



DISCIPLINARY ORDERS AND REGULATORY DECISIONS

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mr Graham Young FCA of

35 Jackson Court, Hazlemere, High Wycombe, Buckinghamshire, HP15 7TZ

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 6 September 2016

Type of Member Member

Terms of complaint

1. Between 26 May 2014 and the 29 June 2015 Mr G Young FCA failed to provide a response in writing to the following issues notified to him on the 21 February 2014 following a QAD visit as required by Practice Assurance Regulation 15:
 - a. No procedures in place to carry out client due diligence on all clients
 - b. PII insurer details not disclosed to new clients
 - c. Not all clients notified in writing of the basis of fees or complaints procedures
2. Between 20 November 2008 and 27 July 2010 Mr G Young FCA engaged in public practice without holding a practicing certificate, contrary to Principle Bye-Law 51a
3. Between 20 November 2008 and 29 April 2010 Mr G Young FCA engaged in public practice without professional indemnity insurance contrary to Regulation 3.1 of the Professional Indemnity Insurance Regulations
4. Between 20 November 2008 and 29 June 2015 Mr G Young FCA failed to carry out and document customer due diligence and risk assessments on all clients
5. From 28 December 2009 and 29 June 2015 Mr G Young FCA failed to provide new clients with contact details of his insurer and details of the territorial cover of the insurance.
6. Between 20 November 2008 and the 29 June 2015 Mr G Young FCA failed to ensure that all new clients are informed in writing of the name of the principle to be contacted if they wish to make a complaint and the client's right to complain to ICAEW contrary to Disciplinary Bye-Law 11.1
7. Between 20 November 2008 and 29 June 2015 Mr G Young FCA failed to notify clients, in writing, of the basis on which fees will be rendered as required by paragraph 240.2b of the Code of Ethics.

Mr Graham Young is therefore liable to disciplinary action as follows:

In respect of head one, two, three and six under Disciplinary Bye-law 4.1.c in that 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 respect of head four, five and seven under Disciplinary Bye-Law 4.1.a in that 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

Hearing date

06 September 2016

Previous hearing date(s)

None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes on the defendant's admission

All heads of complaint proven Yes

Sentencing order

- a) A severe reprimand
- b) Fine of £2,800
- c) Costs of £2,000

Procedural matters and findings

Parties present Mr Graham Young
Investigation Committee (IC)

Represented Mr Cope solicitor represented Mr Young
Mr Francis solicitor ICAEW represented the IC

Hearing in public or private The hearing was in public

Decision on service In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service

Documents considered by the tribunal The tribunal considered the documents contained in the IC's bundle and documents provided by the defendant.

Issues of fact and law

1. Graham Young (the defendant) is the sole Director and therefore Principle of 'A' Ltd, a company which was incorporated on the 21 November 2008.
2. The defendant applied for a practicing certificate on or around the 29 April 2010 and obtained the same on the 28 July 2010.
3. At a Practice Assurance visit that took place via telephone on the 20 February 2014 it was established that 'A' Ltd had been engaged in public practice in the period between incorporation and the date a practicing certificate was obtained. It was therefore reported that the defendant had engaged in public practice without a practicing certificate and without Professional Indemnity Insurance.
4. The findings of QAD were documented in accordance with Practice Assurance Regulation 15 and transmitted to the defendant on the 21 February 2014 for him to provide a response in writing by the 13 March 2014. The defendant was given additional time (in excess of the 15 days provided for within the regulation) to provide a written response but failed to do so. On the 14 April 2014 the defendant was given until 26 May 2014 to provide a response or the matter would be reported to the Practice Assurance Committee.

5. On the 22 October 2014 the Practice Assurance Committee (PAC) considered a report prepared by the QAD following the visit. The PAC decided to refer the failure to hold a practicing certificate and PII to Professional Conduct whilst also giving the defendant another opportunity to respond as required by Regulation 15. The PAC requested the response be provided by the 24 November 2014 or the failure to respond would also be referred to Professional Conduct. As no response was received the failure was so referred.

Complaint One (DBL4.1.c) - Failure to respond in accordance with Practice Assurance Regulation 15

6. Practice Assurance Regulations are regulations made by Council. The present regulations were made on the 06 October 2004 and came into force on the 01 November 2004. Practice certificate holders are required to comply with these regulations which include, among other matters, submitting and co-operating with Practice Assurance visits.

7. Practice Assurance Regulation 15 states:

“Following a visit, any issues or concerns will be notified by ICAEW in writing to the member firm or PC member. The member firm or PC member shall, within 15 business days of receipt of such notification (or such longer period as may be allowed), provide a response in writing to ICAEW addressing such issues or concerns.” (*emphasis added)*

8. The report to the PAC sets out the issues and concerns identified by the QAD reviewer on the 20 February 2014 following the practice assurance meeting. Those issues were consistently and repeatedly brought to the defendant’s attention in a series of correspondence between ICAEW and the defendant that took place between February 2014 and March 2015.
9. Accordingly, between 27 February 2014 and the 04 June 2014 the defendant failed to provide any response pursuant to Regulation 15. The report to the Practice Assurance Committee was prepared on the 26 June 2014 and a copy of that report was sent to the defendant under cover of the 27 June 2014.
10. Correspondence continued with the defendant between 18 July 2014 and 9 September 2014, but this failed to resolve the issues.
11. On the 08 October 2014 the defendant provided a substantive response to the issue / concern around his failure to hold a practicing certificate. Within the correspondence he provided details of personal circumstances.

On the 22 October 2014 the PAC considered the report and provided the defendant with a further deadline of the 24 November 2014 by which he was to respond to the concerns / issues raised in the report to the PAC. In the absence of a satisfactory response the matter was transferred (in accordance with the wishes of the PAC) to investigation. Over the period of 1 December 2014 and 3 March 2015, the Case Manager chased Mr Young for further responses.

