



DISCIPLINARY ORDERS AND REGULATORY DECISIONS

Date published – 7 September 2011

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Disciplinary orders

Disciplinary Committee tribunal orders

1 **Stuart Graham Joseph [FCA]** of 75 Maygrove Road, West Hampstead, London
NW6 2EG

The tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 7 June 2011

Terms of complaint

That the defendant is liable to disciplinary action under Disciplinary Bye-law 4(1)(a), namely: "...in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy"

In that

On 10 February 2009 he was upon his own confession convicted upon indictment of 7 counts of false accounting.

Hearing date

7 June 2011

Pre-hearing review or final hearing Final hearing

Complaint found proved Yes, on the defendant's own admission

All heads of complaint proven Yes, on the defendant's own admission

Sentencing order The tribunal ordered that the member be excluded from membership and pay costs of £2,204.

Procedural matters and findings

Parties present The Investigation Committee (IC) and the defendant attended the hearing.

Represented Raquel Perez represented the IC. The defendant represented himself.

Hearing in public or private The hearing was in public. An application was made on the day of the hearing for the hearing to be in private. The application was dismissed.

Decision on service In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service.

Documents considered by the tribunal The tribunal considered the documents contained in the IC's bundle.

The Investigation Committee's (IC's) case

The IC's case was that the defendant's conviction for an offence involving seven counts of false accounting constitutes professional misconduct. This complaint was not defended.

Issues of fact and law

The existence of the defendant's conviction was agreed.

Conclusions and reasons for decision

- 1 The defendant was in a position of trust as an accountant when he seriously abused that position repeatedly and deliberately committed false accounting over a period of time. This is, self-evidently, conduct which the ICAEW cannot tolerate from its members. Applying the *Guidance on Sentencing*, exclusion is the only appropriate penalty for such serious professional misconduct.

Matters relevant to sentencing

- 2 Mitigating factors were no previous disciplinary record and the defendant's financial circumstances which persuaded the tribunal not to award a fine. The tribunal rejected the defendant's pleas in mitigation that no harm was caused as a result of his false accounting. Harm was caused to those mortgage companies whom he defrauded. It was noted that the defendant did not commit false accounting for his own immediate gain (he did it to help someone in need). While the tribunal considers that no personal financial gain is a mitigating factor, it emphatically rejects the proposition (if it be made) that helping a third party by being dishonest is in any way acceptable or excusable for a member of the ICAEW. The tribunal was unimpressed by the defendant's assertion that he bitterly regrets what he did but not the reason why he did it.
- 3 Aggravating factors, which were noted from the Judge's sentencing remarks, are: (i) the thorough abuse of a position of trust; (ii) the scale of the offending; (iii) the lengthy period of time over which the offending occurred and (iv) the seriousness of the offences.

Sentencing Order

- 4 The tribunal ordered that Mr S G Joseph be excluded from membership and ordered to pay costs of £2,204.
- 5 Costs are to be paid in twelve equal monthly instalments of £183.00. The first instalment is to be paid on 1 August 2011.
- 6 It is not within the tribunal's power to decide whether or not the defendant will ever be readmitted to membership of the ICAEW. It recommends that no application for readmission be entertained for a period of five years. Any such application will be decided by the Readmissions Sub-Committee of the IC, on its merits, at the time.

Decision on publicity

7 The tribunal decided that there should be publication of the decision.

Members of the tribunal

Mr Oliver Grundy FCA
Mr Ian Walker FCA
Mr Richard Woodman

Mr Dominic Spenser Underhill [Legal Assessor]

D6787

2 David Andrew Jones ACA of 24/1 Heriot Row, Edinburgh, EH3 6EN

The tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 14 June 2011

Terms of complaint

That the defendant is liable to disciplinary action under Disciplinary Bye-law 4(1)(a), namely he has:

‘...in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy’

In that

On 27 July 2010, Mr D A Jones ACA was issued with a Final Notice detailing adverse findings made against him by the Financial Services Authority that between 10 January 2007 to 22 February 2008, he as Chief Finance Officer (Designate) and later as Chief Finance Officer of Northern Rock Asset Management plc (formerly Northern Rock plc), being aware that there were 1,917 loans omitted from the impaired loan figures, he:

- 1 Agreed on a deliberate course of action to deal with the position which was not transparent and did not have immediate effect;
- 2 Failed to correct either at the time or subsequently, misleading statements made in his presence regarding the impaired loans, which had been made to external stakeholders, including market analysts;
- 3 Knew that data on impaired loans was being provided to internal and external stakeholders but failed to ensure the data was correct; and
- 4 Acted recklessly as he caused or permitted the firm’s Operating and Business Review to show figures which were, to his knowledge, false and that he failed to correct these figures.

