



## DISCIPLINARY ORDERS AND REGULATORY DECISIONS

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# DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. **Eric John Stonham FCA** of 1 Market Avenue, Chichester, West Sussex PO19 1JU

**The tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 4 August 2011**

## **Terms of complaint**

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

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

## **In that**

Mr Stonham in order to recover payment of his pre-appointment fees in respect of him acting as Administrator of R-Bar and Restaurant Limited (‘the company’) improperly advised Mrs King and her daughter Miss King (both directors and employees of that company) in a letter dated 25 April 2007, to pay themselves a bonus to pay those fees, when that proposal would result in those fees being paid by the company, which by virtue of the company being in administration, it was not permitted to do.

## **Hearing date**

4 August 2011

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

17 May 2011

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

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

**All heads of complaint proven**              Yes

## **Sentencing order**

The tribunal ordered that Mr Stonham:

- a) be severely reprimanded
- b) pay a fine of £5,000
- c) pay costs of £7,000

## Procedural matters and findings

<b>Parties present</b>	The Investigation Committee The defendant
<b>Represented</b>	The Investigation Committee was represented by Mr Jowett The defendant was represented by Ms Merchandani, of counsel
<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 documents provided by the defendant

## Findings on preliminary applications

### Issues of fact and law

1. The defendant acted as administrator for a company called The R-Bar & Restaurant Limited ('the company'). The company initially went into administration and then entered a Company Voluntary Arrangement (CVA). It has since ceased to trade. The company operated a bar/restaurant business.
2. The company had fallen into financial difficulties and two, possibly three meetings between the directors and Mr Stonham took place in November 2006. The purpose of the meetings was to discuss the future viability of the company and Mr Stonham advised the directors (who were also the main employees and creditors of the company) that an application for an administration order should be made. A note of the meeting 17 November 2006 (created recently by Mr Stonham on the basis of his notes) stated that:

*"As far as fees for work up to the appointment of the administrator EJS said that there was a school of thought which cast doubt on the previous practice of making them an expense of the liquidation and he would be looking to the directors to underwrite a minimum fee of £2000 plus VAT. Both [directors] said that they had insufficient funds at the time to pay such fee as they had not been drawing any remuneration from the company and had their own financial problems. EJS confirmed that he was happy to wait for them to be in a position to pay this fee at a later date when their personal finances were improved. It was proper for directors of companies in administration be remunerated for working in the business as they were doing that for the benefit of creditors. Indeed given the busy period around Christmas and the critical need to keep the business alive until the creditors meeting after some 10 weeks, and with the extra problems insolvency would bring a Christmas bonus might be in order. On that basis the directors agreed to pay pre-admin cost of £2000 plus VAT."*

3. The administration commenced on 20 November 2006.

4. There was a fundamental dispute between Mr Stonham and the directors as to what was agreed in terms of Mr Stonham's fees for the initial advice he gave and pre-appointment work he did on behalf of the company directors (pre-appointment fees).
5. On 27 February 2007 proposals were sent to creditors (which had to come from Mr Stonham as the Administrator) seeking approval for a CVA with Mr Stonham being appointed supervisor. A meeting was convened to be held on 16 March 2007 for creditors to consider that proposal.
6. At the adjourned creditors meeting held on 30 March 2007 it was agreed that £15,000 would be paid towards the administrator's remuneration and that the balance of his fee would be deferred and paid from the subsequent CVA. Mr Stonham contends that at this meeting the directors said that they would honour their obligation to personally settle Mr Stonham's pre-administration fees of £2,000.
7. It was during the period when Mr Stonham was preparing to vacate office as administrator so as to allow the CVA to commence, that in letters dated 25 April 2007 he reminded the directors that the pre-appointment fees remained unpaid. The letters suggested the directors could award themselves a '...Christmas bonus...' of £2,500 each. The letter then went on to say:

*'I appreciate that it was difficult for the company to afford these bonus payments early in the season. As it is likely that the company will pass out of administration into the CVA, before I can make the bonus payment I leave you to pay them as soon as the company is able. I should anticipate this by July 2007 at which time you will settle my agreed pre-appointment fees.'*
8. In fact, the directors never awarded themselves this bonus and the pre-appointment fees were, despite further reminders, not paid personally by the directors. Mr Stonham issued a Statutory Demand, which was set aside. He subsequently issued a claim in the County Court to recover the unpaid fees, which was also was unsuccessful. The tribunal was invited to take into account the findings of the District Judge who heard the County Court claim on 19 December 2008. In the absence of a formal court transcript, these were evidenced by the contemporary notes taken by the directors' solicitor. Counsel for Mr Stonham invited the tribunal not to take into account aspects of the note taken by the directors' solicitor and instead argued that the tribunal have regard to the note made by Mr Stonham's solicitors. Given that the judge's findings were not wholly agreed, the tribunal decided it was not safe to take these into account. It was satisfied, in any event, that it had sufficient other evidence before it to enable the tribunal to form its own views on the defendant's conduct and critically his motivation for this conduct.
9. Mr Stonham confirmed in his letter of 2 July 2009 that he was aware that assets of the administration estate should not be used to pay his pre-appointment fees. He contends he had made this clear to the directors when they had agreed to pay this fee personally. It was argued that Mr Stonham had been responding to his perception that there was then a legal doubt over whether pre-appointment fees could be properly recovered as an administration expense and that he needed a 'new strategy' for dealing with this. The tribunal noted that, even accepting this, this did not lead to a suggestion that a proper way round this would be the awarding of a personal bonus to the directors.

10. The tribunal found that Mr Stonham had not, as he claimed, primarily intended that a bonus be paid for motivational reasons (ie: to encourage the directors, who were the main employees, to keep working to the best of their ability despite the fact that the business was being wound down). The tribunal was of the view that he had made this suggestion to provide the directors with enough money to personally pay his pre-appointment fees. In forming this view, the tribunal took into account that the suggestion of the bonus had come entirely from Mr Stonham (see the note of the meeting of 17 November and the clear link in the letters of 25 April between the pre-appointment fees and the bonus), the letters had come in April when the bonus would relate to Christmas (almost 8 months later) and finally, that each director had hand amended the 25 April letters to reflect a bonus amount close to the amount of the pre-appointment fees amount.

### **Conclusions and Reasons for Decision**

11. It was, at the relevant time, an established principle that once an administrator had been appointed, then the assets of the administration estate should not be used to pay the administrator in preference to other creditors, his fees in respect of pre-appointment work. It was, on the other hand, common for insolvency practitioners to incur time costs advising a company and assisting its directors in obtaining an administration order. Naturally, it was and remains reasonable for insolvency practitioners to be remunerated for that service. Often it was paid by the company or its directors prior to the administration commencing. Accordingly there was nothing wrong in Mr Stonham, at the outset, seeking remuneration for that work from the directors or from the company (prior to it entering into administration). However, Mr Stonham should have given the directors a letter of engagement in respect of this work, which would set out any agreed fee (or the basis of how a fee would be calculated) and when that fee would become payable.
12. Mr Stonham has told the tribunal that he accepts “that a part of my motivation in suggesting the bonuses which I suggested in the 25 April 2007 letters must have been to increase the chances of my pre-appointment fees being paid.” He stated further that he “would be lying if I said that this thought did not cross my mind at all when I drafted the ...letters - it must have done”. He accepted that he should not have allowed himself to be placed in a position where such “improper considerations could influence my judgement”.
13. He maintains however that he did not “consciously intend such a direct link to be made”. The tribunal was of the view, however, that Mr Stonham’s suggestion of the payment of a bonus was primarily motivated by a desire to release funds to the directors in order that they may pay his pre-appointment fees. The tribunal did not accept that he had in any way been motivated by a desire to incentivise the directors, in the best interests of the company. This created a serious conflict of interest in his role as administrator. The tribunal accepted however that Mr Stonham could not have considered whether his conduct was improper. It appeared to them that Mr Stonham turned a blind eye to the ethics of his actions in the belief that he was entitled to be paid. His conduct had however been improper and had brought discredit to the ICAEW, the profession and himself.

### **Matters relevant to sentencing**

14. Mr Stonham had two previous disciplinary matters. The first, arose from a consent order dated 6 June 2002, for a reprimand and a fine of £1000 in relation to a failure to identify and thereafter manage a conflict of interest which arose or was likely to arise in circumstances where in the previous three years his former firm was associated with the firm which had acted as auditors to the company. The second was a regulatory penalty dated 29 April 2004, of £3000 in respect of unauthorised remuneration.



## DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

2. **Richard Iain Michael Jemmett FCA** of The White House, High Street, Dereham, Norfolk NR19 1DR

**The tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 4 August 2011**

### Terms of complaint

The complaint is that Richard Jemmett 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:

From 9 March 2011 until 9 June 2011 Mr Jemmett has failed to respond to a letter dated 22 February 2011 issued under Disciplinary Bye-law 13.

### Hearing date

4 August 2011

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

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

**All heads of complaint proven** Yes

### Sentencing order

The tribunal ordered that the defendant:

- a) be reprimanded
- b) pay a fine of £1000

### Procedural matters and findings

**Parties present** The Investigation Committee

**Represented** The Investigation Committee was represented by Ben Jowett

**Hearing in public or private** The hearing was in public

<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was as to 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 documents in mitigation sent in by the defendant
<b>Findings on preliminary applications</b>	The tribunal noted that the defendant had indicated by his letter of 25 July 2011 that he was aware of the date of the hearing and did not intend to attend. The tribunal decided in the circumstances to proceed in his absence.

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

1. The ICAEW wrote to Mr Jemmett on 27 May 2010 and on 1 November 2010 in connection with a complaint it had received by or on behalf of various NES Group companies.
2. The ICAEW wrote various letters to Mr Jemmett ultimately having to write to him pursuant to Disciplinary Bye-law 13 on 22 February 2011.
  1. Mr Jemmett had not replied to that letter.

### **Conclusions and Reasons for Decision**

2. Mr Jemmett's failure to reply to the ICAEW's letter of 22 February 2011 is a breach of Disciplinary Bye-law 4(1)(c) insofar as he has failed to reply to a letter investigating a complaint from the ICAEW issued under Disciplinary Bye-law 13.

### **Matters relevant to sentencing**

3. Mr Jemmett wrote to the tribunal to state that he was in regular communication with the complainant (for the underlying investigation) and engaged in negotiations. The tribunal however did not accept this as a good reason not to have replied to the ICAEW as his responsibilities to his regulator in this regard underpinned the ICAEW's role of maintaining standards in the profession.
4. Mr Jemmett raised matters of personal mitigation with regard to his family circumstances and health. The tribunal took into account this mitigation, including that he had a previously unblemished disciplinary record.
5. On the other hand, the tribunal noted the aggravating feature that the underlying matter was potentially very serious such that the need for cooperation with the ICAEW and a response to the letter of 22 February 2011 was heightened.
6. The tribunal took into account it's Guidance on Sentencing.
7. Noting the personal difficulties faced by the defendant and the potential seriousness of the underlying investigation, the tribunal recommended that the defendant seek the assistance of a support member.

## **Sentencing Order**

8. The tribunal ordered that the defendant:
  - a) be reprimanded
  - b) pay a fine of £1000
9. The tribunal took into account the defendant's limited means and made no order as to costs.

## **Decision on publicity**

10. Publicity with name

**Chairman**                      **Mr Elliot Harris FCA**

**Accountant member**        **Mr David Kaye FCA**

**Lay member**                 **Mr Richard Farrant**

**Legal Assessor**             **Ms Melanie Carter**

**D6859**

## INVESTIGATION COMMITTEE CONSENT ORDERS

### NO PUBLICATION OF NAME

#### 3 Consent order made on 24 November 2011

With the agreement of a member the Investigation Committee ordered that he pay costs of £300 with respect to a complaint that:

On 28 April 2011 the 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.

**D6836**

#### 4 Consent order made on 1 December 2011

With the agreement of Mrs Daphne Tams FCA of 4 Conway Court, Stirling Close, New Milton, BH25 6AR, the Investigation Committee made an order that the member be reprimanded, fined £500 and pay costs of £1,342 with respect to a complaint that:

Between 4 March 2006 and 26 January 2011 Mrs D Tams FCA issued 11 audit reports in the name of her firm, Mrs Daphne Tams Chartered Accountant, when her firm was not a Registered Auditor.