12. On the 16 March 2015 the defendant provided a document setting out, in detail, health issues and requesting a three month extension.
13. The chain of correspondence demonstrated the opportunity and thereby the failing of the defendant to comply with Regulation 15 which requires the defendant to provide a response to the concerns and issues raised. In particular, as set out within complaint one, no response concerning those three matters has been provided.

Complaint Two and Three (DBL4.1.c) – Engaging in public practice without a Practising Certificate and PII respectively

14. ICAEW Principle Bye-Law 51(a) states:

“Subject as may be provided in regulations, a member shall be entitled to engage in public practice in the United Kingdom or any other member state of the European Economic Area only if he holds a current practising certificate.”

15. Regulation 3.1 Professional Indemnity Insurance Regulations (PIIR) states:

“A firm must:

a. take reasonable steps to meet claims arising from being in public practice; and

b. arrange qualifying insurance which meets the limits in regulation 3.2.”

16. Council statement on engaging in public practice is a statement issued by the Council effective from 01 January 2008 intended to clarify what is meant by ‘engaging in public practice’ for the purposes of holding a practising certificate.

17. By paragraph 5 of that statement a member is engaged in public practice if he is a principle in a ‘public practice’ defined as an entity which provides accountancy services to clients in anticipation of reward.

18. The defendant applied for a practising certificate on or around 29 April 2010 indicating within the application form that he would commence public practice on the 30 April 2010. That application was approved on the 28 July 2010 when the defendant provided proof that he had obtained qualifying PII.

19. In an email dated 15 August 2015 the defendant said ‘I regard myself as having been practicing through ‘A’ Ltd from a somewhat earlier date – 20 November 2008’.

20. In correspondence provided by the defendant ‘A’ Ltd was invoicing clients in March 2009.

21. Accordingly the defendant was engaged in public practice from 20 November 2008 and as he neither held a Practising Certificate nor PII for the relevant period as alleged in complaint two and three he was in breach of Principle Bye-Law 51(a) and Regulation 3.1 PIIR.

Complaint Four (DBL4.1.a) – Money Laundering Regulations 2007

22. Regulation 7 and Regulation 19 to 21 Money Laundering Regulations 2007 apply in this case.

23. Regulation 7 requires a relevant person (the defendant) to determine the extent of customer due diligence and demonstrate application of the same to his supervisory body (ICAEW).

24. QAD reported to the PAC that the defendant had no procedure in place to carry out due diligence on all clients. The defendant had failed to respond substantively to the report indicating what due diligence, if any, was undertaken. In correspondence the defendant has indicated that he now has awareness of the regulations, applies some due diligence and has briefed his daughter (his only staff member). No evidence of these checks has been provided.

Complaint Five (DBL4.1.a) – Provision of Service Regulations 2009

25. Regulations 7 to 11 Provision of Services Regulations 2009 apply in this case. The regulations came into force on 28 December 2009
26. Regulation 8(1)(n) requires a provider who is subject to a requirement to hold PII to make available to the 'recipient of a service' information about the insurance, in particular(i) the contact details of the insurer and (ii) the territorial coverage of the insurance.
27. The QAD found that the defendant had not complied with these regulations and the defendant has provided no evidence of compliance.

Complaint Six (DBL4.1.c) 'Clients right to complaint' and Complaint Seven 'Rendering of Fees' (DBL4.1.a)

28. It was further established by QAD and contained within the report to the PAC that the defendant had not issued engagement letters to all clients. Whilst it is not mandatory for engagement letters to be sent it is a requirement, pursuant to DBL11 that:

"Every firm shall ensure that all new clients are informed in writing of the name of the principle to be contacted in the event of their wishing to complain about the firms services, and of their right to complain to the institute."
29. In addition, it is an ethical requirement that the professional accountant in public practice confirm in writing, prior to commencement of any engagement, the basis upon which fees will be rendered.
30. No evidence is provided by the defendant that these matters were attended to within the complained period.

Conclusions and reasons for decision

31. The tribunal found the complaint proven on the defendant's own admission.
32. For a period of years the defendant failed to have regard to ICAEW Bye-Laws, Regulations or ethical standards whilst he engaged in public practice. The defendant indicated that he has a number of personal problems which may have impacted upon his ability to address these issues. However, the chronology provided by the IC to the tribunal and the correspondence within the bundle demonstrated the defendant had been given ample opportunity by QAD, the PAC and thereafter PCD to address issues and concerns raised, yet failed to do so.
33. The tribunal found that, in respect of head one, two, three and six the defendant was in breach of Disciplinary Bye-law 4.1.c in that he had committed a breach of the bye-laws or of any regulations or had failed to comply with any order, direction or requirement made, given or imposed under them
34. The tribunal also found that, in respect of head four, five and seven the defendant was in breach of Disciplinary Bye-Law 4.1.a in that in the course of carrying out professional work or otherwise he had committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy

Matters relevant to sentencing

35. The tribunal had regard to its *Guidance on Sanctions*.
36. The defendant had no prior disciplinary record. Mr Cope addressed the tribunal on behalf of Mr Young and made the following points in mitigation:
- a) During the relevant period, Mr Young himself suffered ill health.
 - b) The failure to obtain a PC and PII had been inadvertent – he had believed that if he did not make public in advertising, letter heads etc. that he was a chartered accountant, that he did not need a PC or PII. Mr Young had only been carrying out a minimal amount of work such that the risk to the public over the 20 month period, was not that great. This issue was now relatively old.
 - c) There had been no complaints from the public.
 - d) Once he had realised that there were other deficiencies in his practice, he did take action, had invited SWAT in and had resolved the QAD issues.
37. The tribunal took into account the above mitigation. It noted however that there was a serious aggravating factor in this case in that Mr Young had failed to cooperate with the Institute over a long period of time.
38. The tribunal was addressed as to his limited means.
39. The tribunal took the view that whilst the matters of concern other than the lack of a practising certificate and PII were relatively minor issues in terms of professional standards, and that there was nothing to indicate that any member of the public had suffered loss due to Mr Young's failings, this was escalated into a much more serious complaint given Mr Young's failure to cooperate over a long period of time. The trust and confidence of the public entrusted in chartered accountants was in part dependent on the ability of the Institute to monitor and maintain standards within the profession. Mr Young's failure to respond over such a long period on the issues of concern was unacceptable. In addition, there was the cumulative effect of the number of matters picked up by QAD indicating an overall picture of concern.
40. The tribunal reduced the proposed financial penalty and award of costs on account of his financial position.

