



## DISCIPLINARY ORDERS AND REGULATORY DECISIONS

Date published: 1 February 2012

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## DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 **Mohamed Sarwar Mughal FCA** of 6 Audley Road, Hendon, London NW4 3EY

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 11 October 2011**

### **Terms of complaint**

The complaint is that Mr Mughal FCA is liable to disciplinary action under Disciplinary Bye-law 4 (1)(c) namely he has:-

*“...committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them”*

### **In that**

- 1 That between 27 October 1998 and 6 October 2009, he engaged in public practice without holding a practising certificate contrary to Bye-law 51a of the Principal Bye-laws.
- 2 That between 27 October 1998 and 6 October 2009, he failed to arrange qualifying insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.

### **Hearing date**

11 October 2011.

### **Previous hearing date(s)**

12 May 2010 – directions order made.

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

## **Sentencing order**

- a) severe reprimand
- b) a fine of £3,000
- c) costs of £3,000

## **Procedural matters and findings**

### **Parties present**

Mr Mohamed Sarwar Mugal FCA. Mr Ben Jowett representing the Investigation Committee (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 Investigation Committee's (IC's) bundle together with letters and evidence from the defendant.

## **The Investigation Committee's (IC's) case**

1. With regard to the requirement for a practicing certificate, the IC relied upon both the old and new Council Statement on Public Practice (changed in January 2008). It was submitted that during the 11 year period, the defendant was in public practice. The relevant question was the services the firm and Mr Mughal were holding out as offering. The IC relied upon two sets of evidence, first an advertisement in CityLocal, a London based online advertisement service; second evidence that Mr Mughal had provided services to five companies (sets of accounts naming him as accountant having been located at Companies House). It was alleged that this was clear evidence of his having engaged in public practice such that during the relevant period he had required both a practising certificate and professional indemnity insurance. It was not disputed by Mr Mughal that he did not have either as he argued that he had not considered them necessary as, in his view, he was not at any point engaged in public practice.

## **Issues of fact and law**

2. Mr Mughal, the defendant is the sole practitioner and director of Mughal Consultancy Ltd, trading as such since 1998.
3. The IC relied upon an advertisement that appeared online under the banner of CityLocal which referred to Mughal Consulting Limited as being a chartered accountancy firm and a firm offering and carrying out taxation, pension advice and accountancy services. Mr Mughal told the tribunal that only the reference to his offering compliance services was accurate. What had happened, he stated, was that he had been 'cold called' on his doorstep and had been offered a free advert on this online listing webpage. When he had seen the version that appeared he had written, by a letter dated 7 January 2008, to CityLocal saying the advertisement was misleading and 'strongly recommending' that it be removed from the website. This letter was not however produced to ICAEW until August

2011 despite ICAEW on and off investigating this matter since early 2009. The IC argued that Mr Mughal had been relatively relaxed about the advert appearing insofar as the letter had merely “strongly recommend” that it be removed from the website. He assumed it would have been removed and did not check. The IC’s argument was that Mr Mughal had not done enough to stop the misleading advert being placed or to have it removed. The tribunal did not accept this submission, however, on the basis that Mr Mughal had written to the company placing the advertisement and that the wording used had been sufficiently strong for him to assume that the advert would be removed.

4. Mr Mughal informed the tribunal that he did not have an accountancy practice as such. He said that he provided regulatory compliance services (95% of his work) to FSA registered companies and in addition he offered limited book keeping and accounts services (less than 5%). His clients are commercial entities.
5. The Case Manager of ICAEW had carried out a Fame search which identified five sets of financial statements filed at Companies House where Mughal Consulting Limited were shown as acting as accountants although only one set contained an accountant’s report.
6. Mr Mughal confirmed that he had acted as an accountant for these companies for a number of years (approximately five or more years) and accepted that these were “accountancy services” within the meaning of the Council Statements. However this was less than 5% of his time and there had not been any financial gain to him. Insofar as he had acted for four of these companies prior to January 2008, it was agreed that the old Council Statement on Public Practice was relevant for that earlier period.
7. In the bundle before the tribunal were letters from the Directors of two of the companies which stated that Mr Mughal had carried out the work for free. In relation to one company, the one which post-dated the introduction of the new Statement, he had received a nominal fee.
8. Mr Mughal explained in oral testimony what he meant by compliance regulatory work. He told the tribunal that this included work on financial returns and financial information. The IC’s response was that it was not entirely clear as to whether this would fall within the term “accountancy services” under either the old or new Statement. The tribunal specifically indicated during the hearing that it would not, given the basis of the IC’s case against him (which was limited to the advertisement and the sets of accounts) take into account any evidence as to whether the main part of his practice in itself amounted to accountancy services.

### **Conclusions and reasons for decision**

9. The tribunal found the complaint proven other than in relation to the period 1 January 2008 to 6 October 2009.

### **First Head of Complaint**

10. By virtue of Principal Bye-law 51a a member engaged in public practice is required to hold a practicing certificate.
11. Principal Bye law 51a provides as follows:

***‘Conditions for engaging in public practice 51 (a) A member shall be entitled to engage in public practice... only if he holds a current practising certificate.’***

12. As stated above, relevant to this matter were two versions of the *Council Statement on Public Practice*, the latter of which came into force on 1 January 2008. The question was whether any of the exemptions under the two statements applied so as to mean that Mr Mughal was not and had not during the period of 11 years been in public practice. Under the old Statement, the most relevant exemption was paragraph 9 which reads:

*“A member who gratuitously or for a nominal fee (not more than £50 at present value) (i) provides accountancy services to a small charitable, community, religious or sporting body, or to similar bodies of a non profit-making nature, or (ii) acts as auditor to a small entity that is not required to be audited by a registered auditor is not engaged in public practice provided such services are not entered into primarily with a view to earning fees.”*

13. Mr Mughal sought also to rely upon paragraph 8, which provides:

*“A member of principal of a firm whose primary purpose is to provide finance, insurance services or computer installation, applications or training, is not engaged in public practice”.*

14. With regard to the old Statement, it was clear that Mr Mughal had been carrying out accountancy services (accountants work and bookkeeping). It was also clear that all companies in relation to whom he had carried out the accountancy services in the period prior to 1 January 2008, did not fall under either exemption above (being commercial limited companies and the work not being in relation to finance, insurance etc.). Thus, the tribunal found Mr Mughal had been engaged in public practice for some or all of the period commencing 27 October 1998 up to 1 January 2008 and that a practising certificate had been required.

15. In relation to the new Statement, the tribunal noted that in addition to revised exemptions there was an additional threshold in that only accountancy services over and above 10% of a firm or member firm’s practice turnover would be caught. Thus:

*“4. Definitions*

*“public practitioner.....an entity which provides accountancy services to clients in anticipation of reward where:*

*- a substantial part of the activities of that entity is the provision of such services”*

*“substantial part.....more than 10% of the total annual turnover of the entity or the group”.*

16. The relevant exemptions in the new Statement were:

*“11. A member is not engaged in public practice if he gratuitously or for a nominal amount (which is in the nature of expenses and does not exceed £500 per appointment):*

*- provides accountancy to a small charitable, community, religious or sporting body, or to similar bodies of a non profit-making nature, whose income is less than £250,000; or*

*- acts as auditor to a small entity (as described above) that is not required to be audited by a registered auditor.*

.....

