



## DISCIPLINARY ORDERS AND REGULATORY DECISIONS

Date published: 2 November 2011

### **Disciplinary orders**

Disciplinary Committee tribunal orders

1	Lennox Ector Thompson (affiliate)	2
2	George Stewart Cook ACA	6

Investigation Committee consent orders

3	Christopher Kenyon	9
4	Miss Meg Edwards	9
5	A general affiliate	9
6	H A Hyatt & Co	9
7	Simon Austin	10
8	Hugh Williams	10
9	Richard Braysher	11
10	Richard Elgar	11
11	Kirankumar Mistry	12
12	Newman Morris Limited	12

### **Regulatory orders**

Audit Registration Committee regulatory penalties and withdrawals

13	Harrison Bernstein Ltd	14
14	KWSR & Co, Chartered Accountants	14

# DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Lennox Ector Thompson (Affiliate)

**Chairman** Paul Brooks

**Accountant Member** Kevin Mawer FCA

**Accountant Member** Ian Walker FCA

**Legal Assessor** Dominic Spenser Underhill

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

**Location of Member** 323-327 Railton Road, Herne Hill, London SE24 0JN

**Type of Member** Affiliate

## **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 16 January 2011 and 5 April 2011, Mr Thompson has failed to respond in full to a letter dated 14 January 2011 issued under Disciplinary Bye-law 13.

**Hearing date**

13 July 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** Reprimand; costs of £500

**Procedural matters and findings**

**Parties present** Mr Lennox Ector Thompson

**Represented** Fin O’Fathaigh on behalf of the Investigation Committee  
The defendant represented himself.

**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 to service.

**Documents considered by the tribunal** The tribunal considered the documents contained in the Investigation Committee’s (IC’s) bundle together with two bundles provided by the defendant, one of which included a letter from his solicitors dated 6 July 2011.

**Findings on preliminary applications** At the commencement of the hearing, the defendant put the IC to proof that the IC had the jurisdiction to make this complaint. The IC legal representative explained that jurisdiction derived from Chapter 5 of the Audit Regulations, read to him the relevant extracts and the defendant indicated his satisfaction with that explanation.

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

The IC's case is that while the defendant responded to a letter from the IC dated 14 January 2011, he failed to respond to it in full; he failed to provide the IC with a copy of a letter dated 26 May 2010 from him to his client which he had referred to in a letter to the client dated 27 May 2010. The Defendant denied the complaint.

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

1. The defendant was instructed by a client to undertake some work. The engagement letter from the defendant to his client dated 6 May 2010 provides at paragraph 6.7 that *"We will exercise a lien over all records in our possession until all amounts due to us are paid in full."* The client lodged some money with the defendant and a dispute has arisen about the purpose of that money. On 27 May 2010, the defendant wrote to his client acknowledging a letter to him dated 26 May 2010. Later, the client made a complaint to the ICAEW and the IC investigated it.
2. The IC wrote to the defendant on 25 November 2010, 13 December and 14 January 2011. It asked, amongst other things for a copy of the letter dated 26 May 2010. The defendant replied on 4 February 2011, responding to the letters of 25 November and 13 December. He responded substantially to the points raised by the IC but he refused to supply a copy of the letter dated 26 May 2010. The reason was that he objected to the IC's stated intention to pass a copy of the copy letter of 26 May to his client (who wrote it to him in the first place).
3. The defendant did not seek to obtain any reassurances from the IC about the disclosure of the copy letter of 26 May.
4. The defendant provided a copy of the letter after the commencement of these disciplinary proceedings and before its final hearing.
5. There is no dispute that the defendant responded to the IC's letter of 14 January 2011. The issue of fact is whether the defendant responded fully to it. If he had, then the complaint would not be proved. If he had not, the issue to determine is whether the defendant was justified in withholding the letter dated 26 May 2010 for the reason he did. If he was justified, then the complaint would not be proved. He would be justified in withholding the letter if the request for the letter was unreasonable or otherwise unjustifiable.