Sentencing Order

41. The tribunal decided to impose the following sentence:
- d) A severe reprimand
 - e) Fine of £2,800
 - f) Costs of £2,000

Mr Young was given 24 months to pay the fine and costs and therefore ordered that he should pay £200 a month, the first payment to be made by 1 November 2016.

Decision on publicity

42. The tribunal decided that there should be publicity of this decision. Mr Cope put forward an application that Mr Young's name not be published on the basis that this would cause hardship to him. Whilst sympathetic to the health issues of Mr Young, these did not amount to exceptional circumstances.

Non Accountant Chairman	Mr Ron Whitfield	
Accountant Member	Mr Martin Ward FCA	
Non Accountant Member	Mr Nigel Dodds	
Legal Assessor	Ms Melanie Carter	024782

2 Mr Simon Charles Rothwell ACA of
4 Hall Close, Bramhope, LEEDS, LS16 9JQ.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 4 October 2016

Type of Member Member

Terms of complaint

Between 01 November 2013 and 11 June 2014, Mr Simon Rothwell ACA had reasonable grounds for knowing or suspecting that Ms 'A' was engaged in money laundering but failed to disclose it to a nominated officer or authorised person.

Mr Simon Rothwell is therefore liable to disciplinary action as follows:

Disciplinary Bye-law 4.1.a in that ... 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

Hearing date

04 October 2016

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

- (i) Severe reprimand
- (ii) Direction : Mr Rothwell is directed to seek advice from ICAEW as soon as practicable and in any event within 3 months as a member in practice as to appropriate money laundering training, and to attend such training as is advised at his own expense within 6 months from the date of this Direction.
- (iii) Costs of £3278.67

Procedural matters and findings

Parties present

Mr Simon Rothwell
The Investigation Committee (“IC”)

Represented

The IC was represented by Mr James Francis

Hearing in public or private

The hearing was in public

Decision on service

In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service

Documents considered by the tribunal

The tribunal considered the documents contained in the Investigation Committee’s (IC’s) bundle together with Regulation 13 answers.

Findings on preliminary matters

Issues of fact and law

1. By section 330 Proceeds of Crime Act 2002 (POCA 2002) it is a criminal offence in England and Wales to know, suspect or have reasonable grounds for suspecting – during the course of conducting business in a regulated sector – that another person is engaged in money laundering and to then fail to disclose that in a prescribed form to a nominated person.
2. Section 334(2) Proceeds of Crime Act 2002 sets the penalty on conviction for such an offence. The maximum penalty on conviction is five years imprisonment and accordingly the offence is indictable.
3. Disciplinary Bye-Law 7.1 states:

“The fact that a member...has, before a court of competent jurisdiction, pleaded guilty to or been found guilty of an indictable offence...shall for the purposes of these bye-laws be conclusive evidence of the commission by him of such an act or default as is mentioned in bye-law 4.1(a)...”
4. On the 15 April 2015 the defendant was convicted at Leeds Magistrates Court of a single offence under Section 330 POCA 2002 and committed to the Crown Court for sentence. On the 12 October 2015 the defendant was sentenced at Leeds Crown Court to pay a fine of £5000 and ordered to pay a standard victim surcharge of £120.00.
5. In accordance with DBL7.1, the defendant’s conviction is conclusive evidence of the commission by him of an act and default alleged in this complaint. The defendant had reasonable grounds to suspect Ms ‘A’ was engaged in money laundering and failed to disclose that fact to a nominated or authorised person as required by law.

6. Mr Rothwell is a director of 'B' Limited, an accountancy practice based in Leeds.
7. A client of 'B' Limited was 'C' Limited. The defendant provided accountancy and tax services to that company. Their principle activity was the supply of consultancy and training services to the National Health Service (NHS).
8. Between January 2009 and November 2013 the defendant provided tax and accountancy services to 'C' Limited. During this period Her Majesty's Customs and Excise (HMRC) started an enquiry into the corporation tax return of the company. That enquiry continued into November 2013. On the 01 November 2013 Ms 'A', the sole director and shareholder of 'C' Limited, disclosed to the defendant that she had engaged a firm of tax specialists to deal with the enquiry of HMRC. She further disclosed that she had over-claimed her mileage expenses and was asking the new firm of tax specialists to negotiate a settlement with HMRC on her behalf. The defendant ends his business relationship with the defendant on this date.
9. In July 2014 the defendant was interviewed by Police under criminal caution. It was disclosed to him that Ms 'A' had been involved in a large fraud against the NHS utilising her company to generate fake orders for training provided by her husband, who worked within the NHS.
10. There was no evidence the defendant had any involvement or knowledge of the fraud, rather the defendant was charged with failing to disclose to the authorities his knowledge of the over-claim for expenses which Ms 'A' had disclosed in November 2013. The lack of knowledge of the larger fraud was accepted by His Honour Judge J Spencer QC who sentenced the defendant to a fine of £5000. The Judge indicated his view that the defendant ought to have been aware of his professional obligations concerning disclosures of this type and thus a belief that those disclosures would be taken up by the newly instructed tax specialists for Ms 'A' was not a meaningful excuse.
11. All matters of fact and law set out by the IC were agreed by Mr Rothwell, who admitted the complaint.