Hearing date

14 June 2011

Pre-hearing review or final hearing Final Hearing.

Complaint found proved Yes.

All heads of complaint proven Yes.

Sentencing order

The tribunal ordered that the defendant:

- a) be severely reprimanded;
- b) pay costs of £3,620.

Procedural matters and findings

Parties present	Mr David Andrew Jones ACA and the Investigation Committee (IC).
Represented	Mr Chris Cope of Cope's Solicitors and Timothy Dutton QC on behalf of the defendant. Mr Fin O'Fathaigh on behalf of the IC.
Hearing in public or private	The hearing was in public.
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service.
Documents considered by the tribunal	The tribunal considered the documents contained in the IC's bundle together with documents provided by Mr Jones' representative.
Findings on preliminary applications	None

The Investigation Committee's case

- 1 Disciplinary Bye-law 7(2)(a), provides that a member who has been the subject of an adverse finding in respect of his conduct by a regulatory body performing its functions under the Financial Services and Markets Act 2000 shall be conclusive evidence of the commission of an act or default under Disciplinary Bye-law 4(1)(a).
- 2 Mr Jones is accordingly liable to disciplinary action under Disciplinary Bye-law 4(1)(a), in that the Financial Services Authority ("FSA") has made such an adverse finding against him and therefore he has in the course of carrying out professional work, committed an act or default likely to bring discredit on himself, the Institute and the profession of accountancy.

Issues of fact and law

- 3 On 23 July 2010 the FSA issued to Mr Jones a Decision Notice stating that it had decided to impose a financial penalty on him of £320,000 and a full prohibition from performing any function in relation to regulated activity. The level of penalty reflected a 20% reduction due to Mr Jones' agreement to settle at an early stage. The FSA subsequently publicised its Final Notice of the decision on 27 July 2010 which sets out the reasons for the action taken against Mr Jones. The Final Notice was made pursuant to section 56 and 66 of the Financial Services and Markets Act 2000.
- 4 Between 10 January 2007 and 1 February 2007 Mr Jones was Finance Director (Designate) of the entity now known as Northern Rock Asset Management plc (formerly Northern Rock plc). From 1 February 2007 to 22 February 2008 he was the company's Finance Director.
- 5 Section 4 of the Final Notice sets out the facts and matters that the FSA relied upon. The FSA found as follows:

- In 2005 loans where a possession order had been made, but where physical possession of the mortgaged property had not yet been obtained were removed from the company's reported arrears figures. As the properties were not yet actual possessions, they were not reported in possessions figures either. These 'pending possessions' were therefore excluded from all the company's reported data on impaired loans.
- At the time the decision was made to exclude these cases from the reported data, the number of pending possession cases was minimal. However it increased in the first half of 2006.
- Mr Jones first became aware of the pending possession loans issue on or about 10 January 2007 when the company's Deputy CEO, Mr Baker, raised it with him. Mr Jones took steps to ensure that the company's bad debt provisions (and therefore financial statements) were correct, and he subsequently agreed with Mr Baker that because the provisioning was correct, there was no obligation to amend the 2006 accounts.
- Mr Jones was, however, aware that the reported data on impaired loans in the company's 2006 Operating and Business Review (OBR) would be incomplete as it did not include details of 1,917 pending possessions cases.
- Mr Jones agreed with Mr Baker to resolve the backlog over a six month period by bringing the cases into possessions.
- Despite this agreement, the reported figures were still incorrect in the interim results for 2007 which were published in July 2007 (although the financial statements remained accurate). At that time there were 828 undisclosed pending possessions. While Mr Jones knew the issue had not been resolved in the agreed timescale, he took no further action to correct the information included in the interim accounts.
- Furthermore, Mr Jones knew that management information he was providing to the Assets and Liabilities Committee (ALCO) was incorrect. While Mr Jones maintained that it was clear that the information given to the ALCO excluded pending possessions, the FSA concluded that he should have ensured accuracy of information given to the ALCO and should have specifically brought the matter to the committee members' attention.
- Additionally, in a presentation to the market on 24 January 2007, Mr Baker made misrepresentations about impaired loans, and while Mr Jones had limited opportunity to contradict Mr Baker at the time, he failed to correct the misstatements (either at the time or thereafter).

