

IN THE MATTER OF

A Complaint made under section 34(1) of the Professional Accountants Ordinance, Cap. 50

BETWEEN

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

AND

Ms. Wong Suet Fan (A13298) RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants

Members: Mr. CHIU Shun Ming (Chairman)
 Miss CHAN Chui Bik, Cindy
 Miss CHAN Ka Man
 Mr. CHOW Tak Sing, Peter
 Mr. LI Ka Fai, David

ORDER AND REASONS FOR DECISION

A. INTRODUCTION

1. This is a complaint made by the Practice Review Committee of the Hong Kong Institute of Certified Public Accountants (the “Institute”) as Complainant against Ms. Wong Suet Fan, a certified public accountant (the “Respondent”).
2. The particulars of the complaint are set out in a letter dated 1 November 2017 (“Complaint Letter”) from the Practice Review Committee (“the Complainant”) submitted to the Registrar of the Institute for consideration of referral to the

Disciplinary Panels under section 34(1) of the Professional Accountants Ordinance (Cap. 50) (“PAO”). These particulars are summarised at paragraph 19 below.

3. The Respondent did not appear throughout these disciplinary proceedings.
4. The Complainant provided their case submissions on 8 June 2018.
5. As the Complainant did not raise any objection and the Respondent had never made any response during these disciplinary proceedings and remained not contactable, the directions hearing and the substantive hearing were dispensed with.
6. The Complainant provided their written submissions on sanctions and costs on 12 October 2018.

B. BACKGROUND

7. Under Part IVA of the PAO, the Institute is empowered to carry out practice review on practice units.
8. The Practice Review Committee (“PRC”) is a statutory committee set up under section 32A of the PAO responsible for exercising the statutory powers and duties in relation to practice review under the PAO.
9. The practice reviewers, being staff members of the Quality Assurance Department (“QAD”) of the Institute, assist and report to the PRC in carrying out those statutory power and duties.
10. The Respondent, whose practising certificate (“PC”) was registered in 1997, had been selected for a practice review in early 2016.
11. The Institute’s membership records of the Respondent indicated the following contact details:
 - 11.1. a residential address in Pok Fu Lam which the Respondent had indicated as her preferred correspondence address (“contact address”);
 - 11.2. a registered office address for her practice located in Kowloon Bay; and
 - 11.3. an email address.
12. By the Respondent’s signing of the “Annual Return 2017 membership and practising certificate renewal” (which along with other renewal documents, were

sent to her contact and email addresses), it was indicated that the contact details including her preference to use the residential address as her contact address remained the same.

13. Clearly, the Respondent was able to receive the documents from the Institute to renew her membership and PC in 2017. However, there had not been a single response from the Respondent to the requests sent by the QAD to those same contact addresses.
14. On 27 April 2017, the matter was referred to PRC pursuant to section 32F(1) of the PAO, and a letter was issued to the Respondent on 28 April 2017 inviting her to make submissions or representations by 12 May 2017.
15. The PRC did not receive any submissions, and issued a direction letter dated 24 May 2017 (“PRC Direction”) under section 32(F)(2)(b) of the PAO directing the Respondent that by 14 June 2017 to:
 - 15.1. provide the QAD with the information stated in the Notification Letter dated 29 February 2016 and cooperate with the QAD to conduct a practice review in the third quarter of 2017; and
 - 15.2. complete the 2016 Electronic Practice Review Self-Assessment Questionnaire and send it to QAD by mail.
16. The PRC received no response from the Respondent. As a result, on 29 June 2017, the PRC decided to raise a complaint against the Respondent under section 32F(3) of the PAO.
17. Prior to issuing a formal compliant letter, the Respondent was invited to comment on Summary of Findings concerning this complaint sent to her on 28 September 2017 by registered post to both her contact address and registered office address, as well as by email. The package sent to her contact address was successfully delivered; but the one sent to her registered office address was returned to the Institute marked “無此公司” (no such company). The Respondent had made no written submissions.
18. In order to assist the Disciplinary Committee, the Complaint Letter provided the following Chronology of Events.

