



## DISCIPLINARY ORDERS AND REGULATORY DECISIONS

Date published: 7 December 2011

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## DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

### 1. Michael Colin Clark FCA

The tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 13 September 2011

**Location of Member** Canterbury

**Type of Member** Member

#### 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

Between 13 March 2001 and January 2010 Mr M C Clark whilst Financial Director of SBS Worldwide Limited misappropriated £1,012,669 from his employer.

**Hearing date** 13 September 2011

**Previous hearing date(s)** None

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

**Complaint found proved** Yes on the defendant’s own admission

**All heads of complaint proven** Yes

#### Sentencing order

Exclusion

## Procedural matters and findings

<b>Parties present</b>	The defendant was not present  The Investigation Committee
<b>Represented</b>	The Investigation Committee was represented by Mr Fin O’Fathaigh of the ICAEW
<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 bundle together with documentation in mitigation provided by the defendant
<b>Findings on preliminary applications</b>	The defendant was not present and the Tribunal, being satisfied as to service, decided to proceed in his absence

## Issues of fact

1. Mr Clark was employed as a company finance director for 14 years. Early in 2010, the company became aware of some irregularities surrounding the use of company air miles and engaged BDO LLP to assist with the forensic investigation of the company’s financial records. BDO LLP produced a draft report dated 8 April 2010 with detailed supporting appendices. They discovered that Mr Clark had perpetrated a fraud of multiple layers and methods. The report states on page 1 that ‘Michael Clark withdrew funds from the company’s UK and US bank accounts and paid his own personal expenses, each time using different payment methods and using different nominal ledger accounts. He uses various methods to hide the fraud, for example by using other employee logins into the accounting system and posting journals which moved the transactions around the accounting ledgers multiple times’.
2. Following the conclusion of these investigations and the return of £750,000 to the company by Mr Clark, BDO LLP reported the matter to ICAEW. The draft report prepared by BDO LLP identified and verified to supporting documentation that Mr Clark had misappropriated monies totalling £1,012,669.16 in a variety of different ways and hidden through several nominal accounts. It also identifies a potential further £64,339.68 which has not yet been verified to supporting documentation. The report states that Mr Clark used the following methods to misappropriate the corresponding amounts:
  - Payroll £303,054.94;
  - Pension £64,313.16;
  - 2131 account (this appears to be an employee expenses control account) £141,183.23;
  - Duplicate payments account £43,643.97;
  - Cheque payments to credit cards £330,446.10;
  - Cheque payments to ‘M C Clark’ £67,727.19; and
  - US\$ transfers £62,300.57.
3. Following a review of the report the complaint wording was amended slightly and Mr Clark was informed of this in a letter dated 14 February 2011.

## Conclusions and Reasons for Decision

4. The Tribunal found the complaint proven on the defendant's own admission.
5. Mr Clark has perpetrated a complex and lengthy fraud against his employer which has led to the loss of at least £1,012,669 to his employer.
6. Mr Clark is in breach of Disciplinary Bye-law 4(1)(a), in that he has, in the course of carrying out professional work or otherwise, committed an act or default likely to bring discredit on himself, the Institute or the profession of accountancy.

### **Matters relevant to sentencing**

7. Mr Clark had stated during the investigation that he began taking monies because shares in the company were promised to him approximately 11 years ago which were not provided and Mr Clark felt aggrieved;
  - Mr Clark stated that he did not start to take the monies until a couple of years later when he was suffering from depression and he saw the other directors getting their larger payments and bonuses;
  - Mr Clark accepted that these were criminal actions;
  - Mr Clark did not know how much he had taken over the years and he had not kept any records;
  - Mr Clark admits in this that he has taken monies from the company but thought that the amount was around £200,000;
  - Mr Clark stated that he was still suffering from depression.
8. Mr Clark did not have any previous disciplinary record.
9. Whilst appreciating that Mr Clark has repaid £750,000 of the monies taken, he was in a position of trust and repeatedly abused this trust throughout the last 9 years of his employment. This conduct is wholly contrary to the high standards maintained by the profession of chartered accountancy and significantly undermines the confidence held by the public in the profession.
10. Mr Clark is currently serving a custodial sentence and the Tribunal was satisfied that he does not now have the financial means to pay a fine or the costs of the Investigation Committee.

### **Sentencing order**

11. The Tribunal took into account its Sentencing Guidance and decided that no lesser sanction than exclusion was warranted.

### **Decision on publicity**

12. Publicity with names.

13. Although not part of the Sentencing order, the Tribunal recommended that no application for re-admission to membership be entertained by the ICAEW within 10 years of the date of this Order.

**Chairman (Lay Member)** Mr Paul Brooks

**Accountant Member** Mr Sohail Choudhry ACA

**Accountant Member** Mr Ian Walker FCA

**Legal Assessor** Ms Melanie Carter

## 2. Mr Peter Cushion BA ACA

of HMP Liverpool, 69 Hornby Road, Walton, Liverpool L9 3DF

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 13 September 2011**

**Type of Member** Member

### **Terms of complaint**

The complaint is that Peter Cushion ACA is liable to disciplinary action under Disciplinary Bye-law 4(1)(a):

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

because:

Between 9 June 2005 and 25 August 2010 Mr P Cushion misappropriated £1,331,574.83 from a company.

