



## DISCIPLINARY ORDERS AND REGULATORY DECISIONS

Date published: 2 March 2016

### Disciplinary orders

#### Disciplinary Committee tribunal orders

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## DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 **Mr Andrew Richard Nicholson FCA** of Shieling, The Orchard, Staverton, Daventry, NN11 6JA

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 8 December 2015**

**Type of Member** Member

### **Terms of complaint**

Mr A Nicholson FCA failed to provide by 29 July 2015 the information, explanations and documents requested in a letter dated 15 July 2015 issued under Disciplinary Bye-law 13.

Mr Nicholson is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(c) because 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”*

### **Hearing date**

8 December 2015

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

1 December 2015

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

**Complaint found proved** Yes, on admission by Mr Nicholson

**All heads of complaint proven** Yes

### **Sentencing order**

- (a) Severe reprimand;
- (b) Fine of £500;
- (c) Costs of £2,286;
- (d) Particular steps set out in paragraph 14 d) below

### **Procedural matters and findings**

**Parties present** Mr Andrew Nicholson  
Investigation Committee

**Represented** Ms Joester of 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 as to service.

**Documents considered by the tribunal**

The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with documents from the defendant.

**Issues of fact and law**

1. A complaint was made against Mr Nicholson by two former clients. As part of the investigation of those complaints he has been asked to provide various information and documentation.
2. On 15 July 2015 the case manager dealing with the investigation of the complaints sent Mr Nicholson a letter requesting information she considered she needed to progress the investigation of the case. The requested information was:
  - (a) Copies of the corporation tax computations and returns for 'A' Ltd for the periods ended 31 March 2006 to 31 March 2011 inclusive.
  - (b) Copies of all HMRC correspondence relating to the errors in the corporation tax returns due to the omitted S455/S419 directors' loan tax.
  - (c) Copies of the self assessment tax returns for Mr & Mrs 'B' for the 2007-08, 2008-09, 2009-10 and 2010-11 tax years.
  - (d) Copies of the HMRC correspondence relating to the omitted beneficial loan interest and other errors in Mr & Mrs 'B's self assessment tax returns.
3. The letter stated that Mr Nicholson was required to reply by 29 July 2015, and that if he did not the matter would be referred to the Investigation Committee to consider the failure.
4. Following receipt of the letter of 15 July, Mr Nicholson did enter into correspondence with the case manager, apologising for his previous failure to reply. In the course of this correspondence he requested some time to respond because his daughter and then he himself had been unwell.
5. Mr Nicholson was offered further time to respond because of the difficulties he identified. He last wrote to the case manager on 26 August, when he said "I will take stock of everything today and will call you tomorrow to organise a suitably convenient time to you when I can deliver what is outstanding to you". Despite the case manager sending two further emails requesting the information, Mr Nicholson did not contact her again.
6. Mr Nicholson had sent in representations before the adjourned hearing.

**Conclusions and reasons for decision**

7. The tribunal found the complaint proven on the defendant's own admission.
8. Mr Nicholson has failed to provide the information requested by the case manager in her letter of 15 July by the date required. Mr Nicholson is therefore in breach of Disciplinary Bye-law 13 and in turn, Disciplinary Bye-law 4.1(c).

**Matters relevant to sentencing**

9. Mr Nicholson did not have a prior disciplinary record.

10. In mitigation, Mr Nicholson pointed out that he had had telephone conversations with the case officer and he stated that he had discussed with her what information he had. Records of these conversations were not available to the tribunal but it was accepted that a conversation had taken place on at least one occasion. Also in mitigation, he told the tribunal about the health problems facing his family explaining that he had not dealt with matters as he should. He had had problems getting together the information required further to the investigation into the underlying matter (he does not have access to all of it). He apologised for not providing what information he had. Mr Nicholson explained that he had limited means.
11. The tribunal took into account that Mr Nicholson had on three separate occasions said he would provide the information required. In addition, he had not provided it on the date of hearing. Whilst the tribunal acknowledged that he had explained that he did not have all the information required, he clearly did have a considerable amount of the information which should have been provided.
12. It was critically important to the ICAEW's ability to monitor and maintain the standards in the profession that members cooperate with any investigation.
13. The tribunal took into account Mr Nicholson's personal mitigation however and on this basis reduced the fine imposed.