6 The FSA found that Mr Jones' conduct fell short of the FSA's regulatory standards, demonstrated a lack of integrity and as a result it considered he was not fit and proper to perform any controlled functions in relation to regulated activity.

Conclusions and reasons for decision

7 The complaint was found proven on Mr Jones' own admission.

8 An adverse finding was made against Mr Jones by the FSA. Pursuant to Disciplinary Bye-Law 7(1), the finding is conclusive of a breach of Disciplinary Bye-Law DBL 4(1)(a).

Matters relevant to sentencing

- 9 Mr Jones' representative made the following submissions in mitigation:
- a) the financial statements were correct as the loans were fully provided for; hence the management accounts and the preliminary results were accurate
 - b) the original difficulty with the pre-possession figures had not been initiated by him;
 - c) Mr Jones' stewardship of Northern Rock's accounts had never been in question;
 - d) There had never been any allegation or finding of dishonesty;
 - e) Mr Jones should be given credit for his actions in persuading the board to issue a profit warning and for his lead on the Basle II initiative;
 - f) When he had made the error of judgement he had been significantly distracted by the above and generally dealing with the overall financial crisis faced by Northern Rock;
 - g) ALCO had the information before it that demonstrated the accurate number of possessions and amount of arrears.
- 10 Overall, Mr Jones' representative argued that he had been disproportionately punished by FSA. Finally, Mr Jones addressed the tribunal and expressed his regret that he had not put right the misstatements made by Mr Baker. Mr Jones added however that if the arrears figures had been adjusted to include the pending possession data then, in his view, reporting such a reduction would have been misleading to the market.
- 11 The tribunal were given a number of character references.

Sentencing order

- 12 The tribunal took into account its *Guidance on Sentencing* and the defendant's mitigation. An adverse finding by the FSA against a member was serious in any circumstances and the tribunal gave due weight to its findings. Mr Jones made an error of judgement which had the effect of potentially misleading both certain of the members of ALCO and the market.
- 13 That said, the tribunal took into account that during the relevant period Mr Jones' primary task was to help resolve the profound and far more serious problems facing Northern Rock overall. Indeed he was instrumental in persuading the board to issue the profits warning despite knowing the impact this would have on the market. His efforts in this regard, were reflected in the quite exceptional references before the tribunal.
- 14 The tribunal accepted moreover that the financial statements were correct, despite the so-called 'pre-possession' issue, as the loans were fully provided for. The understatement of pre-possession had not been a problem initiated by him. In addition, the tribunal accepted that this issue had nothing to do with the eventual run on the bank.
- 15 Mr Jones was working at a very senior level in a leading financial institution. As such, his error of judgement was high profile and was likely therefore to have undermined the public's confidence in the profession. In the circumstances, a severe reprimand was warranted.
- 16 The tribunal took into account the large financial penalty imposed upon Mr Jones by the FSA and therefore imposed no fine.

17 Finally, the tribunal ordered that he pay the ICAEW's costs of £3,620.

Decision on publicity

18 Publicity with name.

Members of the tribunal

Mr R Lea FCA
Mr Michael Swift FCA
Mr Tony Foster

Ms Melanie Carter [Legal Assessor]

D6788

Cessation of membership

- 3 The following individuals have ceased to be members because they have not paid fines and costs:

Miss Rachel C Battersby of Lancashire
Mr Richard C Barber of Penicuik, Midlothian
Mr Kishor Majithia of Winford, Cheshire
Mr John M Johnstone of Hertford

The ICAEW takes all necessary steps, including legal proceedings, to recover the money it is owed.

