

THE RULES OF FAIRNESS

Getting caught in the disciplinary system can be scary but needn't be a crisis if you actively participate. **Sarah Perrin**

The much read but highly truncated disciplinary reports in the ICAEW section of *Accountancy* offer a tiny window into the failings of the few ICAEW members and firms who go astray. Their brevity does little justice to the effort put into delivering a disciplinary system that is both fair to members and protects the public interest.

'I believe we are the premium brand of accountants,' says Richard Lea, chairman of the institute's disciplinary committee. 'The price is that when we are considering disciplinary matters, we have to take into account the interests of the public. It's crucial that the public feel our work can be trusted. We must maintain our reputation and the only way to do that is properly and fairly to discipline members who don't abide by the rules and regulations.'

Members who behave dishonestly in their professional work, or with gross incompetence, face the ultimate sanction of exclusion. They could also be fined and ordered to pay ICAEW's costs.

SILLY MISTAKES

Members who have not acted dishonestly, but have perhaps made silly mistakes that they are willing to correct, should not fear unreasonably harsh treatment.

'Primarily, the institute is the members' professional body and it is there to help – not to condemn and punish them,' says Tim Harris, who retired from the disciplinary committee in June after 12 years' service as a member, then chairman.

'I've realised how lucky I was to be a partner in a large firm [PwC], because I had support mechanisms round me and I could always ask another partner for advice. I feel empathy for sole practitioners who may feel isolated.'

But members are not alone when dealing with complaints, Harris emphasises. 'I am passionate about encouraging members to use the institute. The place is packed with people itching to give help. If someone makes a complaint against you, ring the institute.'

There are, for instance, peer chartered accountants in the Support Members scheme who offer wholly confidential advice and are exempt from the duty to report misconduct.

Over time the matters triggering disciplinary attention can shift subtly. 'I sense there are now fewer disciplinary cases regarding audit matters,' says Lea.

'That may be because smaller practices are not doing as many audits. We also see fewer cases of poor accounting, which may be due to computerisation of accounts preparation.'

There is a current trend in money laundering cases, mostly breaches of the anti-money laundering regulations.

'Members are being caught out,' Lea warns. 'They need to be on their guard and look out for suspicious circumstances.'

RULES OF FAIRNESS

Some complaints against members are generated internally, after ICAEW



Photo: Jackie Chambers

Majority of members provide excellent professional service
Richard Lea



becomes aware of regulatory breaches through its own monitoring procedures. Some come directly from members' clients, but many of these do not usually result in disciplinary action.

'If the situation concerns a falling out with a client, the professional conduct department may suggest conciliation,' explains Tracey Owen, head of legal services. 'Often, with a trained conciliator's help, a settlement is reached.'

If the complaint cannot be resolved, or its nature is sufficiently serious to require investigation and possibly disciplinary action, it becomes a matter for ICAEW's investigation committee and potentially also a tribunal. The professional conduct department investigates the facts, producing a detailed report for the committee. 'The golden rule is that the subject of the complaint – a member, firm or student – has the opportunity to make representations,' Owen says. 'General rules of fairness are strictly applied.'

It is in members' interests to engage in the process and participate fully. 'Not to respond to institute correspondence regarding a complaint would be a cardinal sin in my eyes,' Harris says. 'You can't ignore the problem. It doesn't go away.' ICAEW is legally compelled to pursue any matter where a member may have breached one of its bye-laws.

Since January 2008, disciplinary tribunal hearings have been held in public unless there are compelling reasons for privacy, such as potential harm to a minor. A legal assessor – a solicitor retained by the institute but with an independent remit – assists and answers any queries concerning procedure or points of law.

Members have the right to be represented but are also strongly advised to attend the tribunal hearing



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Tracey Owen, ICAEW head of legal services

in person. 'It's a huge mistake not to,' says Lea. 'You don't have to be a professional orator, but someone's sincerity comes across much better face to face.' Sometimes new mitigating evidence emerges. 'There may be things members have been hiding because of pride, or they may have suffered serious illness,' Harris notes.

Most members accept the tribunal's decision but some appeal, sometimes followed by a judicial review, although rarely. 'The appeal panel can vary the order of the tribunal,' Owen notes. 'It can reduce the terms of the penalty and costs, but it can also increase them.'