Particulars:

<b>Company name:</b>	<b>Period ended:</b>	<b>Audit report dated:</b>
X	31 March 2010	26 January 2011
X	31 March 2009	Undated
X	31 March 2008	28 January 2009
X	31 March 2007	18 November 2007
X	31 March 2006	23 January 2007
X	31 March 2005	November 2005
Y	31 August 2009	04 March 2010
Y	31 August 2008	07 February 2009
Y	31 August 2007	10 March 2008
Y	31 August 2006	25 January 2007
Y	31 August 2005	04 March 2006

**D6839**

#### 5 Consent order made on 2 December 2011

With the agreement of Mrs L Nabarro FCA of 29 Cumberland Road, Brooklands, Sale, Cheshire, M33 3EW, the Investigation Committee made an order that the member be reprimanded, fined £500 and pay costs of £1,292 with respect to a complaint that:

- 1 Between in or around April 1993 and 30 June 2011 Mrs L S Nabarro FCA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51(a).

2 Between in or around April 1993 and 30 June 2011 Mrs L S Nabarro FCA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.

**D6840**

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**6 Consent order made on 7 December 2011**

With the agreement of Mr G Best FCA of 189 Lynchford Road, Farnborough, Hants, GU14 6HD, the Investigation Committee made an order that the member be reprimanded, fined £1,000 and pay costs of £1,992 with respect to a complaint that:

On 24 January 2011 Mr Graham Roy Best FCA gave an undertaking under the Company Directors Disqualification Act 1986 that he would not for a period of three years act as a director of a company or be otherwise involved with a company or act as an insolvency practitioner, following unfit conduct in the matter of X Limited, which went into administration on 27 January 2009, in that between 16 October 2008 and 15 December 2008 he allowed the company to breach its obligations to two separate finance companies.

**D6845**

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**7 Consent order made on 13 December 2011**

With the agreement of Philip Kendell FCA of 4 Wheelwrights Corner, Nailsworth, Stroud, GL6 0DB, the Investigation Committee made an order that the member be reprimanded, fined £2,000 and pay costs of £2,092 with respect to a complaint that:

Mr P J Kendell wrongfully delayed raising and submitting an invoice covering the entire period he had acted for his client Mrs X (for her sole trader business) namely 18 years.

**D6847**

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**8 Consent order made on 22 December 2011**

With the agreement of Mr P Heaven of 2<sup>nd</sup> Floor, 3 Brindley Place, Birmingham, B1 2JB, the Investigation Committee made an order that the member be reprimanded, fined £1,000 and pay costs of £955 with respect to a complaint that:

Between 1 January 2008 and 3 August 2011 Mr P M Heaven ACA engaged in public practice without holding an ICAEW practising certificate contrary to Principal Bye-law 51a.

**D6848**

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## REGULATORY DECISIONS

### AUDIT REGISTRATION COMMITTEE

#### ORDER – 14 SEPTEMBER 2011

##### Regulatory penalty

##### 9 Publicity statement

P H Ross & Co, 18 Woodcock Dell Avenue, Kenton, Harrow, HA3 ONS 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 audit regulation 6.06 in that the firm failed to comply with assurances previously given to the Quality Assurance Department following an audit monitoring visit.

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D6825

#### ORDER – 14 SEPTEMBER 2011

##### Regulatory penalty

##### 10 Publicity statement

The registration as company auditor of TWY Limited, 20 Sansome Walk, Worcester, WR1 1LR, was withdrawn on 3 January 2012 under audit regulation 7.03(h) for failure to comply with the requirements of the audit regulations.

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D6849

#### ORDER – 6 DECEMBER 2011

##### Regulatory penalty

##### 11 Publicity statement

The registration as company auditor of D.B. Jones & Co, 14 Providence Street, Earlsdon, Coventry, West Midlands, CV5 6ED, was withdrawn on 3 January 2012 under audit regulation 7.02(h) of the Audit Regulations and Guidance 2008 for failure to comply with the requirements of the audit regulations.

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D6851

## ORDER – 6 DECEMBER 2011

### Regulatory penalty

#### 12 Publicity statement

John Belford & Co Ltd, 14a Main Street, Cockermouth, Cumbria, CA13 9LQ, 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 audit regulation 2.03 (a) in that the firm failed to ensure a principal (non-member) held audit affiliate status between 1 April 2008 and May 2011.

**D6850**

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