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

6. The letters from the IC from 25 November 2010 to 14 January 2011 requested, amongst other things, a copy of a letter from the defendant's client to the defendant dated 26 May. The defendant deliberately, and with a stated reason, would not provide it. As a matter of fact, it is not possible to conclude that he responded fully to those letters, and in particular the letter dated 14 January 2011 because the information he provided was not all the information requested of him.
7. The reasons provided by the defendant both in correspondence and at the hearing for not providing the letter were; (i) his objection to the IC's intention to send a copy of it to his client who wrote it in the first place; (ii) the providing of the copy letter would "throw his defence away" in prospective litigation with the client; (iii) he had a lawful lien over the document which comprises part of the client's papers; (iv) it was not in his interests to release the document.
8. These reasons do not justify the withholding of the copy letter from the IC. The IC simply requested from the defendant a copy of a letter which the defendant's client wrote to him

and to which the defendant referred in a letter from him to the client. The reason it requested the copy letter is that the client asserted to the IC that she had no recollection of writing the letter. This request is not unreasonable or unfair. It is entirely understandable why the IC would wish to see it to pursue its proper enquiries.

9. In some circumstances, it may be possible to understand the sensitivity by a member who may be asked to provide a document to the IC and who, because of its nature, does not wish it to be shown to anyone other than the IC when that the document will be shown to a third party who is not involved in the investigation process. That cannot be done in this case. All that the defendant was being asked to do is provide a copy of a letter that his own client wrote to him, and the defendant refers to in a letter he wrote to his client. That is not an unreasonable request. There is nothing inherently sensitive about the nature of that document; the defendant is not even the author of it.
10. As to the concern that the defendant would be “throwing his defence away”, this is not accepted. The defendant explained that the copy letter would be able to refute any assertion in any litigation by the defendant’s client that she did not write the letter in the first place. This is not compromising a legal defence; the production of the letter in any litigation would be to adduce evidence to rebut an assertion of fact.
11. Regarding the concern that the defendant’s lien over the client’s papers would be compromised or diminished by the passing by the IC of a copy of the client’s letter to her, this is not accepted. The defendant’s lien, as set out in his engagement letter, attaches to “all records in our possession”. A letter by the defendant’s client to the defendant is, more likely than not, not a “record” but merely a letter from a client to the defendant at the start of a retainer.
12. For effective regulation to take place, a regulator must be able to call on those it regulates to provide documents it needs to carry out its functions provided it does so properly. Such requests must be fair and reasonable and proportionate and in accordance with the Bye-laws, as was the case here. Equally, those who are asked to produce documents in this way must do so promptly. It is not satisfactory or acceptable for a member to choose whether or not to comply with a legitimate request from his regulator.

### **Matters relevant to sentencing**

The defendant’s clean disciplinary record and the fact that he had, before the hearing, disclosed the copy letter are mitigating factors. The tribunal has noted that while it did not agree with the defendant, the defendant withheld the letter because of a cogent (although incorrect) reason and not, say, because of his recklessness or carelessness. An aggravating factor was the defendant’s assertion at the hearing that faced with the same situation again he would not do any thing differently. He is thus unable to show any insight into his misconduct. The tribunal sees no reason to depart from the Guidance on Sentencing, subject to these factors.

### **Sentencing order**

- (i) Reprimand
- (ii) Costs of £500

### **Decision on publicity**

Publication with name.

**D6826**

2 George Stewart Cook ACA  
of 2 Hall Orchards Avenue, Wetherby, West Yorkshire, LS22 6SN

**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:

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

**In that**

on 26 May 2010 Mr G S Cook ACA was convicted upon indictment at Bradford Magistrates Court for fraud by false representation under the Fraud Act 2006.

**Hearing date**

7 September 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 £1,500; costs £2,000

## **Procedural matters and findings**

<b>Parties present</b>	George Stewart Cook ACA
<b>Represented</b>	Mr Cook represented himself.
<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 submitted that the defendant was liable to disciplinary action under Disciplinary bye-law 4(1)(a) because he was convicted on indictment for fraud by false representation under the Fraud Act 2006.

## **Issues of fact and law**

The tribunal found that the defendant first notified his solicitors of his wrongdoing on 9 March 2010. There were no other issues of fact or law to determine, as the defendant had admitted the complaint. The complaint was found proved on the defendant's own admission.

## **Conclusions and reasons for decision**

The defendant was, at all material times self-employed. In August 2004, the defendant was involved in a road traffic accident. He suffered personal injury and was off work for a time. He sued the driver of the other vehicle, and the claim was handled by that person's insurers. Liability for the accident was admitted by insurers. To inflate his claim in damages, the defendant forged letters purportedly from his clients demonstrating that he was incapable of working, and so having a loss of earning. These letters were used in the course of the litigation but the case did not come to trial. On 9 March 2009, the defendant, ashamed and frightened by what he had done, admitted his wrongdoing to his solicitors who took the appropriate action in the litigation. The defendant was arrested in February 2010, was charged, pleaded guilty and was convicted on 26 May 2010 of making fraudulent representations to make a gain, contrary to Sections 1 and 2 of the Fraud Act 2006. He was given a community service order of 200 hours unpaid work and ordered to pay costs of £85.