Conclusions and reasons for decision

12. Mr Rothwell was convicted in Leeds Magistrates Court on 15 April 2015 of failure to disclose that another person who he had reasonable grounds for suspecting was engaged in money laundering. That information came to him in the course of business in the regulated sector contrary to sections 330 and 334 Proceeds of Crime Act 2002. Mr Rothwell was sentenced in the Leeds Crown Court on 12 October 2015 to pay a fine of £5,000 and a victim surcharge of £120.
13. DBL 7.1 states:-

"The fact that a member...has, before a court of competent jurisdiction, pleaded guilty to or been found guilty of an indictable offence...shall for the purposes of these bye-laws be conclusive evidence of the commission by him of such an act or default as is mentioned in bye-law 4.1(a)."
14. Accordingly Mr Rothwell is in breach of DBL 4.1.a

Matters relevant to sentencing

15. The tribunal considered the *Guidance on Sanctions*. The starting point in respect of an offence of this nature is exclusion.
16. Mr Rothwell has been in practice for 26 years. He has no prior disciplinary record.

17. The information which came to Mr Rothwell and which he should have made known to the proper authority concerned over claimed mileage expenses on the part of a client.
18. At the point when the knowledge came to Mr Rothwell another firm of accountants was instructed to deal with HMRC in respect of the mileage. Mr Rothwell therefore, having recognised that this information should be notified, considered that this information would reach the HMRC through the newly instructed firm of accountants. That is what did happen but it may have been the case that earlier notification might have enabled a larger fraud to have been discovered sooner.
19. Mr Rothwell has suffered considerable stress through the police investigation and court process but that is inevitable in such circumstances. Mr Rothwell was fined £5000 in the Crown Court.
20. The tribunal has taken into account the importance of the money laundering legislation, and the interests of the public and the Institute.
21. In all the circumstances the tribunal has taken the view that the appropriate sanction in this case is a severe reprimand. In addition the tribunal is concerned to ensure that Mr Rothwell and those for whom he is responsible in his practice should undertake thorough training in respect of money laundering rules and responsibilities. Accordingly we have made an order which will ensure that adequate training is undertaken.

Sentencing Order

- (i) Severe reprimand
- (ii) Direction : Mr Rothwell is directed to seek advice from ICAEW as soon as practicable and in any event within 3 months as a member in practice as to appropriate money laundering training, and to attend such training as is advised at his own expense within 6 months from the date of this direction.
- (iii) Costs of £3278.67

Decision on publicity

The tribunal decided that there should be publicity of this decision.

Non Accountant Chairman	Mr Ron Whitfield	
Accountant Member	Mr Nigel Meredith FCA	
Non Accountant Member	Ms Martha Maher	
Legal Assessor	Mr John Trotter	027076

3 Mr Nicholas Stephen Pomroy [FCA] of
2A Zodiac House, Calleva Park, Aldermaston, Reading, RG7 8HN

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 20 September 2016

Type of Member Member

Terms of complaint

Between July 2007 and February 2008, Mr N S Pomroy FCA conspired with others to defraud 'A' PLC and 'B' of £5,162,500.00.

Mr Nicholas Stephen Pomroy is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.a.

because

...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.

Hearing date

20 September 2016

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 Exclusion

Procedural matters and findings

Parties present Nicholas Pomroy was present.

Represented Mr Pomroy was represented by Mr Kieran Galvin of Counsel. The Investigation Committee (IC) was represented by Mr James Francis.

Hearing in public or private The hearing was in public.

Decision on service In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service.

Documents considered by the tribunal The tribunal considered the documents contained in the Investigation Committee's bundle together with evidence of Mr Pomroy's means and his Regulation 13 Answers as well as two letters from him to ICAEW dated 28 and 30 June 2016. The tribunal also received information about Mr Pomroy's health.

The Investigation Committee's (IC's) case

1. On 21 July 2014, the defendant was convicted in the Crown Court at Southwark of two counts of conspiracy to defraud 'A' PLC of £3,562,500 and 'B' of £1,600,000. In short, in his capacity as an accountant, he provided false and untrue information in order to enable others to obtain mortgage advances. He was sentenced to a term of imprisonment of three years.
2. This conduct is an act, or acts, likely to bring discredit on the defendant, the Institute or the profession of accountancy, pursuant to DBL 4.1(a).
3. Disciplinary Bye-law 7.1 provides that the finding of guilt for an indictable offence in a court of competent jurisdiction is conclusive evidence of a discreditable act described in DBL 4.1(a). The defendant was found guilty of such an indictable offence.
4. The defendant did not admit the complaint, although he said that he understood the effect of DBL 7.1, as a matter of evidence. He said that the reason why he did not admit the complaint was that he was preparing a case to be put before the Criminal Cases Review Commission and did not want to prejudice that. A plea of not admitted was recorded.

Issues of fact and law

5. In light of the non-admission of the complaint, the IC was put to proof of the complaint. The issue to determine was whether the Defendant had breached DBL 4.1(a) because he had, on two counts, conspired to defraud two mortgage lenders. The proof that he had done so was his conviction.
6. The tribunal found the complaint proved.

Conclusions and reasons for decision

7. The defendant has been convicted for conspiring to defraud two financial institutions. While the tribunal notes that the defendant was found by the court to have played a lesser role in the fraud than others, his conduct self-evidently breaches DBL 4.1(a), and requires the appropriate sanction.