### **Sentencing Order**

14. The tribunal took into account its *Guidance on Sentencing*. It decided to impose the following sanction:
  - (a) Severe reprimand;
  - (b) Fine of £500;
  - (c) Costs of £2,286.
  - (d) The tribunal in addition made an order further to Disciplinary Bye-law 24.1.c on the basis that it was appropriate for the purposes of resolving the issues which gave rise to the complaint to order he take steps to provide the information requested. It ordered, with regard to the information required further to the letter of 15 July 2015, that he:
    - i) produce to the IC, within 30 days of the sending of this decision to Mr Nicholson:
      - (a) a detailed list of what information he has and the information itself;
      - (b) a detailed list of what information he does not have, an explanation for why and an indication of where he thinks it may be obtained;
    - ii) write to 'C', copied to the IC, within the same period, consenting to them releasing information to the IC and asking them to do so as soon as possible.
    - iii) arrange a meeting with the case officer within the same period, which meeting subject to the case officer's availability is to take place by 29 January 2016.

15. The costs award included an amount for the previous date on which the hearing was adjourned. Mr Nicholson told the tribunal that he was not aware he was meant to be at the hearing on 1 December 2015. He had been at a medical appointment accompanying a family member. He said that he had not received the papers for the hearing by either email or post and around the time Ms Joester had emailed him, just before the papers were sent out, there had been difficulties with his email server.
16. The tribunal however decided to order him to pay part of the costs of the first hearing, taking into account that service had been satisfied, he had been aware of the ongoing investigation and that the tribunal was not persuaded by his explanation that he had not received both the papers and the email, given in particular that there had been a series of successfully received correspondence at the registered address and his email address.
17. The tribunal ordered that the fine and costs were to be paid in monthly instalments. There should be 11 equal monthly instalments of £240 and a last payment of £146, the first payment to be made by 29 January 2016.

### **Decision on publicity**

18. Publicity with names.

<b>Chairman</b>	Mr David Wilton FCA	
<b>Accountant Member</b>	Mr Mike Ranson FCA	
<b>Non Accountant Member</b>	Ms Ron Whitfield	
<b>Legal Assessor</b>	Ms Melanie Carter	<b>029585</b>

2 **Mr Alan George Kent FCA** of Greengates, Church Street, Rudgwick, Horsham, RH12 3ET

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 December 2015**

**Type of Member** Member

**Terms of complaint**

On 3 November 2015, ICAEW's Investigation Committee referred a formal complaint to the Disciplinary Committee against Mr Alan George Kent (the defendant).

Mr A Kent FCA failed to provide by 4 September 2015 the information, explanations and documents requested in a letter dated 19 August 2015 issued under Disciplinary Bye-law 13.

Mr Alan George Kent is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(c).

**Hearing date**

16 December 2015

**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) Reprimand; (ii) fine £4,000; (iii) order to produce information.

**Procedural matters and findings**

**Parties present** Mr Kent was present.

**Represented** Mr Kent was not represented. The Investigation Committee (IC) was represented by Julia-Anne Dix.

**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 IC's bundle. It was shown an email purportedly sent by Mr Kent to Sarah Brook of ICAEW dated 18 September 2015.

**Findings on preliminary matters** The tribunal agreed to be shown an email dated 18 September 2015 purportedly sent by Mr Kent to Sarah Brook of ICAEW and upon which he wished to rely. However, it was accepted by Mr Kent that the email address cited for Mrs Brook was incorrect and that she had not received the email.

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

1. Disciplinary Bye-law (DBL) 13 provides, in summary, that the IC has the power to give notice to a member to provide information which it considers necessary to perform its functions. DBL 13 also imposes a duty on members to comply with such notices by such time as the IC specifies.
2. Two complaints have been made to the ICAEW about the defendant about two separate allegations arising out of his professional work ("Ms G" and "AW"). The IC wrote to the defendant about them in two letters dated 1 May 2015 and 2 June 2015. No reply was received to either letter and no substantive response was received in spite of further letters sent in May, June, July and August 2015. The IC then wrote two letters to the defendant containing notices pursuant to DBL 13 requesting the information about the allegations, both dated 19 August 2015. Responses to each letter were requested by 4 September 2015. The defendant failed to respond to either letter by that time or at all. He is therefore in breach of DBL 13.