*13. A member who gratuitously and not in anticipation of reward applies his skills for the private benefit of friends or family does not thereby engaged in public practice”.*

17. For the reasons given above, the exemption at paragraph 11 did not apply (the companies not falling within the categories there provided). The tribunal noted that the two letters from the five relevant companies did refer to the work being carried out on a friendship basis. It was submitted by the IC that the exemption at paragraph 13 should not be interpreted as applying to limited companies as even though no fee had been charged it was, on the face of it, a commercial arrangement. Mr Mughal described the work he had done for the companies as on a non-commercial basis, rather on a friendship basis. He pointed out that the companies had been loss making and indeed certain of them no longer existed.
18. The tribunal was satisfied however that, whether or not one of the exemptions applied, that his accountancy services (the bookkeeping and accounts work) were less than 5% of his practice. Thus the tribunal accepted that since 1 January 2008, such accountancy services as he had carried out and which formed the basis of the Institute's case fell below the "substantial part" threshold.

### **Second Head of Complaint**

19. Regulation 3.1 of the Professional Indemnity Insurance Regulations requires a member in public practice to hold qualifying insurance.
20. It is clear from the above that Mr Mughal required professional indemnity insurance for some of the period stated in the complaint and as he did not have this, he was in breach of Disciplinary Bye-law 4(1)(c).

### **Matters relevant to sentencing**

21. The Tribunal took account of its *Sentencing Guidance*. It noted that Mr Mughal had no previous disciplinary record and accepted his mitigation that his actions had not caused any loss or damage to anyone. It also took into account that there had not been any complaints as to his work.
22. It was an aggravating feature however that the non-compliance had lasted for such a long period.
23. Accountancy services, albeit of a minor nature, had been provided to the public over a substantial period of time. It was of fundamental importance to the maintenance of professional standards of chartered accountants that they be regulated by the Institute and that the public be protected by the provision of professional indemnity insurance.

### **Sentencing Order**

24. The tribunal decided to impose the following sanctions:
  - a) severe reprimand
  - b) a fine of £3,000
  - c) costs of £3,000
25. Mr Mughal provided no information as to his means. The tribunal agreed however that, given the total amount of the fine and costs, he nevertheless be given time to pay. It ordered that he pay £500 a month for the next 12 months, the first instalment to be paid by 1 December 2011.

### **Decision on publicity**

26. Publicity with names.

<b>Chairman</b>	<b>Mr Oliver Grundy FCA</b>
<b>Accountant member</b>	<b>Mr Sohail Choudhry ACA</b>
<b>Lay Member</b>	<b>Mr Richard Farrant</b>
<b>Legal Assessor</b>	<b>Ms Melanie Carter</b>

**D6871**

**2 William Scott Miller ACA of 10c Ravenna Road, Putney, London, SW15 6AW**

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 18 October 2011**

**Terms of complaint**

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

*“...he has committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them”*

**In that**

Between 31 January 2007 and 31 January 2011 Mr W S Miller ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2005 to 31 October 2006, in breach of Principal Bye-law 56(c).

Between 31 January 2008 and 31 January 2011 Mr W S Miller ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2006 to 31 October 2007, in breach of Principal Bye-law 56(c).

Between 31 January 2009 and 31 January 2011 Mr W S Miller ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2007 to 31 October 2008, in breach of Principal Bye-law 56(c).

Between 31 January 2010 and 31 January 2011 Mr W S Miller ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2008 to 31 October 2009, in breach of Principal Bye-law 56(c).

**Hearing date**

18 October 2011

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** Reprimand; fine of £1,500; costs of £1,465.17

**Procedural matters and findings**

**Parties present** The defendant was not present at the hearing and was not represented. The Investigation Committee was represented.

**Represented** The Investigation Committee was represented by Raquel Perez

<b>Hearing in public or private</b>	The hearing was in public
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service.
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle.

### **The Investigation Committee's (IC's) case**

- 1 The IC's case is that the defendant's failure to certify compliance with the ICAEW's CPD requirements from January 2007 to January 2011 is serious professional misconduct.

### **Issues of fact and law**

- 2 The defendant was not present and was not represented. The tribunal put the IC to proof of the complaint and applied the standard of proof as the balance of probabilities. The tribunal found the complaint proved.

### **Conclusions and reasons for decision**

- 3 The defendant failed without any good reason to certify that he had complied with his Continuing Professional Development ("CPD") requirements for many years. This is unacceptable. CPD is a fundamental aspect of ensuring that members of ICAEW offers levels of competence and service which the public and other institutions such as HM Revenue & Customs is entitled to expect. Certifying compliance with CPD is equally important and is a significant aspect of self-regulation which ICAEW and its members enjoy. Ensuring and certifying CPD is not an option for each member to take or leave. Neither is it trivial or bureaucratic. In this case, the defendant has failed over a considerable period of time to certify that he has maintained his CPD. He has failed to participate responsibly in self-regulation and in so doing he has harmed ICAEW and himself. This is serious misconduct.

### **Matters relevant to sentencing**

- 4 The tribunal has no reason to depart from the Guidance on Sentencing. A mitigating factor is the defendant's clean disciplinary record. An aggravating factor is the defendant's complete lack of co-operation with the investigation of this matter and his dealings with the IC during the prosecution of the complaint. A further aggravating factor is the period of time in which the defendant failed to certify his CPD.

### **Sentencing Order**

- 5 The tribunal decided to impose the following sanctions:

Reprimand;  
 Fine of £1,500  
 Costs of £1,465.17

**Decision on publicity**

6 Publication with name.

<b>Chairman</b>	<b>Elliot Harris FCA</b>	
<b>Accountant Member</b>	<b>Marianne Neuhoff FCA</b>	
<b>Lay member</b>	<b>Tony Foster</b>	
<b>Legal Assessor</b>	<b>Dominic Spenser Underhill</b>	<b>D6872</b>

**3 Fowziah Sham FCA** of 15 Burleigh Gardens, London, N14 5AH

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 18 October 2011**

**Type of Member** Member

**Terms of complaint**

**That the defendant**

Is liable to disciplinary action under Disciplinary Bye-law 4(1)(c), namely she has:

*“...committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them”*

**In that**

- 1 Between 1 January 2000 and 7 February 2011 Mrs F Sham FCA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51(a).
- 2 Between 1 January 2000 and 1 February 2011, Mrs F Sham FCA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.

**Hearing date**

18 October 2011

**Previous hearing date(s)**

None

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** Severe reprimand; fine of £6,000; costs £1847.67

## **Procedural matters and finding**

<b>Parties present</b>	The Investigation Committee was represented. The Defendant was not present and was not represented.
<b>Represented</b>	Raquel Perez represented the Investigation Committee.
<b>Hearing in public or private</b>	The hearing was in public
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service.
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle.