Matters relevant to sentencing

8. The tribunal considered the *Guidance on Sanctions* and saw no reason to depart from that. The tribunal was satisfied that no lesser sanction was appropriate. A mitigating factor was the defendant's clean disciplinary record. The defendant's means were also taken into account.
9. The tribunal was told that the defendant did not give evidence at his trial which, on reflection, he believes was a mistake. The tribunal heard evidence from the defendant, who also answered questions, as to what happened that gave rise to his conviction. The tribunal also noted, through his Counsel, the defendant's sincere intention to apply to the Criminal Cases Review Commission. None of these matters can affect the appropriate sanction of exclusion which must follow from a case of this kind. Nevertheless, if the defendant is successful in his application to set aside his conviction, he will be at liberty to apply to ICAEW for re-admission.
10. The defendant's means (he is in an IVA) and current situation persuaded the tribunal that an order for costs would not be appropriate. Had his means been greater, a costs order would have been made.

Sentencing Order

Exclusion

Decision on publicity

Publication with name.

Non Accountant Chairman

Mr Peter Williamson

Accountant Member

Mr Ian Walker FCA

Non Accountant Member

Miss Jane Rees

Legal Assessor

Mr Dominic Spenser Underhill

005247

INVESTIGATION COMMITTEE CONSENT ORDERS

4 Mr Ralph Wood Thoburn

Consent order made on 28 October 2016

With the agreement of Mr Ralph Wood Thoburn of 14 Barrington Street, South Shields, Tyne and Wear, NE33 1AJ, the Investigation Committee made an order that he be severely reprimanded and pay costs of £1,342 with respect to a complaint that:

Mr R W Thoburn was a director of X Limited, a body corporate engaged in public practice that was wound up on the ground of insolvency on 18 July 2014.

022960

5 Mr Richard Hilton Savage

Consent order made on 2 November 2016

With the agreement of Mr Richard Hilton Savage of Fairclough House, Church Street, Adlington Chorley, Lancashire, PR7 4EX, the Investigation Committee made an order that he be reprimanded, fined £2,500 and pay costs of £2,386 with respect to a complaint that:

Between 19 April 2013 and 15 May 2015 Mr R H Savage as supervisor of the individual voluntary arrangements of Mr and Mrs X failed to issue a certificate of completion in a timely manner.

025689

6 Mr Andrew James Gambier

Consent order made on 2 November 2016

With the agreement of Mr Andrew James Gambier of 73 Annandale Road, London, SE10 0DE, the Investigation Committee made an order that he be reprimanded, fined £2,650 and pay costs of £4,480 with respect to a complaint that:

Mr Andrew James Gambier FCA failed to comply with section 150 of the Code of Ethics by pursuing a course of conduct between 18 February 2010 and 9 February 2014 when his blog was live, namely making offensive comments made on 'fcablog' which he subsequently shared on Twitter.

030733

7 Mr Michael Man-Chau Choi

Consent order made on 15 November 2016

With the agreement of Mr Michael Man-Chau Choi of 12/F Kam Sang Building, 255-257 Des Vouex Road, Central, Hong Kong Sar, the Investigation Committee made an order that he be severely reprimanded, fines £4,750 and pay costs of £1,968 with respect to a complaint that:

On 29 March 2011, on behalf of his firm X Ltd, Mr Michael Man-Chau Choi FCA signed an unqualified audit report for Y Ltd (the company) for the year ended 31 December 2010 when the audit had not been conducted in accordance with:

1. Paragraphs 8 and 9 of Hong Kong Standard on Auditing 500 'Audit Evidence' as Mr Choi had relied on the work of a management's expert and information produced by management regarding the valuation of mining rights without evaluating the appropriateness of the expert's work or assessing the appropriateness and accuracy of the audit evidence obtained; and
2. Paragraph 8 of Hong Kong Standard on Auditing 230 'Audit Documentation' as Mr Choi had failed to prepare adequate audit documentation of the audit procedures performed, the audit evidence obtained and conclusions reached during his discussions with management on their assessment of the valuation and impairment of Z.

032618

8 Humphrey & Co

Consent order made on 15 November 2016

With the agreement of Humphrey & Co of 7-9 The Avenue, Eastbourne, East Sussex, BN21 3YA, the Investigation Committee made an order that the firm be reprimanded, fined £3,000 and pay costs of £4,661 with respect to a complaint:

That Humphrey & Co issued the following audit reports, on the financial statements of X Limited:

Financial statements for the year-ended:	Audit report dated:
30 September 2009	10 February 2010
30 September 2010	15 February 2011
30 September 2011	2 February 2012
30 September 2012	8 February 2013

when the audits were not conducted in accordance with:

1. International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the auditor failed to prepare, on a timely basis, audit documentation that provides a sufficient and appropriate record of the basis for the auditor's report in respect of:
 - completeness of income;
 - reliance on management representations;
 - reliance on the external stock taker; and
 - expenditure through petty cash.
2. International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion in respect of:
 - completeness of income;
 - reliance on management representations;
 - reliance on the external stock taker; and
 - expenditure through petty cash.

027262

9 Mazars LLP

Consent order made on 17 November 2016

With the agreement of Mazars LLP of Tower Bridge House, St Katherine's Way, London, E1W 1DD, the Investigation Committee made an order that the firm be severely reprimanded, fined £22,500 and pay costs of £5,405 with respect to a complaint:

That on 17 April 2014, Mazars LLP issued an audit opinion in respect of the financial statements of X plc for the period ended 30 November 2013, in breach of Audit Regulation 3.02 in that the firm failed to apply appropriate safeguards to eliminate or reduce to an acceptable level a threat to the firm's independence and objectivity arising from the appointment on 3 May 2013 of a former partner in Mazars LLP that might have been in the firm's chain of command as a director of the audited entity.