Investigation Committee Consent Orders

Consent Order made on 21 July 2011

- 4 With the agreement of a member the Investigation Committee ordered that he pay costs of £435 with respect to a complaint that:

On 9 June 2009 a member entered into an Individual Voluntary Arrangement (IVA) under the provisions of the Insolvency Act 1986.

The Committee directed that the member should not be identified by name when the order is publicised.

D6768

Consent Order made on 25 July 2011

- 5 With the agreement of Barker Maule Limited of 27 & 33 Castle Gate, Newark, Nottinghamshire, NG24 1BA, the Investigation Committee made an order that the firm be severely reprimanded, fined £2,000 and ordered to pay costs of £971, with respect to a complaint that:

Between 31 August 2004 and 24 May 2010, Barker Maule Limited incorrectly issued Accountants' Reports in respect of the financial statements of the following companies when they did not meet the conditions for exemption from audit in that the balance sheet total exceeded the audit exemption threshold:

- (i) Under section 249A Companies Act 1985

Client Name	Period Ending	Accountants' Report issued
• A	7 June 2004	14 April 2005
• A	31 July 2005	5 June 2006
• A	31 July 2006	13 April 2007
• A	31 July 2007	31 March 2008
• A	31 July 2008	8 April 2009
• B	31 May 2004	30 September 2004
• B	31 May 2005	10 October 2005
• B	31 May 2006	10 November 2006
• B	31 May 2007	8 February 2008

• B	31 May 2008	25 February 2009
• C Limited	31 January 2009	22 April 2009
• D Limited	30 April 2004	31 August 2004
• D Limited	30 April 2005	18 August 2005
• D Limited	30 April 2006	4 September 2006
• D Limited	30 April 2007	3 September 2007
• D Limited	30 April 2008	27 August 2008

(ii) Under section 477 Companies Act 2006

Client Name	Period Ending	Accountants' issued	Report
• A Limited	31 July 2009	30 April 2010	
• B Limited	31 May 2009	3 February 2010	
• C Limited	31 January 2010	24 May 2010	
• D Limited	30 April 2009	2 September 2009	

D6770

Consent Order made on 3 August 2011

6 With the agreement of H W Fisher & Co of Acre House, 11-15 William Road, London NW1 3ER, the Investigation Committee made an order that the member be reprimanded, fined £5,000 and pay costs of £5,555 with respect to a complaint that:

- 1 Between 15 December 2004 and 16 September 2010 H W Fisher provided accountancy services to X plc, a PLUS-quoted audit client, contrary to ES5 (revised 2008) paragraph 127(a) (formerly ES5 (revised December 2004) paragraph 117(a)).
- 2 Between 30 September 2005 and 30 September 2009, H W Fisher provided accountancy services to Y Plc, a PLUS-quoted audit client, contrary to ES5 (revised 2008) paragraph 127(a) (formerly ES5 (revised December 2004) paragraph 117(a)).

D6771

Consent Order made on 4 August 2011

7 With the agreement of Shaukat Hussein of 158-160 Arthur Road, Wimbledon Park, London SW19 8AQ, the Investigation Committee made an order that the member be severely reprimanded, fined £5,000 and pay costs of £1,405 with respect to a complaint that:

Between 9 March 2009 and 10 March 2010, Mr S Hussein FCA having agreed to obtain and submit to ICAEW the results of an external hot file review, prior to signing any audit reports, for audits carried out by X Limited, failed to do so in breach of the condition imposed by the Audit Registration Committee in its letter of 9 April 2009, in respect of the following audits:

	Company	Period ended	Audit report dated
i	Y	30 June 2009	9 March 2010
ii	Z	30 June 2009	10 March 2010