#	Date	Means of contact	Address Used	Status of delivery	Remarks
<i>Request for information relating to practice review</i>					
1	29 February 2016	Letter by registered post	Contact address (residential)	Delivered	The QAD sent out the "Practice Review Notification Letter" advising the Respondent of the practice review and requested the Respondent to submit information by 21 March 2016.
2	30 March 2016	Email	Email address on record	Delivered	The QAD emailed the Respondent requesting the information again and extended the deadline to 8 April 2016.
3 (a)	12 April 2016	Email	Email address on record	Delivered	The QAD emailed the Respondent again requesting the Respondent to submit the information as requested for the practice review and contact the QAD as soon as possible.
3 (b)	20 May 2016				
3 (c)	31 May 2016				
<i>Request for submission of "Electronic Practice Review Self-Assessment Questionnaire" ("EQS")</i>					
4	22 April 2016	Letter by post	Contact address	Delivered	As a standard procedure for all member practices, the QAD sent the 2016 EQS to the Respondent and requested submission by 30 June 2016.
5	29 April 2016	Letter by post	Contact address	Returned to sender	The QAD wrote to the Respondent again referring to the letter dated 22 April 2016. This letter was returned to the Institute marked "refused" with handwritten words "無此人" (no such person).
6	6 July 2016	Letter by post	Contact address	Returned to sender	The QAD wrote to Respondent again extending the deadline of submitting the 2016 EQS to 17 July 2016. The letter was returned to the Institute marked "refused" with handwritten words "無此人" (no such person).
<i>The QAD's continuous effort to establish contact</i>					
7	5 December 2016	Phone Call	Contact phone number (residential)	Phone call picked up by individual but not the Respondent	The QAD requested the recipient of the phone call to inform the Respondent to contact the QAD as soon as possible and left QAD's phone number.

#	Date	Means of contact	Address Used	Status of delivery	Remarks
<i>2017 membership and practising certificate ("PC") renewal</i>					
8	14 November 2016	Letter by post and Email	Contact address and email address on record	Delivered	The Admissions Department of the Institute sent the documents to the Respondent for the 2017 renewal of her membership and PC and requested her submission of the completed "Annual Return for the 2017 membership and practicing certificate renewal" (" Annual Return ") by 16 December 2016.
9	21 December 2016	Email	Email address on record	Delivered	The Admissions Department emailed the Respondent as she did not submit the Annual Return by 16 December 2016; and requested the submission by 31 December 2016.
10	29 December 2016	Letter by post and Email	Contact address and email address on record	Delivered	The Admissions Department sent out a final notice for the 2017 renewal and extended the deadline to 8 February 2017.
11	13 January 2017	Email	Email address on record	Delivered	The Admissions Department sent a reminder requesting the Respondent to submit the Annual Return by 8 February 2017.
12	17 January 2017	<i>The Institute received a "Request for Hardcopy Annual Return for 2017 Renewal" dated 12 January 2017 from the Respondent by post as the Respondent was unable to complete her Annual Return on-line, and therefore requested a hardcopy of the Annual Return to her by post.</i>			
13	23 January 2017	<i>The Institute received the completed "Annual Return" from the Respondent dated 16 January 2017. Her contact details as well as her preferred correspondence address (residential address as contact address) were confirmed by the Respondent in the Annual Return.</i>			
14	10 February 2017	Letter by post	Contact address	Delivered	The Admissions Department notified the Respondent that her 2017 membership and PC renewal was complete and her PC was available for collection at the Institute's counter.
15	3 March 2017	Letter by post	Contact address	Delivered	The Admissions Department sent a reminder to the Respondent to collect her PC at the Institute by 7 April 2017.
16	19 April 2017	Regular post	Contact address	Delivered	The Respondent did not collect the PC and therefore the Admissions Department sent the PC to her by regular post.