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

3. The defendant admitted the complaint and no issues of fact or law fell to be determined. The tribunal found the complaint proved on the defendant's admission.

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

4. DBL 13 functions to enable the IC to perform its duties. In this case, it was to investigate two complaints against the defendant. The sending of two DBL 13 notices was a serious matter, and the defendant's failure to respond to either substantively is not acceptable conduct. The defendant ought to provide the information sought by the IC.

### **Matters relevant to sentencing**

5. The tribunal considered the *Guidance on Sentencing* and saw no reason to depart from that. The tribunal satisfied itself that no lesser penalty was appropriate. Mitigating factors were (i) the defendant's clean disciplinary record (ii) the pressure of work under which the defendant found himself during the relevant period and (iii) difficult personal circumstances concerning a bereavement of a close friend at the same time. The tribunal has also given credit for the fact that the defendant appeared in person to explain himself and that he did not seek to excuse his misconduct, but to explain it. Aggravating factors were the seriousness of two separate complaints which prompted the IC writing to the defendant in the first instance.

### **Sentencing Order**

1. Reprimand;
2. Fine of £4,000;
3. An order that the Defendant produce by 16.00hrs on 1 February 2016 the information requested at paragraphs A-I (inclusive) of the IC's letter to him dated 1 May 2015 concerning Ms G, and at paragraphs A-F of the IC's letter to him dated 19 August 2015 concerning AW;
4. Costs of £1,399.

### **Decision on publicity**

Publication with name.

**Non Accountant Chairman**

Mr Peter Williamson

**Accountant Member**

Mr Martin Ward

**Accountant Member**

Mr David Kaye

**Legal Assessor**

Mr Dominic Spenser Underhill

**029985**



**3 Mr David John Gillespie FCA** of 108a Bradford Street, Bocking, Braintree, Essex, CM7 9AU

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 December 2015**

**Type of Member** Member

**Terms of complaint**

Mr D J Gillespie FCA failed to provide by 10 September 2015 the information, explanations and documents requested in a letter dated 26 August 2015 issued under Disciplinary Bye-law 13.

Mr David John Gillespie is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(c)

**Hearing date**

16 December 2015

**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) fine £4,000; (iii) order to produce information.

**Procedural matters and findings**

**Parties present** Mr Gillespie was not present.

**Represented** Mr Gillespie was not represented. The Investigation Committee (IC) was represented by Julia-Anne Dix.

**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 IC's (IC's) bundle and an email from Mr Gillespie dated 15 December 2015 to Julia-Anne Dix.

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

1. Disciplinary Bye-law (DBL) 13 provides, in summary, that the IC has the power to give notice to a member to provide information which it considers necessary to perform its functions. DBL 13 also imposes a duty on members to comply with such notices by such time as the IC specifies.
2. In 2014, the ICAEW was notified that there was an adverse finding against the defendant by the Financial Conduct Authority about various issues relating to his role as the former Managing Director of 'A' Limited. It wrote to the defendant about that on 4 November 2014. Apart from one telephone call on 5 December 2014, and a response to a chasing letter on 5 January 2015, the defendant has failed to engage with ICAEW, in spite of further letters to him dated 16 February 2015, 23 June 2015, 17 July 2015 and 5 August 2015. On 26 August 2015, the IC sent a notice to the defendant pursuant to DBL 13 requesting a response by 10 September 2015. No response was received by that date or at all, and so the defendant is in breach of DBL 13.

## **Issues of fact and law**

3. The issues to be determined are whether the defendant was sent a notice pursuant to DBL 13 on 26 August 2015, and if so, whether he complied with it.
4. The tribunal found the complaint proved.