**Hearing date** 13 September 2011

**Previous hearing date(s)** None

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

**Complaint found proved** Yes

### **Sentencing order**

Exclusion

## **Procedural matters and findings**

<b>Parties present</b>	The defendant was not present as he is currently in prison.  The Investigation Committee
<b>Represented</b>	Mr Cushion was not represented  The Investigation Committee was represented by Mr O’Fathaigh of the ICAEW
<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 bundle together with documents in mitigation provided by the defendant
<b>Findings on preliminary matters</b>	The tribunal, being satisfied as to service, decided to proceed in the defendant’s absence  The tribunal decided to admit in evidence a certificate of criminal conviction

## **Issues of fact**

11. Mr Cushion was employed by a company as a financial controller until 27 August 2010 when he was suspended and subsequently dismissed on the discovery of a significant fraud perpetrated by him. At some time during August 2010, Mr Cushion left a transaction on the BACS machine which appeared suspicious and triggered an investigation which led to the detection of the fraud.
12. The fraud was jointly investigated by the company and its auditors and it was discovered that Mr Cushion had stolen £1,331,274.83 from the company from 29 July 2005 to 25 August 2010 split over the years as follows:
  - Year ended 31 January 2006 £518,627.48;
  - Year ended 31 January 2007 £198,228.58;
  - Year ended 31 January 2008 £143,003.11;
  - Year ended 31 January 2009 £171,220.84;
  - Year ended 31 January 2010 £225,225.90; and
  - Year ended 31 January 2011 £74,968.92.
13. On 6 July 2011, Mr Cushion was convicted at the Crown Court in Liverpool of theft and sentenced to 42 months imprisonment.

## **Conclusions and reasons for decision**

14. The Tribunal found the complaint proven. Disciplinary Bye-law 7(1) provides that the fact that a member has pleaded guilty to or been convicted of an indictable offence is conclusive evidence of the commission by that member of an act or default as is mentioned in Bye-Law 4(1)(a).

15. Mr Cushion has perpetuated a lengthy fraud which has led to a significant financial loss to his employer. Mr Cushion was in a position of trust and has repeatedly abused this throughout the last 5 years of his employment.
16. Accordingly, Peter Cushion ACA is in breach of Disciplinary Bye-law 4(1)(a) as in the course of carrying out professional work or otherwise he has committed an act or default likely to bring discredit on himself, the Institute and the profession of accountancy.

### **Matters relevant to sentencing**

17. Mr Cushion stated that the monies had been used for gambling and that there was very little money left. He had not repaid any monies, but he had been cooperative and had provided a charge on his beneficial interest in a property which may lead to the recovery of £40,000.
18. He did not have a previous disciplinary record.
19. This matter was however aggravated by it being theft from an employer. Given the amounts involved and the length of time this fraud had continued, this had been a gross breach of trust.
20. This conduct is wholly contrary to the high standards maintained by the profession of chartered accountancy and significantly undermines the confidence held by the public in the profession.
21. Mr Cushion is currently serving a 42 month custodial sentence and the Tribunal was satisfied that he does not now have the financial means to pay a fine or the costs of the Investigation Committee.

### **Sentencing order**

22. The Tribunal took into account its Sentencing Guidance and decided that no lesser sanction than exclusion was warranted.

### **Decision on publicity**

23. Publicity with names.
24. Although not part of the Sentencing order, the Tribunal recommended that no application for re-admission to membership be entertained by the ICAEW within 10 years of the date of this order.

**Mr Paul Brooks (Chairman)**  
**Mr Sohail Choudhry ACA (Accountant Member )**  
**Mr Ian Walker FCA (Accountant Member )**  
**Ms Melanie Carter (Legal Assessor)**

### 3. Joe Lip Poh Seet FCA

of Sigma Partnership, 45-47 Cornhill, London, EC3V 3PF

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 7 September 2011**

**Type of Member** Member

#### **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**

Mr Seet acted contrary to Section 100.4 (Fundamental Principles) of the Code of Ethics with specific reference to Integrity and Professional Behaviour in that:

- on 28 June 2010 Mr Seet employed unprofessional and abusive behaviour in a telephone conference call with Mr 'A', Mr 'B', Mr 'C' and Mrs 'D' stating, of 'X' partners, the 'business was bullshit' and 'a joke'; and
- on 28 June 2010 Mr Seet employed unprofessional and threatening behaviour in an email to Mr 'A' stating that his firm 'will be writing to the Inland Revenue and the FSA to express our confidential views' when there no justifiable grounds to do so.