D6772

Consent Order made on 22 August 2011

- 8** With the agreement of Armstrongs Accountancy Ltd of 1 & 2 Mercia Village, Torwood Close, Westwood Business Park, Coventry, CV4 8HX, the Investigation Committee made an order that the firm be severely reprimanded, fined £3,000 and ordered to pay costs of £5,396, with respect to a complaint that:
- 1 Armstrongs Accountancy Ltd issued the following audit reports, signed by an individual who was not a designated Responsible Individual of the firm (breach of Audit Regulation 2008 4.04 and 4.05):
 - (i) X for the year ended 31 March 2007, signed 3 November 2007
 - (ii) X for the year ended 31 March 2008, signed on 24 October 2008
 - (iii) Y Ltd for the year ended 31 March 2007, signed 11 October 2007
 - (iv) Y Ltd for the year ended 31 March 2008, signed on 16 September 2008
 - (v) Z for the year ended 31 March 2007, signed 19 December 2007
 - (vi) Z for the year ended 31 March 2008, signed 10 October 2008
 - (vii) Z for the year ended 31 March 2009, signed 2 October 2009
 - 2 Armstrongs Accountancy Ltd between 23 October 2007 and 13 August 2010 acted as auditor to X where a principal of the firm was also trustee of the audit client, contrary to Ethical Standard 2, paragraph 7.
 - 3 Armstrongs Accountancy Ltd failed to inform the ICAEW within 10 business days of the following changes in circumstances which might affect its eligibility to be registered for audit work (contrary to Audit Regulations 2008 2.11(d) and 2.11 (f) of:
 - (i) The appointment of Mr A as a director with 20% shareholding, on 1 October 2008
 - (ii) The appointment of Mr B as a director with 5% shareholding on 1 February 2009
 - (iii) The change in shareholding, where Mr C a former director transferred 5% of his 30% equity shareholding to Mr B on 1 February 2009
 - (iv) The affiliate status of Mr D, between 10 April 2007 and 22 July 2010.
 - 5 The firm made inaccurate disclosures in its 2008 annual return in:
 - (i) Stating that principal/ shareholding percentage voting rights held by holders of an appropriate audit qualification was 100%, when Mr D who did not hold appropriate audit qualification held 10% of the company shares at the time.
 - (ii) Failing to disclose that Mr A was appointed a principal in 2008.

D6779

Regulatory Decisions

Audit Registration Committee

Order made on 9 June 2011

- 9 The registration as company auditor of Crilly & Co, Chartered Accountants, Wyvern House, 1 Church Road, Bookham Leatherhead, Surrey, KT23 3PD, was withdrawn on 15 August 2011 under audit regulation 7.03 (g) of the Audit Regulations and Guidance 2008 for failure to comply with the requirements of the audit regulations. **D6780**

Order made on 6 July 2011

- 10 The registration as company auditor of R J Taylor & Co, Unit A2, Imex Business Park, Flaxley Road, Stechford, Birmingham, B33 9AL, was withdrawn on 22 July 2011 under audit regulation 7.03(g) and 7.03(h) of the Audit Regulations and Guidance 2008 for failure to comply with the requirements of the audit regulations. **D6781**

Investment Business Committee

Order made on 16 June 2011

- 11 The Designated Professional Body licence of Marcusfield Dodia & Co, 19 Cumberland Road, Stanmore, HA7 1EL was withdrawn on 29 July 2011 under DPB clause 2.18 of the Designated Professional Body Handbook 2004 for failure to pay the DPB licence fees for 2011. **D6782**
- 12 The Designated Professional Body licence of Colin Barker, 11 Felton Close, Hollins, Bury, BL9 8BJ was withdrawn on 29 July 2011 under DPB clause 2.18 of the Designated Professional Body Handbook 2004 for failure to pay the DPB licence fees for 2011. **D6783**
- 13 The Designated Professional Body licence of Jemmett Fox (UK) Limited, The White House, High Street, Dereham, Norfolk NR19 1DR was withdrawn on 29 July 2011 under DPB clause 2.18 of the Designated Professional Body Handbook 2004 for failure to pay the DPB licence fees for 2011. **D6784**
- 14 The Designated Professional Body licence of Atkinson Hunter & Co., Weir Bank, Monkey Island Lane, Bray, Maidenhead, Berkshire, SL6 2EA was withdrawn on 29 July 2011 under DPB clause 2.18 of the Designated Professional Body Handbook 2004 for failure to pay the DPB licence fees for 2011. **D6785**
- 15 The Designated Professional Body licence of Marc Lawson & Co Limited, Unit 7, Brooklands, Budshead Road, Plymouth, PL6 5XR, was withdrawn on 29 July 2011 under DPB clause 2.18 of the Designated Professional Body Handbook 2004 for failure to pay the DPB fees for 2011. **D6786**

All enquiries to the Professional Conduct Department on +44 (0)1908 546 293