024688

10 SPW (UK) LLP

Consent order made on 18 November 2016

With the agreement of SPW (UK) LLP of Gable House, 239 Regents Park Road, London, N3 3LF, the Investigation Committee made an order that the firm be reprimanded, fined £1,300 and pay costs of £3,358 with respect to a complaint that:

2. SPW (UK) LLP failed to efficiently deal with the personal tax enquiry of their client Ms X contrary to Section 130.4 of the Code of Ethics. In particular, the firm did the following:
 - a. failed to meet HMRC deadlines on multiple occasions, including following the issue of an information notice by HMRC;
 - b. lost Ms X's file
 - c. failed to provide any new information to HMRC after 10 February 2014.

022821

12 Sutton McGrath Hartley Ltd

Consent order made on 23 November 2016

With the agreement of Sutton McGrath Hartley Ltd of 5 Westbrook Court, Sharrow Vale Road, Sheffield, S11 8YZ, the Investigation Committee made an order that the firm be reprimanded, fined £2,650 and pay costs of £2,708 with respect to a complaint that:

2. On 13 May 2015 Sutton McGrath Hartley Ltd failed to comply with regulation 22 of the Clients' Money Regulations as they withdrew money from the firm's client bank account towards the payment of fees for a client without agreeing the precise amount with the client or before 30 days had elapsed since the date of delivery to the client of a statement of fees.

029721

REGULATORY DECISIONS

REVIEW COMMITTEE

- 13 Mr Philip Andrew Nuttall FCA** of
Broadhurst Edge Farm, Mellor Road, New Mills, High Peak, Derbyshire, SK22 4QG

A panel of the Review Committee made the decision recorded below having heard an application for review on 1 June 2016

Status of applicant	Insolvency licensee
Date of decision of committee	11 March 2016
Date of Review Panel Hearing	1 June 2016
Decision of Review Panel	Insolvency licence removed
Conditions and Restrictions imposed?	Not applicable
Order for costs made	Yes. £5,080.00.
Instalment arrangement made?	Yes.
Terms of publicity	Publication

Reasons for decision

Background and the grounds of application for review

- 1 The Applicant is a Member of ICAEW and, since March 2003, has been a director and the manager of a limited liability company called 'A' Ltd (now in administration) through which he practised. The Applicant has practised insolvency since 1986 and obtained his ICAEW insolvency licence in 1990. 'A' Ltd is owned by 'B' Ltd, of which Mr Nuttall is a director and (with his wife) a shareholder. 'A' Ltd provided Individual Voluntary Arrangement (IVA) services in respect of a large number of individuals. At all material times it employed a person called Mr 'E' who is a member of ACCA (not the ICAEW). In late 2015 'A' Ltd was handling 3,260 open cases of which 96% were IVAs and 4% were Protected Trust Deeds. Mr Nuttall was handling 2,363 IVAs at this time. These cases had been transferred to Mr Nuttall in December 2014 when another Insolvency Practitioner left 'A' Ltd. By November 2015 these numbers had seemingly reduced: the bank reconciliation summary showed 2,737 cases, with 1,617 being handled by Mr Nuttall.
- 2 'A' Ltd used a global bank account for the client trust funds and, for each individual case, individual so-called "virtual" sub-accounts, with their own bank statements. As a matter of accounting, the total balances of the virtual sub accounts should equal the balance on the global bank account. At all material times (from about 2013), 'A' Ltd used an automated internet banking arrangement with Barclays Bank which, schematically, provided a single global control account for client funds with subsidiary virtual accounts. In fact, the global control account comprised three, numbered, accounts:

- (i) the account numbered 'FFF' was the default account which was used for receipts and payments across the caseload, and was also used for old cases managed by the Applicant;
 - (ii) the account numbered 'GGG' was used for cases handled by a member of staff called Ms 'C'; and
 - (iii) account 'HHH' was used for cases handled by Ms 'D'.
- 3** Mr 'E', who had been employed within the 'B' Ltd, understood the Barclays system and the Applicant delegated the task of performing weekly bank reconciliations to him once the Barclays system had been put in place. (Before that, the Applicant had performed that task himself.) The Applicant, who had no prior experience of the Barclays system, also delegated its daily operation to Mr 'E' as well and Mr 'E' became the System Administrator with control over it.
- 4** Although there are three numbered accounts, account 'FFF' is the default account and where funds are received into the 'FFF' account which relate to cases covered by the other two, appropriate funds are then transferred to either of them, as the case might be. Ms 'C' and Ms 'D' were employees and also Insolvency Practitioners. They expressed concerns with regards to the operations of the bank accounts (see paragraph 6 below). It was agreed that these two employees should liaise with Mr 'E' about their concerns who would, in turn, liaise with the Applicant.
- 5** The system of accounting ought to have run along the following lines:
- (i) daily, staff at 'A' Ltd download a net movement report from the 'FFF' account which would show a total of receipts and payments of the previous day. Those staff then prepare a daily transaction spreadsheet which allocates those transactions to individual clients. The transactions are then allocated to one of three Client Relationship Management systems ("CRM systems") and the daily cash book is updated as well. The CRM systems update the receipts and payments account for each client. The transaction spreadsheet described above is then used to update allocations in the virtual sub-accounts.

The upshot of all this should be that:

- (i) the balance on the physical 'FFF' account;
- (ii) the balance in the cash book; and
- (iii) the aggregate of the balances of the virtual sub-accounts should show the same amounts.

However, no reconciliation reports were made before 28 August 2015. 'A' Ltd handled a large number of cases; regular payments were made by individuals undergoing IVAs to 'A' Ltd. Fees were charged by 'A' Ltd and net amounts would be paid out to creditors in respect of the IVAs. Due to the volumes of transactions involved, it was clearly very important that these systems operated efficiently.