<b>Hearing date</b>	7 September 2011
<b>Previous hearing date(s)</b>	None
<b>Pre-hearing review or final hearing</b>	Final Hearing
<b>Complaint found proved</b>	Yes
<b>All heads of complaint proven</b>	Yes
<b>Sentencing order</b>	Reprimand; fine of £1,000; costs of £3,644

## **Procedural matters and findings**

### **Parties present**

Joe Lip Poh Seet FCA

### **Represented**

Nick Brocklesby of SJ Berwin

### **Hearing in public or private**

The hearing was in public

An application was made on 7 September 2011 for part of the hearing or to be in private. The application was refused.

### **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 Investigation Committee's (IC's) bundle together with a bundle of documents handed up by the defendant on the day of the hearing. An application to adduce this evidence out of time was allowed.

### **Findings on preliminary and other interlocutory matters**

An application was made by the defendant at the start of the hearing to adduce documentary evidence out of time. This was unopposed by the IC with rights reserved, and was allowed by the tribunal.

An application was made by the defendant in the morning of the hearing for part of the hearing to be heard in private, namely that part or parts of it where the defendant would give oral answers to any questions either from the IC's representative or the tribunal regarding the second head of complaint. The application was opposed by the IC. This application was refused because (i) the actual reasons for requesting privacy – which necessitated knowing what the defendant was going to say – were not sufficiently clear and precise; (ii) the attempt by the defendant to minimise the risk of breaching a confidentiality agreement with the complainant about which he had already obtained legal advice and appropriate assurances was not in itself a matter of concern to the tribunal; (iii) there was no evidence, or insufficiently persuasive evidence, that the circumstances of this particular case did not outweigh the public interest in holding a public hearing.

An application was made after the sentence was made for publication without name. This was refused. There were no grounds to depart from the usual practice of publishing the unanonymised record of decision.

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

On 28 June 2010, the defendant had a conference call with his firm's client, for whom the firm had been acting for almost five months. It concerned the client's business including the matter of an unpaid invoice for professional services. In particular, it concerned a Turkish national who apparently lacked necessary employment credentials and whom the client had asked be put onto its payroll by the defendant's firm. During the call, the defendant also described the client's business as 'bullshit' and 'a joke'. He adopted a generally threatening and aggressive manner towards them. Shortly after the conference call, and in an email dated 28 June 2010 timed at 10:40, the defendant wrote to the same client in the following terms:

'... just for the record, this email is to confirm that we are standing down immediately and will consider legal action to recover the initial invoice billed to you already as it is very much past due.

Should you wish to, we are prepared to have a follow-up meeting AFTER the invoice is paid together (i)[sic] close off our engagement and to hand over to you payroll and other documents or (ii) to agree a way forward to expedite the FSA authorisation of your firm and the launch of your fund.

Also for the record, we will be writing to the Inland Revenue and the FSA to express our confidential views.'

The remarks made on the telephone were so unprofessional and abusive that they breached the fundamental principles of integrity and professional behaviour. The email, particularly the last sentence of it, amounted to an unwarranted threat to report a client to the tax and regulatory authorities without any justification; as such, that, too, was so unprofessional as to breach the same fundamental principles.

The defendant admitted the first head of complaint – the telephone conversation – and had previously said in correspondence that he regretted using the language he did.

The defendant admitted writing the email, but denied that it was either a threat or was a breach of the Fundamental Principles. Rather, the defendant explained in a letter dated 5 November 2010 to ICAEW that it was written 'informing the client of the measures we felt we might have to take in order to comply with our professional obligations.'

At the hearing, the defendant explained that the email was written (i) with an honest belief that a report to the FSA and HMRC was justified, (ii) to give the client an opportunity to respond and (iii) to put matters right. Thus, it was submitted, the final sentence of the email was justifiable and not a breach of the Fundamental Principles. In any event, the email does not transgress either of the Fundamental Principles, which do not apply to the subject matter of this complaint.

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

It is not in issue that the conference call took place in the morning of 28 June 2010 and that the defendant said that his client's 'business was bullshit' and 'a joke'. The first head of complaint was admitted. It is not in issue that the email of 28 June was written by the defendant and received by the client.

It is not in issue that an approved person (as defined in the Financial Services Act and related legislation) has an obligation to deal with the FSA in an open and cooperative way and must disclose appropriately any information of which the FSA would reasonably expect notice. Neither is it in issue that HMRC has an expectation (evidenced in its 'Tax Evasion Hotline' facility) that members of the public should provide information to it with a view to assisting HMRC in stopping tax evasion.

The issues are:

- (i) the true meaning and construction of the final sentence of the email of 28 June quoted above;
- (ii) whether or not the defendant was justified in writing to the client in the way that he did; and
- (iii) whether or not the sending of the email amounted to unprofessional and threatening behaviour such that it breached the Fundamental Principles of Integrity and Professional Behaviour.

The appropriate standard of proof is the balance of probabilities.