## **The Investigation Committee's (IC's) case**

The IC's case is that for a period of 11 years, the defendant engaged in public practice without a practising certificate and professional indemnity insurance. In so doing, she has breached Principal Bye-law 51(a) and Regulation 3.1 of the Professional Indemnity Insurance Regulations.

## **Issues of fact and law**

The complaint was found proved on the defendant's own admission. For this reason, there were no issues of fact or law to be determined.

## **Conclusions and reasons for decision**

The defendant has, for a considerable period of time, practised in public practice as a Chartered Accountant without a practising certificate and without any insurance with which to protect her clients. In fact, she practised through a limited liability company called Westmere Services Limited. These basic errors breach fundamental practising requirements and each constitutes serious professional misconduct.

## **Matters relevant to sentencing**

Turning to the practising certificate; the tribunal is prepared to give the defendant the benefit of some doubt and hold that she did not fail to obtain one recklessly or deliberately. It is feasible that after she had made an earlier application for a practising certificate which was refused because of her training in non-regulated firms, she believed (albeit wrongly) that as she practised through a limited company she was not obliged to hold one. It is difficult to understand how she could have come to this conclusion for a period of eleven years without questioning it, but, as has been said, the benefit of any doubt is exercised in the defendant's favour. This doubt arises on the matter of sentencing, however, and not liability for the offence.

Turning to the failure to obtain professional indemnity insurance; the tribunal considers that no reasonably competent chartered accountant (which it has no reason to consider the defendant not to be) could possibly have believed that they were not obliged, and/or it was not obviously necessary, to insure themselves and protect their clients against the risk of negligent work. Such a safeguard is obviously necessary whether the member was acting in an individual capacity or

through a corporate vehicle. The tribunal concludes that the defendant was grossly irresponsible in failing to obtain insurance to such an extent that her actions were reckless. This is an aggravating factor.

Another aggravating factor is the extended period of time over which the professional misconduct took place.

A further aggravating factor is that by failing to obtain insurance, and thus by putting her clients at risk, the defendant has indirectly benefitted financially in that she has not paid out, for eleven years, insurance premia.

The tribunal has taken into account as mitigating factors (i) the defendant's clean disciplinary record and; (ii) her obtaining of professional indemnity insurance when requested, which was retrospective to 1 January 2005. She is now insured.

The tribunal has considered the *Guidance on Sentencing*. In the light of that, it had considered exclusion as a possible penalty; on balance, and taking into account the mitigating factors in this case, it has decided that a severe reprimand and a fine is a proportionate penalty.

### **Sentencing Order**

Severe reprimand;  
Fine £6,000;  
Costs £1,847.67

### **Decision on publicity**

Publication with name.

<b>Chairman</b>	<b>Elliot Harris FCA</b>	
<b>Accountant Member</b>	<b>Marianne Neuhoff FCA</b>	
<b>Lay member</b>	<b>Tony Foster</b>	
<b>Legal Assessor</b>	<b>Dominic Spenser Underhill</b>	<b>D6873</b>

**4 Mr Richard David Arthur FCA** of Old Cadet House, Le Mont Mallet, St Martin, Jersey, JE3 6DX

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 9 November 2011**

**Type of Member** Member

**Terms of complaint**

The complaint is that Richard David Arthur FCA is liable to disciplinary action under Disciplinary Bye-law 4(1)(c):

“...committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them”

because:

Between 24 November 2010 and 9 June 2011 Mr R D Arthur FCA failed to respond to a letter issued by ICAEW on 22 November 2010 under Disciplinary Bye-law 13.

**Hearing date**

9 November 2011

**Previous hearing date(s)**

None

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** Severe reprimand; fine £2,500; costs £1,049

## **Procedural matters and findings**

<b>Parties present</b>	Mr Arthur was not present and was not represented.
<b>Represented</b>	The Investigation Committee was represented by Ben Jowett.
<b>Hearing in public or private</b>	The hearing was in public
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service.
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle.

## **The Investigation Committee's (IC's) case**

In 2010, ICAEW received certain information from the Jersey Financial Services Commission concerning the defendant's fitness and propriety. It wrote to the defendant about it on 19 July 2010. ICAEW had some subsequent correspondence with both the defendant and that Commission. Eventually, it wrote to the defendant by a letter dated 22 November 2010. Apart from a telephone conversation with the defendant on 6 December 2010 (which did not constitute a response to the letter of 22 November), no further contact has been established with the defendant. The IC's case is that the defendant failed to respond to its letter dated 22 November 2010 between 24 November 2010 and 9 June 2011, and thus is in breach of Disciplinary Bye-law 13.

## **Issues of fact and law**

The issues to be determined were (i) whether a letter from ICAEW was sent to the defendant on 22 November 2010 and (ii) whether he replied to it or not. The tribunal found the complaint proved.

## **Conclusions and reasons for decision**

The defendant has failed to respond properly or at all to a letter from ICAEW regarding a serious matter involving concerns about his fitness and propriety raised by the Jersey Financial Services Commission. This constitutes professional misconduct. The tribunal sees no reason to depart from the Guidance on Sentencing having taken into account any mitigating and aggravating factors.

### **Matters relevant to sentencing**

A mitigating factor is the defendant's clean disciplinary record.

A serious aggravating factor is that the defendant ignored ICAEW correspondence in spite of promising to forward the information requested.

### **Sentencing Order**

Severe reprimand

Fine £2,500

Costs £1,049

### **Decision on publicity**

Publicity with name

**Chairman**

**Richard Lea FCA**

**Accountant Member**

**Michael Swift FCA**

**Lay member**

**Tony Canham**

**Legal Assessor**

**Dominic Spenser Underhill**

**D6874**

**5 Kwoo Seng Heng [FCA]** of 7/F Allied Jajima Building, 138 Gloucester Road, Wanchai, Hong Kong

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 9 November 2011**

**Type of Member** Member

**Terms of complaint**

The complaint is that Kwoo Heng FCA 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”

because:

- 1 Mr K S Heng FCA failed to comply with Fundamental Principle 1 of the Guide to Professional Ethics (in force at the relevant time) in that:
  - Between 1 January 1994 and 30 April 1994 and on 23 March 1995 with regards to loans arranged from London Standard Bank Limited for Shenzhen Yiwen Industrial Limited, Mr K S Heng FCA assisted or facilitated Mr P N Elliott, an employee of London Standard Bank Limited to receive a number of bribes totalling US\$500,000.
  - On 1 February 1994, 7 April 1994, 23 May 1994 and 12 September 1994 with regard to loans arranged from London Standard Bank Limited for PYCY International Limited Mr K S Heng FCA assisted or facilitated Mr P N Elliott, an employee of London Standard Bank Limited to receive a number of bribes totalling HK\$625,000.
- 2 Mr K S Heng FCA failed to comply with Fundamental Principle 2 of the Guide to Professional Ethics (in force at the relevant time) in that he:
  - Allowed Goodvest Limited, a company affiliated with his audit firm K S Heng & Co (now Morison Heng) to act, on behalf of Mr P N Elliott, as a nominee director of Asia Pacific Leasing Limited, an audit client of his firm K S Heng & Co (now Morison Heng).