- 6** In March 2015, Ms 'C' and Ms 'D' raised concerns about:
- (i) their access to estate accounts;
 - (ii) the fact that funds were paid into a global account before being allocated to the virtual accounts;

- (iii) the fact that estate accounts should be interest bearing and
- (iv) fees paid to a company in the 'B' Ltd were wrongly treated as a category 1 disbursement.

However, both staff members subsequently complained that Mr 'E' did not provide them with the information they sought.

- 7 In May 2015, Mr 'E' handed in his six months notice to terminate his employment. Since August 2015, Mr 'E' became absent from work due to stress.
- 8 The investigation into the matters raised by the two staff members put the Applicant on a train of enquiry leading up to a discovery which gave rise to the decision which is currently under review.
- 9 On 25 August 2015, the Applicant notified ICAEW that he had become aware of a significant difference of £6,643,839 between the total balances of the virtual sub accounts (which were £7,755,623) and the balance of the global control account number 'FFF' (which was (£1,111,784). In short, there was an extremely material accounting discrepancy. The Applicant was unable to explain the difference. [The Applicant has also since notified his professional indemnity insurers and the police.] Since reporting the matter to ICAEW, the Applicant continued to investigate what had happened: at that stage it was not known if money had been wrongly extracted or if transactions had been made but not reflected in the virtual sub-accounts. In early September 2015 the Applicant engaged the services of an independent firm of Chartered Accountants to assist with that.
- 10 On 1 September 2015, the caseworker of ICAEW wrote to the Applicant about the forthcoming QAD visit; she said: *"The results of the visit will then be provided to the Insolvency Licensing committee so that they are [sic] fully appraised on the situation. There are no regulatory implications for you, as you have identified the issue, are putting procedures in place and have taken action in respect of the employee, however, it is important that the committee are [sic] fully aware of what has taken place."*
- 11 The August self-reporting prompted a visit by the Quality Assurance Department (QAD) of ICAEW to 'A' Ltd on 4 September 2015.
- 12 A second visit by QAD took place on 5 October 2015. However, by 23 December 2015, and in spite of the Applicant reporting regularly to ICAEW, the investigation into the accounting discrepancy had made slow progress. This caused the Insolvency Licensing Committee growing concern. A further QAD visit took place on 17 February and a final report into the matter was produced on 19 February 2016.
- 13 By the time of that report, it had been established that some £4,830,000 of estate money had been misappropriated, with a large proportion of that sum being paid to 'A' Ltd (about £4,000,000) and its holding company 'B' Ltd (about £751,000). These transactions appear to have been authorised and processed by Mr 'E'.
- 14 The Insolvency Licensing Committee met on 11 March 2016 to consider the QAD's report of 19 February 2016 and some written responses of the Applicant dated 9 March 2016. The Committee decided to withdraw the Applicant's Insolvency Licence with effect from 1 April 2016. The Applicant was informed of this decision by a letter dated 14 March 2016 and the Applicant exercised his right to a review of this decision on 8 April 2016, with reasons.

- 15** The reasons that the Insolvency Licensing Committee gave for withdrawing the Applicant's licence were under clauses 5.12d and/or 5.12f of the Insolvency Regulations and Guidance Notes. The Committee concluded that the Applicant had failed to maintain proper control over estate accounts for which he was responsible resulting in the inappropriate payment out of £5,000,000 of estate money, causing loss to creditors and debtors. The funds in question were paid away to 'A' Ltd and 'B' Ltd, where the Applicant was a director of both and, in the case of 'B' Ltd, a shareholder (with his wife). This gave the Applicant a very significant benefit from the inappropriate payments. Furthermore, it appeared to the Committee at that time that the losses were, either in whole or in part, irrecoverable; the recipient companies had neither the resources nor the intention, either as companies or through their directors and shareholders, to make good the losses.
- 16** The Panel considered the matter afresh.

Findings and Reasons

- 17** There is no dispute that 'A' Ltd had in place an internal accounting system the operation of which the Applicant had delegated to Mr 'E'. Mr 'E', it would seem, authorised the payment of almost £5,000,000 to the bank accounts of two companies of which the Applicant was a director and, in the case of one company, a shareholder. Why he did this was unclear.
- 18** This matter involves no allegation of dishonesty against the Applicant, and the Panel has been informed that the matter was reported to the Police by the Applicant.
- 19** It is to the Applicant's credit that he self-reported this matter to ICAEW in August 2015 and that he has taken steps to try to understand what happened to cause this extraordinarily large misappropriation of funds to two companies over which he had direction. His actions include the instruction of a firm of independent chartered accountants. The Panel is also aware that the progress of the investigation of events has been slowed by the unavailability of Mr 'E' through stress-related illness.
- 20** Yet, it is still not completely clear what has happened, and the administrators of 'A' Ltd were only appointed on 24 March 2016 and have only relatively recently commenced their work.
- 21** The reality confronting the Panel is of the Applicant, who is an experienced insolvency practitioner, directing a company which handles large sums of estate money, with high transaction volumes, and delegating the daily responsibility of administering the bank accounts which received that money to an employee. That employee was given by the Applicant very high rights of access to the banking system. Having carried out that delegation, the Applicant appears to have adopted a very light, if non-existent, touch in terms of daily control and supervision of that employee. That decision to delegate very responsible duties, and to provide rights to the operation of the banking systems, and then not to supervise, and not to impose checks and balances, lies at the heart of this matter.
- 22** There is no suggestion that the Applicant intentionally misappropriated the money to companies which he directed or in which he had an interest; nevertheless, the Applicant directed both companies at all material times and took the decision to delegate to Mr 'E' without imposing any sensible or workable method of supervising him. Furthermore, the amounts in question are very substantial and the period of misappropriation (although still not completely clear) extended from May 2013 until about August 2015. The amounts were very material to the income of 'A' Ltd in that period. This cannot be described as a case involving a one-off error by an employee while the employer's back was momentarily turned. It is a matter which exposes chronic shortcomings in the Applicant's directing of his business and supervision of his staff over a long period of time. Also, it is a matter where there is, even now, not a clear answer to what happened to all the money and whether any of it will be recovered.