Large public interest investigations among the profession are undertaken by the UK regulator's Accountancy and Actuarial Discipline Board. The fact is that, last year, roughly 230 complaints were dealt with by ICAEW disciplinary action from among a membership of some 133,000. How realistic is that? 'Some probably slip through the cracks,' admits Lea. 'But I think it's a real testament to the quality of our profession. The majority of members provide an excellent professional service to clients or within industry. So our system deals with the few to protect the many.'

Case studies »

The ICAEW Support Members Scheme helps members in difficulty. ICAEW member volunteers offer totally confidential, non-judgmental help on professional or personal matters and are exempt from the duty to report misconduct. Call +44 (0)800 917 3526 (free within the UK), email support.members@icaew.com, or visit www.icaew.com/supportmembers

DISCIPLINARIES

FACTS AND FIGURES

- In 2010, some 230 complaints were dealt with by disciplinary action
- The disciplinary committee tribunal heard 50 cases to end September 2011, following 64 in total in 2010, 55 in 2009 and 74 in 2008
- In the nine months to end September 2011, 14 members were excluded following a disciplinary tribunal hearing, 26 were severely reprimanded, nine reprimanded and one complaint was not proved
- Of 15 private tribunal hearing applications received in 2010, eight were accepted

RANGE OF COMPLAINTS

Complaints against members are wide-ranging and have included:

- dishonest expenses claims
- breaching anti-social behaviour orders
- endorsing fake university degrees
- assault
- providing false accountants' references
- accepting loans from or making loans to clients
- failure to certify CPD

- defective audit work
- ignoring Audit Registration Committee requirements for file reviews
- failure to obtain professional indemnity insurance
- breaching insolvency practice rules

HINTS AND TIPS IF YOU FACE A COMPLAINT

- Engage: respond to ICAEW correspondence promptly and provide explanations and mitigating evidence
- Use Members Support: a volunteer can talk you through the disciplinary process and even potentially attend the tribunal with you
- Complete the financial questionnaire: otherwise the tribunal will assume you have the means to pay any level of fine and/or costs
- Attend: tribunal members appreciate genuine regret and acknowledgement of mistakes, and particularly clear willingness to put matters right
- Consider legal representation: the skills of a solicitor or barrister to explain circumstances or set out mitigating factors can be helpful, particularly in serious cases where exclusion could well apply

CAUTIONARY TALES

AN OTHERWISE EXEMPLARY TRUSTEE



One of the most unusual cases to come before the disciplinary tribunal concerned a professional trustee, with two others, of a family trust with one beneficiary.

Twenty years previously, the member had forged a bank account mandate which gave him unfettered control over trust assets worth over £500,000. From then on, he regularly signed cheques in his own name and that of another co-trustee without their consent, withdrew funds for his firm's fees without the others' approval, and single-handedly approved the annual accounts. Yet when this came to light, neither the trust beneficiary nor his co-trustees complained. Instead, it was the ICAEW investigation committee which acted against him.

The tribunal said that normally such misconduct is 'rightly met with exclusion from membership for a lengthy period and a substantial fine'. But there were such uniquely mitigating factors, that the tribunal reduced the penalty significantly without reducing the severity of its criticism.

It became clear that the sole motive for the member's actions was to benefit the trust. For the three years before he forged the mandate, he had run the trust properly, but alone, having been unable to contact the co-trustees. He gave up trying, and so when it came to renewing the mandate, he forged it. There also seemed little point in getting them to approve the accounts – they had never approved them before.

When his co-trustees and the beneficiary found out, they praised him for his competence and professionalism. Apart from gathering the firm's fees, he had not gained personally and was able to account for all trust money. The tribunal found 'he used his wholly inexcusable forgery to continue to administer the trust in an otherwise exemplary fashion'.

A 'member of good standing' for many decades and although in poor health, he had reported himself to the institute and assisted fully with its investigation. He was reprimanded, fined £500 and paid costs of £1,886.

MARKET MISSTATEMENTS



The former CFO of Northern Rock Asset Management plc attended a disciplinary tribunal hearing in June 2011 after being subject to an adverse finding by the Financial Services Authority (FSA). This concerned his actions between January 2007 and February 2008 when he was the company's CFO designate.