**Hearing date**

9 November 2011

**Previous hearing date(s)**

None

**Pre-hearing review or final hearing** Final Hearing

<b>Complaint found proved</b>	Yes
<b>All heads of complaint proven</b>	Yes
<b>Sentencing order</b>	Exclusion; costs of £5,000
<b>Procedural matters and findings</b>	
<b>Parties present</b>	Mr Heng was not present and was not represented.
<b>Represented</b>	The Investigation Committee was represented by its advisor Ben Jowett.
<b>Hearing in public or private</b>	The hearing was in public.
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service.
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with a letter from Mr Heng dated 27 September 2011 and a statement as to his means.

### **The Investigation Committee's (IC's) case**

The IC's case is that the defendant assisted or facilitated PN Elliott to receive a number of bribes. The defendant's failure to enquire as to the legality or appropriateness of the payments he was making to PN Elliott in connection with substantial loans made to that person's employer, demonstrated a lack of professional integrity, and constituted a breach of paragraph 1 of the Fundamental Principles. In addition, the defendant breached paragraph 2 of the Fundamental Principles by allowing a company which was affiliated to his audit firm to act as a nominee director of an audit client of his firm, on behalf of the same PN Elliott.

### **Issues of fact and law**

There are no issues of fact or law to determine as the complaint is admitted. The relevant Fundamental Principles are the ones extant at the time the professional misconduct took place. The tribunal found the complaint proved on the defendant's own admission.

### **Conclusions and reasons for decision**

- 1 This matter concerns a defendant who, in 1994 and in 1995 assisted or facilitated a bank employee in receiving bribes totalling over HK\$1,100,000. He also allowed a company affiliated to his audit firm to act as a nominee director of another company which was an audit client of his firm. He did this on behalf of the same person whom he had assisted in receiving bribes.
- 2 While the tribunal makes no finding of dishonesty against the defendant (and has not been asked to do so), it finds that this conduct is very serious professional misconduct not least as it

involves a serious abuse of a position of trust involving large sums of money, a lack of professional integrity and the obtaining of advantage for himself.

- 3 The tribunal disregards the fact that the misconduct took place over 16 years ago, as the passage of time does not make the misconduct less so. However, it has taken into account that passage of time when considering the risk the defendant poses to the public now.
- 4 The tribunal sees no reason to depart from the *Guidance in Sentencing*, while taking into account mitigating and aggravating factors.

### **Matters relevant to sentencing**

Mitigating factors are (i) the defendant's previously clean disciplinary record; (ii) his co-operative and courteous conduct towards the IC; (iii) the unlikelihood of the offence being repeated.

Aggravating factors are: (i) the large sums involved in the professional misconduct; (ii) the misleading by the defendant of Mr Morrison as to his status; (iii) the abuse of a position of trust and (iv) an element of self-advantage gained as a result of the misconduct.

It is not within this tribunal's power to decide whether or not the defendant will ever be readmitted to membership of the Institute. It recommends that no application for readmission be entertained until the expiry of two years from the date of this decision. Any such application will be decided by the Readmissions Sub-Committee of the Investigation Committee, on its merits, at the time.

### **Sentencing Order**

Exclusion;  
Costs of £5,000.

### **Decision on publicity**

Publicity with name.

<b>Chairman</b>	<b>Richard Lea FCA</b>
<b>Accountant Member</b>	<b>Michael Swift FCA</b>
<b>Lay Member</b>	<b>Tony Canham</b>
<b>Leal Assessor</b>	<b>Dominic Spenser Underhill</b>

**D6875**

**7 Laurence Warren Finger ACA** of 89 New Bond Street, London, W1S 1DA

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 November 2011**

**Type of Member** Member

**Terms of complaint**

The complaint is that Laurence Finger ACA is liable to disciplinary action under Disciplinary By-law 4(1)(a):

“...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”

because:

On 13 December 2010 Mr L W Finger ACA was the subject of an adverse finding by the Financial Services Authority in respect of his conduct, in that by failing to take reasonable steps to ensure that the Anti Money Laundering processes at SRLV complied with the relevant requirements and standards of the regulatory system, he had fallen below the minimum regulatory standards in terms of his competence.

**Hearing date**

16 November 2011

**Previous hearing date(s)**

None

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order**

a) severe reprimand; and

b) costs of £2350

## Procedural matters and findings

<b>Parties present</b>	Laurence Warren Finger ACA The Investigation Committee
<b>Represented</b>	Bridget Lucas instructed by Watson Farley & Williams on behalf of the defendant Fin O’Fathaigh on behalf of the IC
<b>Hearing in public or private</b>	The hearing was in public  An application had been made on 28 September 2011 for the hearing to be in private. This had been refused on the basis that there were no exceptional circumstances in this case to override the normal rule that, in the public interest, hearings were to be held in public
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the Investigation Committee’s (IC’s) bundle together with documents provided by the defendant
<b>Findings on preliminary matters</b>	The tribunal accepted the application of Mr Finger to hear this matter at the same time as the case against the firm, SRLV

## The Investigation Committee’s (IC’s) case

1 The IC relies in this matter upon Disciplinary Bye-law 7(2) which provides:

*“The fact that a member, member firm or provisional member*

*a) has been the subject of an adverse finding (not set aside on appeal or otherwise) in respect of his conduct, being a finding in proceedings before a body which is for the time being listed in paragraph 5 or before a regulatory body performing its functions under the Financial Services Act 1986, the Financial Services and Markets Act 2000, the Insolvency Act 1986 or the Companies Act 1989; or*

*b) has had a disqualification order made against him .....,*

*shall, for the purposes of these bye-laws, be conclusive evidence of the commission by him of such an act or default as is mentioned in bye-law 4.1(a).”*

2 Thus, ICAEW Disciplinary Bye-laws provide that an adverse finding by a body such as the Financial Services Authority (“FSA”) is conclusive evidence of the commission by the firm of an act that is likely to bring discredit upon himself, the ICAEW or the profession.

