificate be cancelled; and the respondent to pay the costs.

Discussion about previous decisions

17. The Respondent in the present case did not have any submission regarding the precedents submitted by the Complainant.
18. The Complainant submitted that the present case is more severe than Proceedings No. D-19-1549P because, unlike the respondent in Chiang Sin Mei, Cindy case, the Respondent in the present case disputed the complaints and made late assertions against the Complainant regarding service of documents only until the substantive hearing. The Complainant submitted that this amounted to an abuse of process.

19. It was noted that the facts of the present case were slightly distinguished from the Chiang Sin Mei, Cindy case. The respondent of Chiang Sin Mei, Cindy case was totally non-responsive and the disciplinary committee in that case even commented that the respondent was “deliberately avoiding communications from the PRC and/or the QAD”. Consequently, the substantive hearing was dispensed with after the respondent did not submit her case or submission or reply in accordance with the directions or procedural timetable. The disciplinary committee in that case delivered the sanctions and costs order against the respondent after the respondent did not file any submission in sanctions and costs. And in the present case, though the Respondent was not wholly non-responsive and non-compliant, it was noted that the Respondent’s responses were belated, limited, unfounded and shifting; also had caused the review and hearing to be inevitably lengthened unnecessarily.
20. However, the Committee agreed that in passing the sanctions and costs, the disciplinary committee’s consideration in Chiang Sin Mei, Cindy case about the conduct of a non-cooperative respondent had reference value to this Committee.

(iv) Aggravating factors

21. This Committee noted the non-responsive and non-compliant conduct of the Respondent in the practice review and the disciplinary proceedings.
22. As mentioned in the Decision, the Respondent not only ignored the requests to update the registered office or various requests made by the Institute during the practice review process, but also failed to comply with the Procedural Timetable to file the Respondent’s Case on or before 23 June 2022. After the Committee extended the filing deadline to 29 June 2022, the Respondent filed his Case on 27 June 2022. In addition, the Respondent raised his dispute to the service of the Institute’s letters only until the commencement of the substantive hearing, although the Respondent maintained all along in the Respondent’s Case that the only issue for the First Complaint was whether the Respondent had reasonable excuse in not complying with the Direction, i.e. unable to afford the costs to engage another CPA to prepare two monitoring reports. There was no material fact in dispute and it was also not necessary to cross-examine the other party to the proceedings in the substantive hearing as stated in his Checklist. In his clarification to the Committee’s query about his Answer in his Checklist regarding the matters he wished to bring to the attention of the Chairman of the Committee, the Respondent replied that his Answer in the Checklist was for mitigation only. Eventually, the Complainant applied to adduce additional documents after close of evidence.
23. The aforesaid non-responsive and non-compliant conducts of the Respondent during the practice review and disciplinary proceedings fell within the aggravating factors listed in paragraph 7.7(a) of the Guideline (i.e., failure to cooperate with the investigation); and the Respondent should set out in his respective case in writing (i.e. his dispute to the service of the Institute’s letters) as required under the DCP Rules. The failure to do so during the course of the disciplinary proceedings was similar to the aggravating factors listed in paragraph 7.7(d) of the Guideline (i.e. failure to comply with relevant direction(s) from the Institute, other regulatory bodies and/or the Court). The Complainant submitted that the above conduct of the Respondent amounted to an abuse of process. However, the Committee also considered that the burden of proof rested on the Complainant. In addition, the conduct of the Respondent was slightly different from the Chiang Sin Mei, Cindy case in which the respondent in that case was deliberately avoiding communications from the PRC and/or the QAD and also did not respond to any procedural requirement or directions of the disciplinary committee at all.

(v) **Mitigation**

24. The Respondent first registered with the Institute on 19 April 1994 and has no previous disciplinary record. In his written submission on sanctions and costs, the Respondent did not submit any mitigation factor, but only remarked that he agreed with the sanction of a reprimand and no financial penalty because he could not afford it.
25. From the Respondent's Case, it was noted that the Respondent claimed that he had retired, and his annual income generated from signing the audit reports was HK\$20,000/ per year. Apart from that, he had no other source of income.

(C) **ANALYSIS**

26. In considering the proper order to be made in this case, this Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaints and the serious nature of the Complaints, all circumstances of this case, the mitigating factors as well as the non-responsive and non-compliant conduct of the Respondent, also previous decisions (and we understood it is not binding on us), this Committee opined that the sanctions should be adjusted upward from those as discussed in paragraph 14 above:
 - (1) In the present Complaints, the Respondent's non-cooperation and non-compliance with the Direction undermined the public's expectation on practising accountants and corporate to discharge their duties and carry out their work to the highest standards of probity, independence and competence. If public confidence is shaken, the price to be paid by the entire accountancy profession is very high. Therefore, it is important that public confidence in the accountancy profession is maintained and that any sanctions imposed by the Committee should act as deterrence to others that non-compliance by accounting professionals to the high standards expected of them would be viewed seriously and would exact suitably severe sanctions.
 - (2) Although there was no evidence to show that the Respondent was deliberately avoiding communications from the PRC and/or the QAD nor wholly non-responsive to and non-compliant with the directions of this Committee or the procedural requirements of the disciplinary proceedings, it was noted that the Respondent's responses were belated, limited, unfounded and shifting. The behaviour of the Respondent had inevitably lengthened the review and the hearing process unnecessarily.
 - (3) Considering all the aforesaid matters, we agreed that cancellation of practising certificate and not to be issued for at least 24 months and the removal from the register for at least 24 months were reasonable and appropriate sanctions in the circumstances of this case.
 - (4) Though the Respondent did not adduce any evidence in support of his financial condition, the Respondent submitted in his Case that he was retired, and his annual income was HK\$20,000/ per year. Having said that, the Committee has considered all mitigating factors in favour of the Respondent including his clear disciplinary record, and decided not to impose any financial penalty on the Respondent.

27. Regarding costs, this Committee is satisfied that the costs and expenses set out in the Statement of Costs dated 29 November 2024 in the total sum of HK\$107,443 were reasonably and necessarily incurred. This Committee accepted the Complainant's submission that this relatively high costs were mostly attributed to the uncooperative attitude of the Respondent and the adjournment of substantive hearing due to the dispute of service of letters raised by the Respondent only until the substantive hearing. Therefore, the costs and expenses ought to be borne by the Respondent.
28. The Respondent did not have any submission regarding the costs and expenses submitted by the Complainant.

(D) ORDER

29. The Committee ORDERS that:

- (1) the Respondent be reprimanded under Section 35(1)(b) of the PAO;
- (2) the name of the Respondent be removed from the register of certified public accountants for 24 months under section 35(1)(a) of the PAO and it shall take effect on the 42nd day from the date of this order;
- (3) the practising certificate issued to the Respondent be cancelled under Section 35(1)(da) of the PAO and shall not be issued to the Respondent for 24 months under section 35(1)(db) of the PAO and it shall take effect on the 42nd day from the date of this order;
- (4) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant and the costs of the Clerk to the Committee in the total sum of HK\$107,443 (being the total of the Complainant's costs of HK\$90,966 and the Clerk to the Committee's costs of HK\$16,477) under Section 35(1)(iii) of the PAO.

Dated: 27th January 2025

Ms. LAU, Wan Ching

Chairman

Mr. CHAN, Chak Ming

Member

Mr. LEE, Kwo Hang, Felix

Member

Mr. HUI, Cheuk Kit, Frederick

Member

Mr. SO, Kwok Kay

Member