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

1. In February 2010, the defendant's firm began acting for a client which required complex financial services advice. The defendant's firm had been recommended by the client's legal advisers, a firm of City solicitors. A retainer letter was eventually signed on 13 April 2010 and an interim invoice for professional services was rendered on 5 May 2010 in the sum of £5,000 plus VAT.
2. The client required tax advice (among other things) regarding the setting up and launching of an investment fund for infrastructure projects in Iraq. Advice was required on the structuring of the fund as well as the application to the FSA for authorisation to operate and manage the fund. The defendant's firm managed the client's payroll and at some stage the client made a request that a Turkish national be added to it.
3. The relationship with the client was not an easy one. It is plain that the advice required was complex and by 28 June 2010, the invoice of 5 May 2010 had remained unpaid. By the end of June 2010, the defendant was, perhaps understandably, becoming frustrated with his client who was requesting advice but, it seemed, not paying for it.
4. Although the defendant was unable to be precise about timing in his oral evidence, his evidence was he and his firm began to have serious concerns in June 2010 (possibly from the first two weeks of June and certainly before 28 June) about the client using the services of a Turkish national who was, it appeared, not in possession of either a British national insurance number or the necessary valid permits to work in the UK.
5. In an email to ICAEW dated 11 October 2010, the defendant explained that it was this employment issue which was being referred to in his email of 28 June. The 11 October email did not explain, however, why the defendant thought fit to refer to it (albeit implicitly) in his email of 28 June. However, his email to ICAEW dated 5 November was more informative.
6. ICAEW asked what processes or procedures he had engaged to ascertain whether it was appropriate to disclose the matter of the Turkish national to the client. The defendant replied that he and his firm were (i) not under any legal or professional requirement to inform a client who is employing a foreign national not in possession of a work permit that they proposed raising the matter with either the HMRC or the FSA but equally (ii) under no obligation to withhold such information from the client. Rather, 'the issue was discussed and considered by staff and partners in my firm and we formed the view that it would be appropriate to inform FSA/HMRC of the situation and that it would be appropriate to inform [the client] of our intention.' However, the defendant did not explain **why** it was thought appropriate. He further explained that at the time of the email of 28 June, the client knew that using the services of the Turkish national would be in breach of 'FSA, HMRC and other requirements'.
7. When asked by ICAEW why the defendant had threatened to report the client in the email of 28 June, and did not discuss it with the client, the defendant denied that he had used a threat. The final sentence of the email of 28 June was 'no more than informing the client of the measures we felt we might have to take in order to comply with our professional obligations.'
8. In a further email to ICAEW dated 16 November 2010, when asked to confirm whether the client was intending to employ the Turkish national but had not actually done so by 28 June 2010, the defendant explained that he had merely obtained verbal assurances that a proper employment letter would be prepared and signed but had never been received. He explained that it was reasonable for him and his firm to assume that the client was intending to employ the individual but 'as we never received a copy of a bona fide employment letter which is duly accepted and signed up we do not know if the 'intention to employ' was ever formalised. Whether or not and when someone who is not an EU citizen is actually legally employed or not in the absence of a duly accepted and executed

employment contract is likely to be a complex legal matter and this is beyond the scope of our knowledge as accountants.’

9. The defendant told the tribunal at the hearing that he had formed his views about the employment of the Turkish national earlier than 28 June but he gave no satisfactory explanation why he did not tell his client or make his report to the FSA and HMRC at that earlier time.
10. The tribunal finds that at the time the email of 28 June was written, the defendant and his firm did not know whether the Turkish national was employed by the client or not.
11. At the time the complaint was preferred, it appeared that the email of 28 June referred, albeit implicitly, only to the issue of the Turkish national. So much was indicated in the defendant’s correspondence with ICAEW and explains the way in which the IC presented its case at the hearing. This remained the position during the morning session of the hearing. The defendant, on legal advice, did not give evidence in his own defence because, it was explained later at mitigation, it was believed all his evidence was contained in writing (some of which has been referred to above, and is set out in the bundle before the tribunal) and was accepted. Regardless of the merits of that position, the defendant answered questions from the tribunal and from the legal assessor who asked some on the tribunal’s behalf with the chairman’s permission.
12. During his answers, it emerged (as far as the tribunal was aware, for the first time), that the defendant was also referring to something else, and completely different, in his email of 28 June. The defendant explained that he considered that the client’s proposed investment fund would be illegal. He said that the client knew his and his firm’s views on the matter. He explained that the final sentence of the email of 28 June implicitly referred both to the Turkish national and to the illegality of the fund as matters to be reported to the FSA and the HMRC, and the client would have interpreted it in that way. (As the defendant explained at the hearing, the FSA would not be interested in hearing about the Turkish national issue.) The defendant explained that the sentence complained of was written to enable the client to take steps to remedy ‘the deficiencies’ complained of by the defendant and his firm.
13. In the event, the defendant and his firm did not make any report to the FSA or to HMRC at any time. The reasons given both in writing by the defendant and at the hearing were that (i) an FSA report was not necessary since no application to the FSA was made by the client and (ii) an HMRC report was not necessary as the defendant and his firm ceased to act and the obligation fell away as a result. Further, matters later came to his attention to persuade him that a report was not necessary. The defendant did not write to the client to explain that, after all, reports would not be made.
14. In order properly to construe the final sentence of the email of 28 June, it must be given its ordinary English meaning and read in the context in which it appears. The words, on their face, tell the client ‘for the record’ (which the defendant admitted does not refer to any formal record other than the written record of correspondence) that the defendant will be writing to the Inland Revenue and the FSA to express his [and his firm’s] confidential views (whatever they may be). The words in and of themselves, do not contain a threat (although the phrase ‘for the record’ has an air of officious formality); they simply explain what the defendant will do. However, the words are also, in and of themselves, meaningless. They clearly refer to other matters, not least the ‘confidential views’ which are nowhere explained. They have to be interpreted in a broader context.
15. The words refer to two matters: (i) the opinion of the defendant that a Turkish national was being illegally employed by the client and (ii) the opinion of the defendant that the client’s proposed fund would be illegal. The report to the Inland Revenue would have concerned the Turkish national; the report to the FSA would have concerned the proposed illegal fund.