The defendant fabricated evidence in proceedings before a Court in order to obtain financial gain for himself. This is a crude and blatant fraud on the insurers of the driver of the other motor vehicle. It is conduct which is plainly unacceptable for any member of the ICAEW and cannot be tolerated. This is serious misconduct. Members engaged in such activity much expect a severe penalty.

## **Matters relevant to sentencing**

The tribunal has considered carefully the Guidance on Sentencing and the defendant's mitigating factors which he has brought to its attention. In case such as this, where dishonesty is involved, exclusion is the usual penalty and sometimes there is a fine. However, in exceptional circumstances exclusion is not necessary or proportionate; this is such a case. The exceptional circumstances are the mitigating factors which the tribunal has accepted. These include: (i) the defendant's clean disciplinary record; (ii) the admission of the defendant's wrongdoing to his solicitors to enable them to ensure the matter is redressed; (iii) no actual financial gain arose from the fraud as the defendant had stopped it progressing by his own actions; (iv) the defendant's immediate admission of guilt to the charge; (v) the defendant's co-operation with the police and his admission of guilt at court; (vi) the defendant's completion of his punishment imposed by the Court; (vii) the full redress made by the defendant to all those affected by his wrongful actions; (viii) the extreme remorse and regret evidently felt and expressed by the defendant to the Court, and to the tribunal; (ix) clear and compelling evidence that the defendant has had real and prolonged insight into his wrongdoing; (x) evidence, which has satisfied the tribunal, that the defendant does not pose a risk to the public; (xi) the disproportionately adverse affect that exclusion would have on the defendant's family, particularly having regard to his financial circumstances.

It is appropriate to fine the defendant. Having regard to his financial circumstances, the sum of £1,500 is a fair and proportionate sum.

The tribunal wishes to make it clear that the defendant has narrowly avoided exclusion by the unusual strength of the mitigation on the facts of this particular case.

### **Sentencing Order**

- (i) Severe reprimand
- (ii) Fine of £1,500
- (iii) Costs of £2,000

### **Decision on publicity**

Publication with name.

**Mr Paul Brooks (Chairman)**

**Mr Kevin Mawer FCA**

**Mr David Wilton FCA**

**Mr Dominic Spenser Underhill - Legal Assessor**

**D6827**

## INVESTIGATION COMMITTEE CONSENT ORDERS

### 3 Consent order made on 15 September 2011

With the agreement of Christopher Kenyon of Hopyards Cottage, Flat Lane, Kelsall, Tarporley, CW6 0PU, the Investigation Committee made an order that the member be severely reprimanded, fined £2,000 and pay costs of £1,680 with respect to a complaint that:

***On 4 March 2010 Mr Christopher Kenyon FCA gave an undertaking to the Secretary of State for Business Innovation and Skills in accordance with section 1A of the Company Director Disqualification Act 1986 with effect from 25 March 2010 that he would not for a period of 4 years be a director of a company not be concerned in the management of a company or act as an insolvency practitioner.***

D6798

---

### 4 Consent order made on 16 September 2011

With the agreement of Miss Meg Edwards of 34 Pettitts Lane, Dry Drayton, Cambridge, CB23 8BT, the Investigation Committee made an order that the member be reprimanded, fined £1,250 and pay costs of £850 with respect to a complaint that:

***Between 28 November 2005 and 16 June 2011 Miss MK Edwards ACA, engaged in public practice without holding a practising certificate from the ICAEW contrary to Principal By-law 51a.***

D6799

---

## NO PUBLICATION OF NAME

### 5 Consent order made on 22 September 2011

With the agreement of a general affiliate the Investigation Committee ordered that he pay costs of £360 with respect to a complaint that:

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

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

D6800

---

### 6 Consent order made on 30 September 2011

With the agreement of H A Hyatt & Co of 4 – 5 King Street, Richmond, Surrey, TW9 1ND, the Investigation Committee made an order that the firm be severely reprimanded, fined £2,500 and ordered to pay costs of £2,755, with respect to a complaint that:

***H A Hyatt & Co Limited issued unqualified audit reports, when the audits had not been properly conducted in accordance with International Standards on Auditing (UK & Ireland) in respect of the financial statements of;***

- i X Limited for the year ended 31 August 2008, audit report dated 25 August 2009
- ii Y Limited for the year ended 31 March 2009, audit report dated 27 January 2010  
in that;
  - a) the final audit files were not assembled on a timely basis after the date of the auditor's report contrary to ISA 230 Audit Documentation (Revised), in breach of Audit Regulation 3:10
  - b) the firm failed to make arrangements to prevent anyone who is not a Responsible Individual of the firm from having influence over the independence or integrity of the audit, in breach of Audit Regulation 3.07.