#	Date	Means of contact	Address Used	Status of delivery	Remarks
<i>The Institute's continued effort to reach the Respondent in 2017</i>					
17	3 January 2017	Letter by collection	Contact address	Not collected	The QAD issued a letter referring to: (i) Review Notification letter dated 29 February 2016 (#1); (ii) the letter regarding 2016 EQS dated 29 April 2016 (#5); and (iii) the letter dated 6 July 2016 (#6). These letters, along with the Respondent's renewed PC were put at the Institute's counter for collection by the Respondent. See#14 - 16 above.
18	16 March 2017	Letter by courier	Contact address	Unsuccessful - no door answer	Since the letter dated 3 January 2017 was not collected by the Respondent, the QAD re-sent it by courier. The letter was returned to the Institute on 17 March 2017.
19	28 March 2017	Email	Email address on record	Delivered	The QAD emailed the Respondent referring to previous letters sent by QAD and requested the Respondent to contact the QAD as soon as possible.
20	28 April 2017	Letter by registered post and Email	Contact address and Email address on record	Registered post delivery completed on 2 May 2017	The QAD notified the Respondent of a dispute due to her lack of cooperation with the QAD in the practice review process, and invited her to make submissions or representations by 12 May 2017.
21	24 May 2017	PRC Direction Letter by registered post	Contact address	Letter was returned to sender	The PRC Direction with a due date of 14 June 2017 was returned to the Institute as the addressee did not collect the mail within the retention period.
22	30 June 2017	Letter by registered and regular posts, and email	Contact address and Email address on record	Registered post delivery completed on 3 July 2017	The QAD notified the Respondent of PRC's decision to raise a compliant under section 32F(3) of the PAO.
<i>Compliance Department's attempts to contact the Respondent regarding the current complaint</i>					
23	20 July 2017	Phone call	Contact phone number (residential)	Phone call picked up by individual but not the Respondent	The Compliance Department attempted to contact the Respondent and verified her contact, and left a contact number for the Respondent to call back.

#	Date	Means of contact	Address Used	Status of delivery	Remarks
24	28 September 2017	Registered Post and email	Both contact and registered office addresses; and email address on record		<p>The Compliance Department sent a Summary of Findings to the Respondent and requested submissions or representations by 12 October 2017.</p> <p>The registered post to the contact address was successfully delivered.</p> <p>The registered post to the registered office address was returned to the Institute marked "no such company".</p> <p>There was no indication that email was bounced.</p>
25	26 October 2017	Registered Post	Both contact and registered office addresses		<p>The Compliance Department sent the proposed complaint to the Respondent inviting her to make submission pursuant to Rule 5 of the Disciplinary Committee Proceedings Rules.</p> <p>The registered post to the contact address was successfully delivered.</p> <p>The registered post to the registered office address was unclaimed and returned to the Institute.</p>
26	6 December 2017	Registered Post	Both contact and registered office addresses		<p>The Compliance Department sent the Notification Letter to the Respondent with regards to the compliant inviting her to admit the compliant.</p> <p>The registered post to the contact address was successfully delivered.</p> <p>The registered post to the registered office address was returned to the Institute marked "addressee unknown".</p>

C. THE COMPLAINTS

19. The Complainant filed 3 complaints against the Respondent, as follows:-

First Complaint

19.1. Section 34(1)(a)(viii) of the PAO applies to the Respondent in that her disregard of communications sent to her contact addresses by the Institute amounted to professional misconduct.

Second Complaint

- 19.2. Section 34(1)(a)(viii) of the PAO applies to the Respondent in that her failure to maintain or otherwise ensure a proper or effective residential and/or business address as required by law amounted to professional misconduct.

Third Complaint

- 19.3. Section 34(1)(a)(x) of the PAO applies to the Respondent in that she was guilty of dishonourable conduct as her failure to comply with section 31 of the PAO would amount to a criminal offence.

D. FACTS AND CIRCUMSTANCES IN SUPPORT OF THE COMPLAINTS

20. The Respondent is a practising certified public accountant (“CPA”) who had been issued a practising certificate since June 1997.
21. Up to end of 2017, the Respondent’s mode of practice had been reported as part-time basis in her own name. As such, the Respondent was able to carry out statutory audits and issue auditor’s reports in her own name during the period from June 1997 to end of 2017.
22. All practising CPAs, whether in full or part-time practice, must submit to practice review, which is a quality assurance program oversight by the PRC for the purpose of ensuring that all practising members observe, maintain and apply professional standards.
23. In February 2016, the Respondent was notified that her practice had been selected for practice review. However, a review could not be carried out due to her failure to respond to the Institute’s communications.
24. All members of the Institute are required to provide their contact details which include residential, email and business addresses; and designate which of these addresses as their preferred correspondence address.
25. Section 22 of the PAO requires the Registrar of the Institute to maintain accurate membership records. The Institute has a reasonable and legitimate expectation that the contact details provided by members provide effective means for communication.
26. According to the Institute’s records, the Respondent chose her residential address as the preferred correspondence address. Her residential address had not been changed since 1997 when she became a practising member.