The expression of 'confidential views' would be the expression of the views of the defendant and his firm about each matter.

16. If, as the defendant has asked the tribunal to accept, the words are intended to be 'no more than informing the client of the measures we felt might have to take in order to comply with our professional obligations', this explanation is rejected. The tribunal cannot find such a congenial interpretation from these words. First, the sentence using the indicative tense: it clearly tells the client what is going to happen, not what might have to happen. Second, it does not in any meaningful way explain to a lay client what those measures are and what professional obligations apply. The client is given no precise indication of when the reports will be made. Third, there is no plausible evidence of why (in spite of ICAEW's attempts to find out in its email of 3 November 2010) the defendant thought it '**appropriate** to inform' the client of the intended reports. The explanation offered by the defendant at the hearing that it was to give the client an opportunity to take remedial steps regarding the deficiencies complained of, is rejected because (i) the words offer the client no opportunity at all – it was presented with a *fait accompli*; (ii) there are no deficiencies described in any way so that a client can remedy them and (iii) there is no evidence anywhere of any kind of complaint. The defendant's explanation that there was no need to set out in detail what was wrong, because the client already knew, is not a satisfactory answer. Not only is there no evidence to support such an assertion, but even if there was, the gravity of what the defendant said he would do required more than simply setting out his position in a few words at the end of an email to enable the client properly to understand fully and properly the consequences of what was intended.
17. If it is the defendant's case that the sentence was written as some kind of advice or assistance to the client (even construed in the broadest sense of those words), that is rejected. If an ICAEW chartered accountant, acting in an advisory capacity, has concerns about the legality of what a client is minded to do, he or she should set about advising that client in an appropriate, informed, professional and responsible way. On any view, setting out in an email in which a firm first tells a client that it is standing down immediately and will sue for unpaid fees, then with no explanation and giving no chance to respond, states that it will be reporting the client to the FSA and HMRC, is not advice or assistance of any appropriate professional standard expected of a member of ICAEW.
18. If it is the defendant's case that it had given the client advice on the legality of the launch of the fund, but the client was minded to ignore that advice and proceed in an unlawful fashion, the correct professional conduct was not to write in the terms of the email of 28 June, and in particular its final sentence. In any event, there is no evidence of such advice having been given. There is no evidence as to how the defendant came to the conclusion that the proposed fund or the Turkish national were illegal and were matters to be reported to the authorities; no legal advice was obtained and no advice obtained from the Institute's ethics helpline either. There is no evidence that the defendant took a calm, informed view of his client's position in order to inform his own professional conduct. There ought to have been. The defendant told the tribunal at the hearing that he had formed his views about the fund earlier than 28 June, but he gave no satisfactory explanation why he did not tell his client or make his report to the FSA at that earlier time. There is evidence, which has already been cited and is accepted, that the defendant did not know one way or the other whether the Turkish national was even employed on 28 June.
19. In spite of telling ICAEW in correspondence that he considered it appropriate to tell the client about the reporting to the FSA and HMRC, the defendant has not explained to the tribunal's satisfaction (or at all) why it was **necessary** to write final sentence of the email of 28 June. He has not referred to any legal or professional obligation or practice guideline.
20. Another relevant context of the offending sentence of the email to aid construction is the telephone conversation that immediately preceded the email and the preceding words of the email.