D6811

---

## 7 Consent order made on 30 September 2011

With the agreement of Simon Austin of Pine House, Chandlers Way, Southend-on-Sea, SS2 5SE, the Investigation Committee made an order that the member be severely reprimanded, fined £2,500 and pay costs of £1,167 with respect to a complaint that:

**1 Between July 2009 and 22 April 2010 Mr S Austin FCA acted contrary to paragraph 21 of the Clients' Money Regulations in that he failed to ensure that at all times the sum of the credit balances held for all clients is at least equal to the total balance held in all client bank accounts.**

**2 Between July 2009 and 22 April 2010 Mr S Austin FCA acted contrary to Section 280.3(b) of the Code of Ethics in that he allowed his firm to remove funds totalling £7,259.06 from the client account which amounted to loans from clients.**

**3 Between July 2009 and 22 April 2010 Mr S Austin FCA acted contrary to paragraph 25 of the Clients' Money Regulations in that he failed to ensure bank reconciliations were undertaken for the client bank account at least every 5 weeks.**

D6812

---

## 8 Consent order made on 3 October 2011

With the agreement of Hugh Williams of Valley House, 53 Valley Road, Plympton, Plymouth, PL7 1RF, the Investigation Committee made an order that the member be reprimanded, fined £1,000 and pay costs of £1,880 with respect to a complaint that:

**1 Between 2 July 2001 and 1 July 2010, Mr Williams received a loan of £100,000 from a client in breach of the Code of Ethics section 280.3(b) (effective 1 September 2006) (formerly Code of Ethics section 6.7)**

**2 In 2009 and for a period of two months, Mr Williams received a loan of £25,000 from a client in breach of the Code of Ethics section 280.3(b)**

**3 Between 25 March 2010 and 25 June 2010, Mr Williams received a loan of £25,000 from a client in breach of the Code of Ethics section 280.3(b).**

D6815

---

## 9 Consent order made on 3 October 2011

With the agreement of Richard Braysher of 2 High Road, Eastcote, Pinner, Middlesex, HA5 2EW, the Investigation Committee made an order that the member be severely reprimanded, fined £5,000 and pay costs of £1,280 with respect to a complaint that:

**1 Between 28 September and 3 March 2010 Mr Braysher failed to comply with written assurances he had given on or about 28 September 2006 following a Quality Assurance Visit that he would:**

Under the Money Laundering Regulations 2007:

- a. have procedures in place to perform on-going client due diligence;
- b. attend external training on the money laundering regulations and;
- c. undertake a compliance review.

Under the Clients' Money Regulations (CMR) comply with the following regulations of the Clients' Money Regulations namely:

- d. CMR 6, in that he did not have the word 'client' in the title of the bank account holding clients money;
- e. CMR 9 (b) (iv), in that he did not obtain a letter from the bank to acknowledge the terms of the client bank account as set out in CMR 9 (b);
- f. CMR 25, in that he did not reconcile total balances on the Client Bank Account with the total corresponding credit balances in respect of his Clients every 5 weeks;
- g. CMR 27, by not carrying a review of compliance with the Clients' Money Regulations;
- h. CMR 31, in that he did not appoint an alternate and notify the ICAEW of the details, and;
- i. CMR 22 (a) and CMR 22 (c) in respect of fees taken from tax refunds, he did not obtain the consent of his clients or issue fee notes 30 days earlier.

And that he would:

Issue letters of engagement to his clients notifying them with regards to basis of fees and complaints procedure.