## Issues of fact and law

- 3 In a Final Notice issued by the FSA to Mr Finger on 13 December 2010, the FSA concluded that, in his role as Money Laundering Reporting Officer at SRLV, Mr Finger failed to exercise due skill, care and diligence in managing the business and failed to take reasonable steps to ensure that the Anti Money Laundering processes at SRLV complied with the relevant requirements and standards of the regulatory system. The FSA have undertaken extensive enquires regarding the role of SRLV and its partners in the sale of shares, in one of the firm's clients, to the public. The facts recorded in this decision are based on the FSA's findings.
- 4 In or around May 2008, SRLV was engaged by one of its existing clients, Natrocell Shareholders Limited (NSL), to assist with fund raising by providing company secretarial and registration services and by receiving and dispersing monies through the firm's existing client account. NSL was formed as a parent company. It had no operational activities and was the holding company of its wholly owned subsidiary, Natrocell Technologies Limited (NTL). NTL was concerned with developing, testing, manufacturing and making preliminary sales of its rodenticide products. NTL had been a client of SRLV for a number of years. SRLV viewed NTL as a legitimate business with existing products and distribution contracts.
- 5 In May 2008, NSL embarked on a fund raising exercise, purportedly with the intention of raising up to £5 million from the issue of shares in NSL to enable NTL to develop its business. To assist with the fund raising exercise, NSL engaged the services of other entities and individuals to promote, offer for sale and sell shares in NSL to UK and other investors. These entities were purportedly based overseas and were not authorised by the FSA, nor were they, to the FSA's knowledge, authorised in the respective jurisdictions where they were based. The entities were share fraud operators or 'boiler rooms' who were to be paid 60% of the value of the share sales they generated by way of commission. SRLV was aware of the level of commission but was not involved in the decision to appoint the unauthorised entities or individuals nor in the promotion of NSL shares to potential investors.
- 6 At least 1,262 prospective investors were contacted by a number of the share fraud operators. Of this number, at least 433 (from various jurisdictions) paid monies to the client bank accounts, operated by SRLV, in return for NSL shares. From 2004, SRLV opened, managed and operated two client bank accounts for NTL; a primary and secondary account. Both these client bank accounts were named 'SRLV Ref: Natrocell Technologies Ltd' but had different account numbers. The signatories for these accounts were all the partners of SRLV and disbursements from the accounts were made following a set procedure which required the authority of two equity partners of SRLV. SRLV operated these accounts on the instructions of NTL and NSL. The accounts were used as part of the share sales process as payments from investors for shares in NSL were made into these accounts. The proceeds of the accounts were passed on to parties as directed by NTL and NSL.
- 7 Between 30 May 2008 and 31 December 2008 a total of £2,690,119 was credited to the client bank accounts, of which at least £2,566,027 were monies received from investors who purchased shares in NSL. Approximately 80% of the investors were UK residents. In the same period, and on instructions from NSL and NTL, SRLV effected the payment of £2,403,419 from the client accounts to beneficiaries in the UK, Switzerland, Cyprus, Seychelles, Greece, Spain, Turkey, USA, Belgium and South Africa. Significant sums were paid out in relation to the commission earned by the share fraud operators and to the directors of NSL. A relatively small proportion of the proceeds of the share sales appears to have been used for the stated purpose for which the monies were raised.

- 8 SRLV's activities in respect of NSL and NTL stopped on 11 November 2008 when the FSA imposed a requirement on SRLV to cease any activities in respect of the shares of NSL and to preserve the remainder of the proceeds of the sale of shares in their client bank accounts. NSL and NTL went into administration on 24 June 2009 and 17 August 2009 respectively. The proceeds of NTL's client accounts have now been released to the administrators of NSL and NTL for distribution. SRLV cooperated fully during this process.
- 9 On 15 December 2010 the FSA issued a press release concerning this matter which followed a Final Notice issued to Mr Finger on 13 December 2010. The FSA's findings are summarised below.
- 10 Mr L W Finger ACA was throughout the relevant time the managing partner of SRLV and performed the Money Laundering Reporting controlled function. As such, he had responsibility for oversight of the firm's compliance with the FSA's rules on systems and controls to prevent money laundering. SRLV's money laundering procedures during the relevant period were contained in the 'SRLV Professional Procedures Manual' and a Money Laundering Compliance Manual. Mr Finger and some of the other SRLV partners, but not the partner primarily designated to the NSL relationship, attended fraud and money laundering training immediately prior to the relevant period.
- 11 On the instructions of NTL/NSL, SRLV effected payments from the client bank accounts on many occasions to persons and entities that were, on the face of it, unrelated to NSL and NTL or its business. Some of the recipients were offshore entities, with company names that SRLV did not recognise. As these payments were authorised by NSL and NTL, they were consequently viewed by SRLV as relating to NSL and NTL's business. On no fewer than seven instances dating from 4 June 2008 to 11 November 2008 potential investors raised concerns with SRLV regarding the manner of the promotion of NSL shares by overseas entities. These concerns included the purported overseas location of the share fraud operators, reference to their unauthorised status and that they may be share fraud operators. There were also concerns raised over the sales tactics used by the share fraud operators. On at least two instances, Mr Finger was directly notified of investors' concerns.
- 12 Mr Finger also discussed issues surrounding the sale of NSL shares with the relationship partner and was informed that matters had been raised with NTL/NSL. Mr Finger was therefore aware of investors' concerns about the status of the share fraud operators. It was Mr Finger's responsibility to consider the risk of money laundering when faced with a set of unusual and suspicious transactions. By failing to recognise the need to consider whether the transactions were suspicious and required reporting, Mr Finger considerably weakened SRLV's processes for identifying and mitigating money laundering risks and demonstrated a lack of due skill, care and diligence in performing his controlled function.
- 13 No Suspicious Activity Reports (SARs) were submitted to the Serious and Organised Crime Agency in relation to the NSL transactions during the relevant period. It was not until after the FSA investigation began that SRLV submitted a SAR. Mr Finger stated he did this solely in response to the FSA's interest in the matter. The FSA in its final decision concluded that, in his role as Money Laundering Reporting Officer, Mr Finger failed to exercise due skill, care and diligence in managing the business of SRLV and failed to take reasonable steps to ensure that the Anti-Money Laundering processes at SRLV complied with the relevant requirements and standards of the regulatory system. In particular, Mr Finger failed to:
- i. identify the potentially suspicious nature of multiple payments effected by SRLV despite there being clear indicators;

- ii. undertake adequate assessment as to whether the activities could constitute any sort of suspicious activity; and
- iii. properly consider his responsibilities in relation to the activity and report it to the necessary authorities on a timely basis.

14 The FSA considered these failings to be particularly serious because:

- Investors' funds of at least £2,566,027 were generated as a result of the unauthorised sale of shares and were paid into the client bank accounts operated by SRLV. Most of the funds were then paid out to various third parties. Investors were therefore exposed to the risk of financial detriment as a substantial amount of the funds raised through share sales was unlikely to have been realised or used for the benefit of NSL, although Mr Finger did not recognise this; and
- While these events continued, investors may have gained comfort buying shares in NSL, given the involvement of SRLV, a firm regulated by the FSA.

15 The FSA have prohibited Mr Finger from the role of Money Laundering Officer going forward and also imposed a financial penalty on him of £35,000.

### **Conclusions and reasons for decision**

16 The tribunal found the complaint proven on the defendant's own admission.

17 The FSA concluded that Mr Finger, in his role as Money Laundering Reporting Officer had fallen below the minimum regulatory standards in terms of his competence. In this regard, the FSA concluded that Mr Finger was aware that payments from the client bank accounts for NTL were being made to recipients who represented a high risk in terms of money laundering, as they were unrecognised corporate vehicles based in offshore jurisdictions. Further, despite the warning signs available to him of possible financial irregularities by the share fraud operators, Mr Finger failed to act or respond appropriately. Mr Finger's failure to respond to indicators of unusual activity during the relevant period and his approval of suspicious transactions exposed UK consumers to severe risk of loss, and threatened confidence in the financial system.