21. The email was written after what is commonly held to be a heated and difficult conversation with the client. It may be that the client was difficult to deal with and fault may lie on both sides, but whatever may have been the case, the defendant called the client's business 'bullshit' and 'a joke'. When the client said it would not pay the defendant's bill, the call abruptly ended with the defendant putting the phone down on the client. The defendant shortly afterwards composed his email which is now complained of.
22. The email tells the client that the firm is standing down and is considering suing for non payment of the invoice which was discussed earlier. He then offers to close off the engagement and hand over all documents (thus terminating the retainer and releasing any lien) OR agreeing new terms of business to expedite FSA authorisation and launch the fund. Whichever option the client takes, it must be conditional on the client paying the outstanding invoice. Finally, the defendant tells the client that he **will be** reporting the client to the HMRC and the FSA.
23. In addition to the reasons already stated, it is also implausible to interpret the final sentence of the email to be 'informing' a client about a professional **obligation** to refer unlawful activities relating to the launch of a fund to the relevant authorities, when the defendant was clearly prepared, upon terms (including payment of a bill), to continue to act for the same client in respect of the launch of same proposed fund.
24. Applying the correct standard of proof and for all the reasons set out above, the tribunal considers that on the balance of probabilities, the proper and true construction of the final sentence of the email of 28 June shows an intention to persuade the client that it would be more beneficial to pay the outstanding invoice than not; if it did pay the invoice, it states the possibility of the defendant and his firm continuing to act would arise and that could mean, it implies, notification to the FSA or the HMRC may no longer be necessary. Alternatively, it is possible to interpret the sentence as an attempt to worry or frighten the client particularly if (as the defendant said) the client would have known what the defendant was referring to. That would seem to be gratuitous. On any view, the sentence cannot be construed as any attempt to help the client or fulfil a professional obligation. The final sentence was written with the self-interest of the defendant in mind, either to secure somehow the chance of the bill being paid or to chastise it from some sense of anger or resentment towards the client.
25. Alternatively, (which the tribunal does not accept) the sentence was not written with such self-interest in mind, it was written in a peevish and aggressive tone, which, given the real gravity of what the defendant wished his client to know he was intending to do, was unprofessional.
26. Alternatively, the tribunal considers (even though it does not accept) that even if the final sentence was intended to inform the client for a purpose unconnected with the client's own interests, then it fell significantly short of any acceptable professional standard in the manner it was done.
27. Whichever construction is applied, the defendant was not justified in writing to his client in the way that he did.
28. The misconduct complained of in this matter plainly breaches the Fundamental Principles of Integrity and Professional Behaviour. As far as Integrity is concerned, the defendant failed to be fair and straightforward with this client when he abused them on the telephone and wrote his email. He breached the Principle of Professional Behaviour by failing to act with appropriate courtesy and consideration towards his client. The tribunal rejects the defendant's submissions that either Fundamental Principle is only intended to apply to cases of members misleading third parties or where public confidence is seriously at risk. The Fundamental Principles apply to all parts of a member's professional (and non-professional) life. It was part of the defendant's case that this matter is less serious than those which are rightly caught by the Fundamental Principles and which breach them. That

is rejected. They do not permit, and should not be construed as permitting, any member from abusing a client, say, on the telephone or in writing. This complaint is a serious one because a member of ICAEW saw fit, for inappropriate reasons, to insult his client on the telephone and then, when the client refused to pay its bill, tell a client that it will report it to HMRC and the FSA for allegedly unlawful behaviour when it did not even know (in the case of the Turkish national) whether he was actually employed or not and without giving the client a chance to explain itself or take advice. If it was not the intention to allow the client to respond or to take advice, it is hard to see the point of telling the client in the first place, unless it is motivated by self-interest. That is, on any view, a serious matter and breaches both Fundamental Principles.

29. Because the defendant admitted the first head of complaint, the tribunal would have found the complaint proved on that alone even if the second head had not been proved. In the event, the tribunal has found each head of complaint proved. The complaint is proved, in any event.

### **Matters relevant to sentencing**

As far as the present complaint is concerned, the tribunal considered the matter to be at the lower end of severity for sentencing purposes, and sought to assist the defendant with that indication before mitigation was made. In the event, the tribunal found no mitigating circumstances, save to note that the defendant admitted the first head of complaint at a relatively early opportunity and, while failing to apologise, expressed regret for his conduct. The tribunal remains of the view that this matter is at the less serious end of the scale for sentencing. The tribunal sees no reason to depart from the Guidance on Sentencing. A reprimand is appropriate, with a fine of £1,000 (broadly, £500 for each head of complaint proved). The tribunal noted that the defendant had a previous disciplinary record. On 20 May 2008, the defendant was reprimanded and fined £1,000 for failing to engage in public practice with a practising certificate and professional indemnity insurance.

<b>Sentencing order</b>	Reprimand
Fine	£1,000
Costs	£3,644
<b>Decision on publicity</b>	Publication with name

**Mr Paul Brooks - Chairman**  
**Mr Kevin Mawer FCA**  
**Mr David Wilton FCA**

**Mr Dominic Spenser Underhill - Legal Assessor**

#### **4. Elizabeth Hilary Tandy ACA**

of Pathways, Crosemere Crescent, Crosemere, Cockshutt, Ellesmere, Shropshire, SY12 0JW

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 14 September 2011**

**Type of Member** Member

#### **Terms of complaint**

The complaint is that Elizabeth Tandy FCA is liable to disciplinary action under Disciplinary Byelaw 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 17 December 2010, Mrs E H Tandy ACA gave an undertaking to the Secretary of State for Business Innovation and Skills in accordance with Section 1A of the Company Directors Disqualification Act 1986 which was accepted on 12 January 2011, that she would not, for a period of five years, be a director of a company nor be concerned in the management of a company or act as an Insolvency Practitioner.