- 23** The Panel had the greatest difficulty in understanding how such additional funds could have been included as income within the financial statements of 'A' Ltd without the Applicant being aware that something was clearly amiss. In the year ended 31 March 2015 the turnover of 'A' Ltd was £3,683,000 and it was £3,414,000 in the previous year. The information before the Panel indicated that the income for the year ended 31 March 2015 included some £2,500,000 which had been incorrectly removed from the estate accounts. This is some 68% of the income for that year. It is an amount in excess of the profits before taxation of that year of £2,367,000. In the year ended 31 March 2014 it seems that some 38% of the total turnover related to such incorrect transfers. The results for the year ended 31 March 2016 would also have been affected by incorrect transfers from April to August 2015.
- 24** Insufficient time has elapsed in a matter of this gravity, in which there would have to be substantial evidence that the same problem will not happen again, to persuade the Panel that the insolvency licence should be retained by the Applicant. The business model of 'A' Ltd had, at its heart, the requirement for strong controls over large transaction volumes. The Applicant failed to ensure that such controls were in place and the Panel does not have sufficient confidence in the Applicant that a similar problem will not happen again, so soon after the events in question, to restore that licence.
- 25** For these reasons, the Panel considers that the Applicant's insolvency licence should be removed. It agrees with the approach adopted by the Insolvency Licensing Committee.
- 26** The Applicant submitted that the email to him from ICAEW's case worker of 1 September 2015 gave him a legitimate expectation that no regulatory consequences would follow against him from his self-reporting of the matter in August 2015. Accordingly he submitted that the regulatory consequences which did, evidently, follow, are an abuse of process.
- 27** The Panel considered this matter very carefully due to the wording of the email. However, it firmly rejects this submission. To establish the basis for a legitimate expectation, the Applicant must show a representation by the relevant authority which is clear, unambiguous and devoid of relevant qualification. He relies on the statement by the caseworker in her email of 1 September 2015 as that representation. However, the Panel does not accept that it is made by the relevant authority. This caseworker had no power to decide whether or not regulatory consequences will flow from the matter. When she wrote the email, the caseworker obviously did not report on behalf of the Insolvency Licensing Committee which was the only relevant authority in this matter. Indeed, it was obvious that she was not doing so as the Committee was not yet apprised of what had happened.
- 28** The Panel can understand why the Applicant has placed reliance on what the caseworker told him, but does not accept that the reliance was, in the circumstances, either realistic or legitimate. In addition to the above points, neither the caseworker nor ICAEW had any knowledge at that stage that funds were missing or, indeed, that the funds had very largely been transferred wrongly for the benefit of 'A' Ltd and its holding company. It is not reasonable or realistic to construe the caseworker's remark on 1 September 2015 to apply to possible regulatory consequences arising out of events of which she knew nothing.
- 29** The Applicant also placed weight on references in one paper provided to him by ICAEW to a "Mr 'I'". The Panel rejects this submission. It is obvious that the references to Mr 'I' in the paper are administrative errors.
- 30** The Applicant has also asserted that the withdrawal of his Insolvency Licence will prevent him being employed, thus earning a living and so would breach his human rights. This is also rejected. The withdrawal of the Licence does not prevent employment. It is the withdrawal of a licence under ICAEW's Insolvency Regulations.

Decision

- 31** Insolvency registration is withdrawn under regulations 5.12d and 5.12f of the Insolvency Regulations and Guidance Notes.
- 32** The Applicant shall pay costs assessed in the sum of £5,080.00. This sum shall be paid in four instalments. The first instalment shall be paid in the sum of £1,250 on the 1 August 2016 and the second and third in the same amounts on the first days of September and October 2016. The fourth instalment in the sum of £1,330 shall be paid on 1 November 2016.

Chairman Andrew Strickland FCA

030399

AUDIT REGISTRATION COMMITTEE

ORDER – 21 SEPTEMBER 2016

14 Publicity Statement

Grant Thornton UK LLP, Grant Thornton House, Melton Street, Euston Square, London, NW1 2EP, has agreed to pay a regulatory penalty of £12,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.02 for failing to ensure that an individual did not act as audit engagement partner and engagement quality control reviewer of a listed entity for a combined period of service of more than seven years.

033346

ORDER – 21 SEPTEMBER 2016

15 Publicity Statement

Hudson THP Limited, 361 Rayleigh Road, Eastwood, Leigh-on-Sea, Essex, SS9 5PS, has agreed to pay a regulatory penalty of £6,350, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 6.06 for failing to comply with an undertaking to arrange and submit the results of an external hot file review of the firm's first completed audit within one month of completion.

018992

INVESTMENT BUSINESS COMMITTEE

ORDER – 11 OCTOBER 2016

16 Publicity Statement

G M Aitken, 18 High Street, North Ferriby, East Yorkshire, HU14 3JP, has agreed to pay a regulatory charge of £575, which was decided by the Investment Business Committee. This was in view of the firm's admitted breach of DPB Regulations 2.07h and 4.04 for incorrect completion of an annual return and for not properly documenting a DPB annual compliance review.

035315

ORDER – 11 OCTOBER 2016

17 Publicity Statement

In view of the firm's failure to comply with conditions on its licence imposed under regulation 2.11c of the DPB Handbook, Prime Accountancy (Group) Limited of 14 Barrington Street, South Shields, Tyne and Wear, NE33 1AJ, has agreed to pay a regulatory charge (determined by the Investment Business Committee) of £575.

030273

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