### **Matters relevant to sentencing**

18 Mr Finger argued that he and the firm took comfort from the visit and telephone calls he had received from the FSA and the fact that these had prompted no requests for further action on their part. The tribunal took the view that this was a neutral point in relation to sentencing as this argument cut both ways. Whilst it may have given the firm some comfort, it could reasonably be said that the FSA's involvement ought to have put the firm on notice that it needed to heighten its scrutiny of the propriety of its client's affairs.

19 In mitigation, Mr Finger's representative, commented that Mr Finger's culpability was based on a failure to do something, rather than active positive involvement in the share fraud – he and the firm had acted recklessly, not deliberately and there was no suggestion of dishonesty; Mr Finger and the firm had not made significant financial gain; Mr Finger and the firm had cooperated fully with the FSA and the police; the cost to Mr Finger in terms of the fine imposed by the FSA had been substantial

20 It was also argued that concerns had been raised with the client partner and reliance placed upon his assurances that matters were being dealt with. The tribunal did not accept

this as mitigation however as, in its view, given his particular role as Money Laundering Officer, he should have done more and not relied upon his partner's assurances alone.

- 21 On the aggravating side, the tribunal noted the very significant amounts of loss to the public and that this sort of 'boiler room' fraud perpetrated on the public was a matter of high public concern.
- 22 The tribunal considered this a very serious matter. For a chartered accountant to be associated with a 'boiler room' fraud of this nature would unquestionably undermine the confidence the public hold in the profession. The defendant's failings had serious consequences and he had fallen well below the standards expected of chartered accountants.

### **Sentencing Order**

- 23 The tribunal took into account its *Guidance on Sentencing* and imposed the following sanction:
- a) severe reprimand; and
  - b) costs of £2350
- 24 The tribunal decided not to impose a fine in light of the financial penalty already imposed by the FSA.

### **Decision on publicity**

- 25 Publicity with names

<b>Chairman</b>	<b>Richard Lea FCA</b>
<b>Accountant Member</b>	<b>David Kaye FCA</b>
<b>Lay Member</b>	<b>Richard Woodman</b>
<b>Legal Assessor</b>	<b>Melanie Carter</b>

**D6877**

**8 Sedley Richard Laurance Vouters (SRLV) of 89 New Bond Street, London, W1S 1DA**

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 November 2011**

**Type of Member** Firm

**Terms of complaint**

The complaint is that SRLV is liable to disciplinary action under Disciplinary Bye-law 5(1)(a):

“...in the course of carrying out professional work or otherwise it has committed any act or default likely to bring discredit on itself, the Institute or the profession of accountancy.”

because the firm has

On 13 December 2010 SRLV was the subject of an adverse finding by the Financial Services Authority in respect of its conduct, in that by failing to conduct its business with integrity and to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems, it had breached the FSA’s Principles for Businesses 1 and 3.

**Hearing date**

16 November 2011

**Previous hearing date(s)**

None

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order**

a) severe reprimand; and

b) costs of £2400

## Procedural matters and findings

<b>Parties present</b>	Mark Voulters on behalf of SRLV The Investigation Committee
<b>Represented</b>	Bridget Lucas instructed by Watson Farley & Williams on behalf of the defendant Fin O’Fathaigh on behalf of the IC
<b>Hearing in public or private</b>	The hearing was in public  An application had been made on 28 September 2011 for the hearing to be in private. This had been refused on the basis that there were no exceptional circumstances in this case to override the normal rule that, in the public interest, hearings were to be held in public
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the Investigation Committee’s (IC’s) bundle together with documents provided by the defendant
<b>Findings on preliminary matters</b>	The tribunal accepted the application of the firm to hear this matter at the same time as the case against Mr Finger

## The Investigation Committee’s (IC’s) case

1 The IC relied in this case upon Disciplinary Bye-law 7(2) which provides:

*“The fact that a member, member firm or provisional member*

*a) has been the subject of an adverse finding (not set aside on appeal or otherwise) in respect of his conduct, being a finding in proceedings before a body which is for the time being listed in paragraph 5 or before a regulatory body performing its functions under the Financial Services Act 1986, the Financial Services and Markets Act 2000, the Insolvency Act 1986 or the Companies Act 1989; or*

*b) has had a disqualification order made against him .....,*

*shall, for the purposes of these bye-laws, be conclusive evidence of the commission by him of such an act or default as is mentioned in bye-law 4.1(a) or 5(1)(a) as the case may be.”*

2 Thus, ICAEW Disciplinary Bye-laws provide that an adverse finding by a body such as the Financial Services Authority (“FSA”) is conclusive evidence of the commission by the firm of an act that is likely to bring discredit upon itself, the ICAEW or the profession.

## Issues of fact and law

- 3 In a Final Notice issued by the FSA to SRLV on 13 December 2010, the FSA concluded that SRLV had breached the FSA's Principles for Businesses (PRIN) 1 and 3. SRLV breached PRIN 1 by acting recklessly and therefore failing to conduct its business with integrity, and PRIN 3 by failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. The FSA have undertaken extensive enquiries regarding the role of SRLV and its partners in the sale of shares, in one of the firm's clients, to the public. The facts recorded in this decision are based on the FSA's findings.
- 4 In or around May 2008, SRLV was engaged by one of its existing clients, Natrocell Shareholders Limited (NSL), to assist with fund raising by providing company secretarial and registration services and by receiving and dispersing monies through the firm's existing client account. NSL was formed as a parent company. It had no operational activities and was the holding company of its wholly owned subsidiary, Natrocell Technologies Limited (NTL). NTL was concerned with developing, testing, manufacturing and making preliminary sales of its rodenticide products. NTL had been a client of SRLV for a number of years. SRLV viewed NTL as a legitimate business with existing products and distribution contracts.
- 5 In May 2008, NSL embarked on a fund raising exercise, purportedly with the intention of raising up to £5 million from the issue of shares in NSL to enable NTL to develop its business. To assist with the fund raising exercise, NSL engaged the services of other entities and individuals to promote, offer for sale and sell shares in NSL to UK and other investors. These entities were purportedly based overseas and were not authorised by the FSA, nor were they, to the FSA's knowledge, authorised in the respective jurisdictions where they were purportedly based. The entities were share fraud operators or 'boiler rooms' who were to be paid 60% of the value of the share sales they generated by way of commission. SRLV was aware of the level of commission but was not involved in the decision to appoint the unauthorised entities or individuals nor in the promotion of NSL shares to potential investors.
- 6 At least 1,262 prospective investors were contacted by a number of the share fraud operators. Of this number, at least 433 (from various jurisdictions) paid monies to the client bank accounts, operated by SRLV, in return for NSL shares. From 2004, SRLV opened, managed and operated two client bank accounts for NTL; a primary and secondary account. Both these client bank accounts were named 'SRLV Ref: Natrocell Technologies Ltd' but had different account numbers. The signatories for these accounts were all the partners of SRLV and disbursements from the accounts were made following a set procedure which required the authority of two equity partners of SRLV.
- 7 SRLV operated these accounts on the instructions of NTL and NSL. The accounts were used as part of the share sales process as payments from investors for shares in NSL were made into these accounts. The proceeds of the accounts were passed on to parties as directed by NTL and NSL. Between 30 May 2008 and 31 December 2008 a total of £2,690,119 was credited to the client bank accounts, of which at least £2,566,027 were monies received from investors who purchased shares in NSL. Approximately 80% of the investors were UK residents.
- 8 In the same period, and on instructions from NSL and NTL, SRLV effected the payment of £2,403,419 from the client accounts to beneficiaries in the UK, Switzerland, Cyprus, Seychelles, Greece, Spain, Turkey, USA, Belgium and South Africa. Significant sums were paid out in relation to the commission earned by the share fraud operators and to the

directors of NSL. A relatively small proportion of the proceeds of the share sales appears to have been used for the stated purpose for which the monies were raised.