<b>Hearing date</b>	14 September 2011
<b>Previous hearing date</b>	None
<b>Pre-hearing review or final hearing</b>	Yes, Final Hearing
<b>Complaint found proved</b>	Yes
<b>All heads of complaint proven</b>	
<b>Sentencing order</b>	Severe reprimand
<b>Procedural matters and findings</b>	
<b>Parties present</b>	Mrs E L Tandy ACA
<b>Represented</b>	The defendant represented herself
<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 together with a bundle of documents supplied by the defendant.
<b>The Investigation Committee’s (IC’s) case</b>	

The IC's case was that disqualification undertaking given by the defendant under the Company Directors Disqualification Act 1986 is (pursuant to Disciplinary Bye-law 7(2)(b)) conclusive evidence of an act or default likely to bring discredit under Disciplinary bye-law 4(1)(a).

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

There was none. The complaint was found proved on the defendant's own admission.

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

The defendant was asked to give, and gave, an undertaking to the Secretary of State for Business, Innovation and Skills, that she would not be a company director or be concerned with the management of a company or act as an insolvency practitioner for a period of five years. The reason for this undertaking was the failure of two businesses controlled and managed by the defendant. Such an undertaking implies the lacking of a level of financial competence which warrants disciplinary action under the Bye laws of the ICAEW. The complaint was found proved on the defendant's own admission.

### **Matters relevant to sentencing**

The Guidance on Sentencing provides that the starting point for misconduct of this kind is exclusion and a fine. The tribunal have begun at that starting point but have given due weight to a number of persuasive mitigating factors. These include: (i) the defendant's previously clean disciplinary record; (ii) her remorse; (iii) her very difficult personal circumstances prevailing at the time of the matters giving rise to her undertaking, and which have arisen subsequently; (iv) her strong character and professional references; (v) her serious and successful attempts to reverse her misfortunes; (vi) her co-operation with the Insolvency Service.

The tribunal was advised by the legal assessor of the judgment of the Court of Appeal **In re Sevenoaks Stationers (Retail) Limited [1991] Ch 164**. In that case, the Court held that cases of disqualification of a period of two to five years are to be regarded as 'not very serious' within the scale of possible disqualification cases. Thus while, an undertaking under the Company Directors Disqualification Act 1986 is serious misconduct for professional disciplinary purposes, the views of the Court of Appeal should be taken into account when considering sentencing. The ICAEW's Guidance on Sentencing acknowledges the reasoning of the Court of Appeal.

In particular, the tribunal considered that it would not, in these particular circumstances, be proportionate, fair or just to fine the defendant or order her to pay any costs.

### **Sentencing order**

Severe reprimand

### **Decision on publicity**

Publication with name.

**Mr David Wilton FCA**

**Mr Michael Swift FCA**

**Mr Richard Woodman**

**Mr Dominic Spenser Underhill**

## INVESTIGATION COMMITTEE CONSENT ORDERS

### 5. Leonidas Michael ACA

Consent order made on 21 October 2011

With the agreement of Leonidas Michael of 274 Northdown Road, Cliftonville, Margate, CT9 2PT, the Investigation Committee made an order that the member be reprimanded, fined £1,500 and pay costs of £1,055 with respect to a complaint that:

Between 1 November 2005 and 22 June 2011 Mr L Michael ACA engaged in public practice without holding a practising certificate contrary to Principal Bye-law 51a.

**D6821**

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### 6. Caroline Bevan ACA

Consent order made on 24 October 2011

With the agreement of Mrs Caroline Bevan of 18 Cintra Avenue, Reading, RG2 7AU, the Investigation Committee made an order that the member be reprimanded, fined £2,000 and pay costs of £1,380 with respect to a complaint that:

Between 1 January 2008 and 27 June 2011 Mrs C S Bevan ACA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51(a).

**D6822**

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### 7. Mohammad Shaikh FCA

Consent order made on 2 November 2011

With the agreement of Mohammad Shaikh of 174 Canterbury Road, Croydon, CR0 3HE, the Investigation Committee made an order that the member be severely reprimanded, fined £5,000 and pay costs of £3,342 with respect to a complaint that:

Mr M Shaikh FCA, on behalf of Shaikh & Co carried out the audit of the financial statements of the following company in breach of Audit Regulation 3.02, in that the firm should have adopted appropriate safeguards as required by Ethical Standard 4:

- X Limited for the year ended 31 January 2009.

**D6829**

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## 8. Heather Parker ACA

Consent order made on 2 November 2011

With the agreement of Heather Parker of 7 Audley Drive, Warlingham, Surrey, CR6 9AH, 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 1 April 1999 and 30 June 2011 Mrs H E Parker ACA engaged in public practice without holding an ICAEW practising certificate contrary to Principal Bye-law 51a.