27. The practice reviewers were unable to establish contact with the Respondent at her residential and email addresses during the 16-month period between February 2016 and June 2017. The facts and circumstances set out in the Complaint Letter described how the practice reviewers' attempts to engage the Respondent's cooperation were to no avail.
28. Further, subsequent attempts from the Institute to establish contact in relation to matters concerning this complaint have also been disregarded by the Respondent.
29. There is no doubt that the Respondent was able to receive correspondence sent to her residential and email addresses because she had responded to the Institute's correspondence sent to these addresses in order to successfully renew her 2017 membership and practising certificate. Even in her 2017 annual membership renewal form, the Respondent made no changes to her contact details.
30. The above chronology showed the Institute's attempts to contact the Respondent regarding practice review and the current complaint. The correspondences were shown to be successfully delivered to the Respondent at her residential and email addresses but she made no response.
31. The Respondent's failure to respond has prevented the Institute from carrying out its statutory duty to conduct a review on her practice. Her conduct falls below the standards expected of a member of the Institute, amounting to professional misconduct.
32. Section 31 of the PAO imposes all practising CPAs to have a registered office in Hong Kong to which all communications and notices may be addressed. Section 32 of the PAO requires the Institute to publish a list of practising CPAs and their registered office addresses in the Gazette.
33. The Respondent did not report any change of her registered office address since June 1997 when she became a practising member. This registered office address turned out to be invalid as all three letters sent to that address during September to December 2017 were returned to the Institute either marked "no such company", "unclaimed" or "addressee unknown".
34. Not only did the Respondent fail to comply with the obligation imposed under section 31 of the PAO, her conduct also affected the accuracy of the information that the Institute is required by law to maintain and publish.
35. The Respondent's conduct in this regard falls below the standards expected of a practising CPA and amounts to professional misconduct.
36. Section 31 of the PAO clearly states that any CPA (practising) who contravenes this section shall be guilty of a criminal offence.

37. By failing to have a valid registered office in Hong Kong to which communications could be addressed, the Respondent violated section 31 of the PAO and would be guilty of a criminal offence. Her conduct would bring discredit upon herself and/or the profession and would also amount to dishonourable conduct.

E. CONCLUSION

38. The Committee finds all of the three Complaints proved.

F. SANCTION AND COSTS

39. The Committee notes that it has a wide discretion on the sanctions it might impose and is not bound by the decision of a previous committee. Each case is fact specific.

40. Nevertheless, to assist the Committee in exercising its discretion, the Complainant has referred to a number of past decisions with similar features to the current case, namely, Proceedings No. D-17-1255P (19 September 2018), D-15-1063P (7 June 2017) and D-15-1050P (28 July 2016). These decisions involved failure to respond to Institute's request in respect of practice review and failure or neglect to comply with a direction issued by the PRC under section 32F(2)(b) of PAO. All of these cases resulted in either a removal from the register or cancellation of the practising certificates of the respective respondents for at least 1 year.

41. The Complainant pointed out that the Respondent was no longer a PC holder since the beginning of 2018. In fact, she did not even renew her 2018 membership. Her membership with the Institute is only retained because of the current disciplinary proceedings.

42. The Complainant submitted that only a removal order for a period of at least 12 months would be commensurate with the nature and seriousness of the complaint, taking into account the objectives of protecting public interest, deterring future non-compliance, upholding audit quality and maintaining public confidence in the profession.

43. As to costs, the Complainant submitted that the Respondent should pay the costs and expenses of and incidental to the proceedings of the Institute (including the costs and expenses of the Committee), as it was the Respondent's own conduct that brought on the disciplinary proceedings under PAO.

44. We are satisfied that the costs and expenses set out in the Statement of Costs dated 12 October 2018 in the total sum of HK\$34,447 were reasonably and necessarily incurred.
45. Accordingly, the Committee makes the following orders: -
- 45.1. The name of the Respondent be removed from the register of certified public accountants for one (1) year under section 35(1)(a) of the PAO and it shall take effect on the 42nd day from the date of this order; and
- 45.2. The Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant (including the costs of the Committee) in the sum of HK\$34,447 under section 35(1)(iii) of PAO.
46. The decision on sanction was made by the majority of the Disciplinary Committee's members. Three members of the Disciplinary Committee agree with the majority decision while two members dissenting.

Dated the 18th day of March 2019.

Mr. CHIU Shun Ming
Chairman

Miss CHAN Chui Bik, Cindy
Member

Miss CHAN Ka Man
Member

Mr. CHOW Tak Sing, Peter
Member

Mr. LI Ka Fai, David
Member