9 SRLV's activities in respect of NSL and NTL stopped on 11 November 2008 when the FSA imposed a requirement on SRLV to cease any activities in respect of the shares of NSL and to preserve the remainder of the proceeds of the sale of shares in their client bank accounts. NSL and NTL went into administration on 24 June 2009 and 17 August 2009 respectively. The proceeds of NTL's client account have now been released to the administrators of NSL and NTL for distribution. SRLV cooperated fully during this process.

10 On 15 December 2010 the FSA issued a press release concerning the matter which followed a Final Notice issued to SRLV on 13 December 2010. The FSA's findings are summarised below:

- SRLV is a partnership of chartered accountants which is an 'authorised professional firm' under the Financial Services and Markets 2000 (the Act). It is authorised under the Act in relation to regulated activities. SRLV has a number of permissions to conduct regulated activities as an authorised professional firm; however, these are subject to a number of material restrictions.
- In or around May 2008, SRLV was engaged by one of its existing clients, NSL, to assist with fund raising by providing company secretarial and registration services and by receiving and dispersing monies through its existing client bank accounts.
- SRLV operated these client bank accounts on the instructions of NTL and NSL. They were used as part of the process of the sale of shares by share fraud operators, as payment for shares were made into these accounts.
- SRLV, through the relationship partner, was made aware by NSL that the entities involved in promoting and selling the shares were based overseas and that they were taking 60% of the monies raised from investors as commission.
- On 28 July 2008, SRLV received the first of a number of emails from investors questioning the authorisation status of the overseas entities. On 29 September 2008, a potential investor wrote to NSL attaching a copy of the FSA's list of 'unauthorised overseas firms operating in the UK' published on the FSA website. The potential investor had marked one of the names as being the same as that from which he had received contact concerning the purchase of shares in NSL.
- SRLV was aware of the names of some of the overseas entities promoting and selling the shares and that these firms appeared on a list of unauthorised firms produced by the FSA. It was also aware that some of these entities corresponded using personal internet based email accounts hosted by gmail and hotmail. SRLV did not appreciate the significance of this as a potential indicator of the entities' lack of corporate or legal substance.
- SRLV was also aware of calls by investors about the cold calling and pressurised sales tactics employed by the share fraud operators and adverse press reports relating to some of the share fraud operators.
- On occasions SRLV, through the relationship partner, played a role by liaising with some investors to explain the remit and involvement of SRLV. Although SRLV did not seek to provide legitimacy to the sale of NSL shares, it should have known that these explanations may have reassured potential investors about the legitimacy of

the scheme in a manner which could be taken as implying that their funds would be safe.

- 11 As a consequence of these findings, the FSA concluded that SRLV had breached the FSA's Principle for Business 1 by acting recklessly and thereby failing to act with integrity. Money Laundering Regulations place a general obligation on firms to have appropriate systems and controls to forestall and prevent money laundering. They also require that appropriate measures are taken to make all employees aware of their obligations with regard to reporting suspicious transactions.
- 12 In addition, the manner in which SRLV operated the two client bank accounts indicated that SRLV did not have sufficient regard to:
  - customer, product and activity profiles;
  - the nature of the recipient and distribution channels; and
  - the complexity and volume of transactions.
- 13 SRLV should have been aware from the profile of a number of the recipients of monies from the client accounts represented a high risk in terms of money laundering as they are corporate vehicles incorporated in offshore jurisdictions, several of which may not have had anti money laundering controls that are equivalent to those operating in the UK.
- 14 These factors indicate that SRLV did not do any proper risk assessment given the nature of the investment, marketing strategy, type of investor targeted, and the destination of the funds that were generated from share sales. Such an assessment is likely to have identified concerns that would have prompted SRLV to take steps, such as the Submission of Suspicious Activity Reports. No Suspicious Activity Reports in relation to the sale of NSL shares were submitted prior to 11 November 2008. As a consequence of its findings, the FSA concluded that SRLV had breached the FSA's Principle for Business 3 by failing to take reasonable care to organise its affairs responsibly and effectively with adequate risk management controls.
- 15 The FSA imposed a financial penalty of £163,140 on SRLV but did not revoke the firm's investment registration.

## **Conclusions and reasons for decision**

- 16 The tribunal found the complaint proven on the defendant's own admission.
- 17 Despite the warning signs of possible financial crime by share fraud operators, the firm failed to act or respond appropriately. Rather than accepting its own responsibility to counter the risk of financial crime by the share fraud operators, it recklessly, through its relationship partner, sought to place these responsibilities on NTL and NSL. Consequently, after relying on the relationship partner to raise and resolve matters with NTL and NSL, SRLV paid insufficient attention to its responsibilities to deal with the alerts appropriately and continued the arrangement and the disbursement of monies to the share fraud operators and their associates.
- 18 Further, SRLV did not take reasonable steps to organise and control its affairs responsibly and efficiently, with adequate risk management systems for countering the risk of becoming involved in financial crime. SRLV failed to put in place and operate systems in order to properly assess the risks to which it was exposed. The profile of a number of the recipients of monies from the client bank accounts operated and managed by SRLV represented a

high risk in terms of money laundering. They were company vehicles incorporated in offshore jurisdictions with bank accounts in jurisdictions, which may not have anti money laundering controls that are equivalent to those operating in the UK. SRLV failed properly to consider the indicators of share fraud activity, namely, that the entities concerned were unauthorised, based overseas, utilised non-corporate email accounts and employed inappropriate sales tactics and SRLV failed to report the activity or respond appropriately.

- 19 The tribunal considered this a very serious matter. For a chartered accountancy firm to be associated with a 'boiler room' fraud of this nature would unquestionably undermine the confidence the public hold in the profession. The defendant's failings had serious consequences and the firm had fallen well below the standards expected of chartered accountants.