**2 Mr Braysher failed to declare that he was holding clients' money at 30 April 2009 in the annual return completed and signed by him on 26 June 2009.**

D6814

---

## 10 Consent order made on 3 October 2011

With the agreement of Richard Elgar of 4 Ashton Place, Kintbury, Hungerford, Berkshire, RG17 9XS, the Investigation Committee made an order that the member be severely reprimanded, fined £2,500 and pay costs of £1,617 with respect to a complaint that:

**1 On 14 August 2008 Mr Elgar signed an audit report in the name of his firm, Horwath Clark Whitehill LLP, for X Limited for the year ended 31 March 2008 whilst he was not a designated Responsible Individual.**

**2 On 26 August 2009 Mr Elgar signed an audit report in the name of his firm, Horwath Clark Whitehill LLP, for X Limited for the year ended 31 March 2009 whilst he was not a designated Responsible Individual.**

D6813

**11 Consent order made on 3 October 2011**

With the agreement of Kirankumar Mistry of 65 Carisbrooke Road, South Knighton, Leicester, LE2 3PF, the Investigation Committee made an order that the member be severely reprimanded, fined £5,000 and pay costs of £3,130 with respect to a complaint that:

**Mr K Mistry FCA as trustee in bankruptcy of Mr X failed to serve notice under s307 of the Insolvency Act 1986 on Mr X within 42 days of becoming aware he had acquired property since the commencement of the bankruptcy in that Mr Mistry knew certain pension policies had been assigned to Mr X on or about 5 March 2002.**

The committee directed that payment of the fine and costs be paid once the bankruptcy has been discharged.

D6816

**12 Consent order made on 7 October 2011**

With the agreement of Newman Morris Limited of Wellington House, 273-275 High Street, London Colney, St Albans, AL2 1HA, , the Investigation Committee made an order that the firm be severely reprimanded, fined £2,500 and ordered to pay costs of £1,650, with respect to a complaint that:

**Between 3 December 2007 and 12 January 2011 Newman Morris Limited failed to ensure that the sum of credit balances held for all clients was at least equal to the total balance held in all Client Bank Accounts, having withdrawn amounts from its Client Bank Accounts which were greater than the credit balance held for the following clients, in breach of Clients' Money Regulation 21:**

Client	Overdrawn balance	Date overdrawn	Date fully rectified
A	5,947.20	03 December 2007	20 July 2010
B	2,585.70	11 January 2008	12 January 2011
C	573.62	18 March 2008	12 January 2011
D	195.03	04 April 2008	12 January 2011
E	636.02	18 April 2008	16 February 2010
F	3,018.09	23 May 2008	05 January 2010
G	179.36	25 July 2008	22 February 2010
H	590.25	28 April 2009	26 February 2010
I	1,594.46	22 May 2009	17 February 2010
J	4,904.48	17 June 2009	08 March 2010
K	1,622.26	29 September 2009	06 November 2009

**Between 28 November 2008 and 31 August 2010 Newman Morris Limited (the firm) failed to ensure that client money in excess of £10,000 that was held, or expected to be held by the**

***firm for more than 30 days, was paid into a designated Client Bank Account in the name of each of the following clients, in breach of Clients' Money Regulation 13:***

<b>Client</b>	<b>Start date</b>	<b>End date</b>
L	28 November 2008	6 January 2010
M	09 January 2009	18 February 2010
N	13 March 2009	12 February 2010
O	18 March 2009	3 November 2009
P	24 March 2009	30 December 2009
Q	20 April 2009	10 February 2010
R	08 May 2009	2 November 2009
S	15 May 2009	18 February 2010
T	31 July 2009	18 February 2010
U	28 August 2009	18 February 2010
V	29 January 2010	3 March 2010
W	12 February 2010	28 April 2010
X	19 February 2010	31 August 2010
Y	16 April 2010	2 July 2010

**D6818**

---

## REGULATORY DECISIONS

### AUDIT REGISTRATION COMMITTEE

#### ORDER

##### Regulatory penalty

##### 13 Publicity statement

Harrison Bernstein Ltd, 10 Harmer Street, Gravesend, Kent, DA12 2AX has agreed to pay a regulatory penalty of £2,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 6.06 and 3.19 in that the firm (i) failed to comply with assurances previously given to ICAEW; (ii) incorrectly completed its 2010 annual return; and (iii) incorrectly issued an accountant's report for a company which did not meet the audit exemption conditions.

**D6817**

---

#### ORDER – 12 OCTOBER 2011

##### Regulatory penalty

##### 14 Publicity statement

KWSR & Co, Chartered Accountants, 136 Merton High Street, London, SW19 1BA has agreed to pay a regulatory penalty of £750, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 4.04 in that an audit report was signed by a partner in the firm who was not, at the time, properly appointed as a responsible individual.

**D6824**

---