The FSA had found that, when aware that 1,917 loans were omitted from the impaired loan figures, he had failed to correct misleading statements made by the deputy CEO about the loans to external stakeholders, including market analysts. The FSA also decided he had acted recklessly by failing to correct misleading figures contained in the company's Operating and Business Review.

In mitigation, the member's representative said that the financial statements were correct and the loans fully provided for, and there had never been any allegation or finding of dishonesty. He argued that the member should be given credit for his actions in persuading the Northern Rock board to issue a profit

warning, and that at the time he made his error of judgment he had been 'significantly distracted' by the task of trying to deal with the financial crisis faced by Northern Rock. The member also addressed the tribunal himself, and expressed regret that he had not put right the misstatements made to the market by the company's deputy CEO.

The tribunal severely reprimanded him, noting that his error was high profile and likely to have 'undermined the public's confidence in the profession'. However, it took account of the mitigating factors and the £320,000 financial penalty already imposed by the FSA, deciding not to impose a fine itself. He was also ordered to pay the institute's costs of £3,620.

Some cases attract disciplinary committee sympathy while others are simply jaw-dropping. Here, we present a selection

SOLDIER OF FORTUNE



Among chartered accountants past and present, few could be more infamous than former FCA Thomas Michael Hoare. A hero to many, a villain to others, Hoare was born in India in 1920. After serving as a British army captain in North Africa during WWII, he qualified as an ICAEW member in 1948.

Hoare came to international attention through his activities in post-colonial Africa in the 1960s. As perhaps the world's most famous mercenary since Xenophon, he conducted operations in the rebellious Congolese province of Katanga.

A couple of years later, his group, now known as '5 Commando', worked with Belgian paratroopers to rescue civilian hostages held by Simba rebels in Stanleyville. This operation saved hundreds of lives.

However, his actions, during what was seen by many as a proxy war between the Soviet Union and the West, led to opprobrium from behind the Iron Curtain. East German radio demonised him as 'the mad bloodhound Mike Hoare', usually now shortened to 'Mad Mike' by fans and detractors alike.

The silver screen paid its own tribute to Hoare with the film *The Wild Geese*, in which Richard Burton's character was believed to have been modelled on Hoare himself. Hoare was employed as a technical advisor on the film.

Although many ICAEW members considered his activities unsavoury, the institute was unable to expel Hoare from membership. He had not broken any ICAEW rule and was also scrupulous about paying his membership subscription.

In 1981, his failed coup d'état in the Seychelles changed all that. Hoare and his followers had landed in the country disguised as a charitable drinking club known as 'The Ancient Order of Froth-Blowers' with their weapons hidden beneath false bottoms in their luggage.

After heavy fighting at Mahe airport, Hoare and his team refuelled and then boarded an Air India aircraft, directing the captain to fly them to South Africa. Hoare was later found guilty of hijacking and was sentenced to 10 years in prison. On the back of his criminal record, ICAEW excluded him from membership in August 1983.

Hoare still resides in South Africa and has published numerous books about his experiences. To our knowledge, he no longer practises as an accountant.

CAUGHT ON CAMERA



A former member who called himself 'Dr' and 'Baron' did not attend his tribunal hearing in October 2009, nor did he make any final written submissions to the tribunal. This did not work in his favour.

The complaint against him – of bringing discredit on himself, the institute and the profession – concerned his association with the Irish International University (IIU), the Irish University Business School and the International University Business School. These had all falsely held themselves out as providing applicants with higher education qualifications equivalent to those obtainable from British universities. He had been vice chancellor of all three.

The evidence against him was substantial, including undercover BBC film footage in which he said the IIU was 'not recognised anywhere' and that the degrees 'were dodgy'.

The tribunal found that the member had 'systematically allowed the public to be misled' over a considerable number of years. Aggravating factors were that he had a previous disciplinary record (and would have been aware of the 'improper nature of his conduct') and that his actions likely incurred financial loss to students and possibly employers. He had shown 'absolutely no remorse for his actions indicating either a profound lack of insight or high level of arrogance'.

The tribunal ordered that he be excluded, fined £20,000 and pay costs of £19,533. All of this was paid immediately after ICAEW wrote to tell him he would be pursued through the courts if he failed to pay his debt.