### **Matters relevant to sentencing**

- 20 SRLV have argued that they took comfort from the visit received and telephone calls its Money Laundering Reporting Officer, Mr Finger, had received from the FSA and the fact that these had prompted no requests for further action on their part. The tribunal took the view that this was a neutral point in relation to sentencing as this argument cuts both ways. Whilst it may have given the firm some comfort that the FSA did not investigate further or require any further action at that time, it could reasonably be said that the FSA's involvement ought to have put the firm on notice that it needed to heighten its scrutiny of the propriety of its client's affairs.
- 21 In mitigation SRLV commented that their culpability was based on a failure to do something, rather than active positive involvement in the share fraud – they had acted recklessly, not deliberately and there was no suggestion of dishonesty; the firm had not made significant financial gain; the firm cooperated fully with the FSA and the police; the cost to the firm has been enormous both in terms of fines imposed by the FSA and the legal fees incurred.
- 22 In respect of the firm in particular, the fines that had already been imposed by the FSA, were considered by the tribunal. Finally, the firm produced testimonials from clients attesting its good reputation.
- 23 It was also argued that concerns had been raised with the client partner and reliance placed upon his assurances that matters were being dealt with. The tribunal did not accept this as mitigation however as, in its view, the firm should have done more and not relied upon this partner's assurances alone.
- 24 On the aggravating side, the tribunal noted the very significant amounts of loss to the public. The firm had a disciplinary record, albeit on dissimilar matters (they related to audit matters). The firm had entered into consent orders dated 8 May 2001 and 8 November 2011, both imposing severely reprimands and fines, respectively of £4,000 and £10,000. The tribunal disregarded the first sanction as it was too long ago to be relevant.
- 25 The tribunal considered whether the most serious sanction in the case of a member firm, prohibition from using the term "chartered accountants," was justified. The fact that the firm had very recently been severely reprimanded was a seriously aggravating factor, as was the scale of the underlying fraud and the loss to the public. However, given the mitigation put forward by the representative, the tribunal decided that the appropriate sanction was a severe reprimand.

### **Sentencing Order**

26 The tribunal took into account its *Guidance on Sentencing* and imposed the following sanction:

a) severe reprimand; and

b) costs of £2400

27 The tribunal decided not to impose a fine in light of the financial penalty already imposed by the FSA.

### **Decision on publicity**

28 Publicity with names

**Chairman**                      **Richard Lea FCA**

**Accountant Member**        **David Kaye FCA**

**Lay Member**                 **Richard Woodman**

**D6878**

## INVESTIGATION COMMITTEE CONSENT ORDERS

### 9 Mr A Merrett FCA

Consent order made on 4 January 2012

With the agreement of Mr A Merrett FCA of 5 Eastcourt, Salisbury Road, Netheravon, Salisbury, SP4 9EE, the Investigation Committee made an order that the member be reprimanded, fined £1,000 and pay costs of £930 with respect to a complaint that:

Between 1 February 2003 and 26 May 2011 Mr A J Merrett FCA engaged in public practice through X without being in possession of a practising certificate, contrary to ICAEW's Principal Bye-law 51(a).

**D6853**

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### 10 Ms D Bray ACA

Consent order made on 4 January 2012

With the agreement of Ms D Bray ACA of 110 Whitchurch Road, Cardiff, CF14 3LY, the Investigation Committee made an order that the member be reprimanded, and pay costs of £1,246 with respect to a complaint that:

Ms Bray was a director of X Limited, a company engaged in public practice, which had an administration order made against it on grounds of insolvency on 3 March 2011.

**D6854**

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### 11 Mr A Baker ACA

Consent order made on 5 January 2012

With the agreement of Mr A Baker ACA of 493a Caerphilly Road, Rhiwbina, Cardiff, CF14 4SN, the Investigation Committee made an order that the member be severely reprimanded, fined £2,000 and pay costs of £1,005 with respect to a complaint that:

- 1 On 30 June 2010, at Cardiff County Court, Mr A P Baker ACA was disqualified under Section 6 of the Company Directors Disqualification Act 1986 for a period of 4 years.
- 2 Mr A P Baker ACA was a director of a company, A P Baker & Co Limited, engaged in public practice that, on 2 April 2008, was the subject of a winding up order under the provisions of the Insolvency Act 1986.

**D6860**

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## 12 Bevan & Buckland

Consent order made on 5 January 2012

With the agreement of Bevan & Buckland of Langdon House, Langdon Road, SA1 Swansea Waterfront, Swansea, SA1 8QY, the Investigation Committee made an order that the firm be reprimanded, fined £2,000 and ordered to pay costs of £1,908 with respect to a complaint that:

- 1 Bevan & Buckland prepared the financial statements of X Limited for the year ended 30 September 2008 which were filed on 31 March 2009, but failed to advise the directors that the company did not meet the conditions for exemption from audit under section 249 of the Companies Act 1985 as its gross assets exceeded the audit exemption threshold of £2.8m.
- 2 Bevan & Buckland prepared the financial statements of X Limited for the year ended 30 September 2009, which were filed on 15 May 2010, but failed to identify that the company did not meet the conditions for exemption from audit under section 477 of the Companies Act 2006 as:
  - i its gross assets exceeded £3.26m
  - ii the company did not qualify as a small company.

**D6857**

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## 13 Mr D Duffy

Consent order made on 5 January 2012

With the agreement of Mr D Duffy of 15 Griffith Park, Londonderry, BT48 8PE, the Investigation Committee made an order that the member be reprimanded, fined £2,000 and pay costs of £1,517 with respect to a complaint that:

Between 1 January 2008 and 5 August 2011 Mr D J Duffy engaged in public practice contrary to regulation 18 of the Learning and Professional Development Regulations.

**D6855**

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## 14 Mr G Roberts ACA

Consent order made on 5 January 2012

With the agreement of Mr G Roberts ACA of Watergate House, 85 Watergate Street, Chester, CH1 2LF, the Investigation Committee made an order that the member be reprimanded, fined £1,000 and pay costs of £1,130 with respect to a complaint that:

Between 10 October 2008 and 19 July 2011 Mr G Roberts ACA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51(a).

**D6856**

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## REGULATORY DECISIONS

### AUDIT REGISTRATION COMMITTEE

#### **15 King Morter Proud & Co**

Regulatory order made on 6 December 2011

King Morter Proud & Co, King's Arms Vaults, The Watton, Brecon, Powys, LD3 7EF, has agreed to pay a regulatory penalty of £2,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of a condition and restriction imposed under Audit Regulation 7.01.

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**D6867**

#### **16 Hayward Wright Ltd**

Regulatory order made on 6 December 2011

Hayward Wright Ltd, Prospect House, Church Green West, Redditch, Worcestershire, B97 4BD, has agreed to pay a regulatory penalty of £3,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 6.06, 3.20 and 2.03(a) in that the firm (i) incorrectly completed its 2011 annual return; (ii) failed to conduct an Audit Compliance Review; and (iii) failed to ensure a non-member principal held audit affiliate status between 1 November 2010 and 4 November 2011.

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**D6868**

#### **17 Drummonds**

Regulatory order made on 6 December 2011

The registration as company auditor of Drummonds, Chartered Accountants, Heritage House, 235 Main Street, Gibraltar was withdrawn on 13 January 2012 under audit regulation 7.03(h) of the Audit Regulations and Guidance 2008 for failure to comply with the requirements of the audit regulations.

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**D6869**

#### **18 S Nunn & Co Limited**

Regulatory order made on 6 December 2011

The registration as company auditor of S Nunn + Co Limited, Chartered Accountants, Unit 2, Guards Avenue, The Village, Caterham on the Hill, Surrey CR3 5XL, was withdrawn on 25 January 2012 under audit regulations 7.03(g) and (h) for failure to comply with the requirements of the audit regulations.

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**D6870**