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**D6828**

## 9. Iain Stewart BA ACA

Consent order made on 3 November 2011

With the agreement of Iain Stewart of 35 Cambridge Road, Bromley, Kent, BR1 4EB, the Investigation Committee made an order that the member be severely reprimanded, fined £5,000 and pay costs of £1,875 with respect to a complaint that:

Between 21 August 2009 and 24 September 2010, Mr I E Stewart BA ACA issued audit reports in the name of his firm, X in respect of the following accounts, when the firm was not a Registered Auditor:

1. A for the year ended 31 December 2008, audit report dated 23 October 2009
2. A for the year ended 31 December 2009, audit report dated 28 July 2010
3. B Limited for the year ended 31 March 2009, audit report dated 31 August 2010
4. C Limited for the year ended 31 December 2008, audit report dated 9 November 2009
5. C Limited for the year ended 31 December 2009, audit report dated 23 September 2010
6. D Limited for the year ended 31 December 2008, audit report dated 25 September 2009
7. D Limited for the year ended 31 December 2009, audit report dated 24 September 2010
8. E LLP for the period to 30 April 2009, audit report dated 21 August 2009
9. E LLP for the year ended 30 April 2010, audit report dated 25 August 2010
10. F for the year ended 31 July 2009, audit report 20 October 2009

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**D6830**

## **10. No publication of name**

Consent order made on 3 November 2011

With the agreement of a member the Investigation Committee ordered that he pay costs of £330 with respect to a complaint that:

On 21 June 2011 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.

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**D6831**

## **11. Christine Dove FCCA**

Consent order made on 8 November 2011

With the agreement of Christine Dove of i2 Mansfield, Office Suite 2.1, Oakham Business Park, Mansfield, NG18 5BR, the Investigation Committee made an order that the member be reprimanded, fined £2,000 and pay costs of £1,205 with respect to a complaint that:

On 2 November 2010, Miss C Dove FCCA was the subject of an adverse finding in respect of her conduct by the Disciplinary Committee of the Association of Chartered Certified Accountants being a body listed in Disciplinary Bye-law 7(2); in particular, that she had acted contrary to the Fundamental Principle of integrity by reason of deliberately misleading a client in letters dated 28 December 2007 and 27 February 2008.

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**D6833**

## **12. Sedley Richard Laurence Vouters**

Consent order made on 8 November 2011

With the agreement of Sedley Richard Laurence Vouters of 89 New Bond Street, London, W1S 1DA, the Investigation Committee made an order that the firm be severely reprimanded, fined £10,000 and ordered to pay costs of £1,780 with respect to a complaint that:

Sedley Richard Laurence Vouters in breach of an order made by the Audit Registration Committee on 24 February 2010 caused or permitted an audit report dated 21 April 2010 to be issued on behalf of the firm in respect of X plc for the year ended 31 December 2009 without arranging beforehand an external hot file review.

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**D6832**

### 13. Ben Sunderland BA ACA

Consent order made on 18 November 2011

With the agreement of Ben Sunderland of 12 Riverview Business Park, Station Road, Forest Row, East Sussex, RH18 5DW, the Investigation Committee made an order that the member be reprimanded, fined £1,000 and pay costs of £2,500 with respect to a complaint that:

- 1 Between 15 November 2005 and 1 June 2008 Mr B Sunderland BA ACA engaged in public practice without holding a practising certificate, contrary to Regulation 25 of the Learning Professional and Development Regulations.
- 2 Between 2 June 2008 and 31 March 2009 Mr B Sunderland BA ACA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51(a).
- 3 Between 2 June 2008 and 31 March 2009 Mr B Sunderland BA ACA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.

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**D6835**

## Special notice on behalf of ICAS – 23 September 2011

### 14. Eamonn Joseph Rice

Eamonn Joseph Rice, an ICAS member based in Edinburgh, has been expelled from membership of The Institute of Chartered Accountants of Scotland and ordered to pay costs of £5,000 following a hearing of the Appeal Tribunal of The Institute of Chartered Accountants of Scotland.

The Appeal Tribunal dismissed Mr Rice's appeal.

The Discipline Tribunal hearing on 11 May 2011, found Mr Rice guilty of professional misconduct in that he had fraudulently prepared a letter. Thereafter, Mr Rice provided a copy of the fraudulent letter to solicitors acting for his bank in an attempt to have the bank stay court proceedings against him.

Further detail can be found at: <http://tribunals.icas.org.uk/Findings.aspx>

## Regulatory decisions

Audit Registration Committee order – 12 October 2011

### 15. Roger C Oaten, Chartered Accountants

Roger C Oaten, Chartered Accountants, First Floor, 23 Westfield Park, Redland, Bristol BS6 6LT, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of the eligibility requirements of audit regulation 2.03(a) in that the firm appointed a third partner (non-member) on 1 January 2008 for whom audit affiliate status was not applied for until May 2011.

**D6838**

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Insolvency Licensing Committee - 6 October 2011

### 16. Mrs Jean McKay Ellis FCA

Of Duncan Sheard Glass, Castle Chambers, 43 Castle Street, Liverpool L2 9TL

The Insolvency Licensing Committee ordered a regulatory penalty of £1,000 in respect of Mrs Ellis's failure to undertake a compliance review in 2008 and 2009, in accordance with Regulation 3.13 of the Insolvency Licensing Regulations and Guidance Notes.

**D6837**

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