## **Conclusions and reasons for decision**

5. DBL 13 functions to enable the IC to perform its duties. In this case, it was to investigate an adverse finding by another regulator against the defendant. The sending of a DBL 13 notice was a serious matter, and the defendant's failure to respond is not acceptable conduct. The defendant ought to provide the information sought by the IC.

## **Matters relevant to sentencing**

6. The tribunal considered the *Guidance on Sentencing* and saw no reason to depart from that. The tribunal satisfied itself that no lesser penalty was appropriate. A mitigating factor was the defendant's clean disciplinary record. An aggravating factor was the complete lack of co-operation from the defendant with the IC.

## **Sentencing Order**

1. Severe reprimand.
2. Fine of £4,000.
3. An Order to produce to ICAEW by 16.00hrs on 1 February 2016, the information requested at paragraphs A-K of the IC's letter to the defendant dated 4 November 2014 and paragraphs A-C of the IC's letter to the defendant dated 26 August 2015.
4. Costs of £1,511.50.

## **Decision on publicity**

Publication with name.

**Non Accountant Chairman**

Mr Peter Williamson

**Accountant Member**

Mr Martin Ward

**Accountant Member**

Mr David Kaye

**Legal Assessor**

Mr Dominic Spenser Underhill

**030115**

**4 Mr Mark Boleslaw Robert Charleson FCA** of PO Box 779-00502, Langata, NAIROBI.  
KENYA

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 December 2015**

**Type of Member** Member

**Terms of complaint**

The complaint is that Mr Mark Boleslaw Robert Charleson FCA is liable to disciplinary action under Disciplinary Bye-law 4.1c in that he

‘committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirements made, given or imposed under them’, because:

1. Between 31 January 2013 and 20 February 2015 Mr M Charleson FCA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2011 to 31 October 2012 in breach of Principal Bye-law 56.c.
2. Between 31 January 2014 and 20 February 2015 Mr M Charleson FCA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2012 to 31 October 2013 in breach of Principal Bye-law 56.c.
3. Between 31 January 2015 and 20 February 2015 Mr M Charleson FCA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2013 to 31 October 2014 in breach of Principal Bye-law 56.c.

**Hearing date**

16 December 2015

**Previous hearing date**

None

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

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** (i) Reprimand; (ii) fine of £2,550

**Procedural matters and findings**

**Parties present** Mr Charleson was not present.

**Represented** Mr Charleson was not represented. The Investigation Committee (IC) was represented by Theresa Thorpe.

**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 IC's bundle and an email from the Defendant dated 25 August 2015.

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

1. Principal Bye-law 56 states:

*Except as may be provided in regulations a member shall:*

- a. *Keep under review his needs for training and development having regard to the professional and other work he undertakes;*
  - b. *Where such a review identifies a specific need for training or development act promptly to meet such need; and*
  - c. *Certify annually to the Institute compliance with these provisions and, if requested by the Institute, provide such evidence of compliance as may be required."*
2. For the years 2012, 2013 and 2014, the defendant failed to certify compliance with the ICAEW's Continuing Professional Development requirements.
  3. This failure to certify annually (in spite of the defendant being provided numerous opportunities to remedy the situation) constituted three separate breaches of Principal Bye-law 56 c.

## **Issues of fact and law**

4. The issues to be determined were whether (i) for the years 2012, 2013 and 2014, the defendant failed to certify compliance with ICAEW's continuing development requirements and, if so; (ii) whether he did so in breach of Principal Bye-law 56 c. Furthermore, it needs to be determined whether such a breach constitutes a breach of Disciplinary Bye-law 4.1 c.
5. The tribunal found the complaint proved.

## **Conclusions and reasons for decision**

6. The defendant failed to certify his compliance with ICAEW's continuing professional development requirements for three consecutive years. Those requirements exist to ensure that members of ICAEW maintain the high level of professional competence required of them, through education. Failure to do so is not acceptable. In this case, the defendant did not certify whether he complied with those requirements and in the absence of such certification it is reasonable to presume that he did not comply with them. Even if he had so complied, the failure to certify compliance is professional misconduct.

## **Matters relevant to sentencing**

7. The tribunal considered the *Guidance on Sentencing* and saw no reason to depart from that. The tribunal satisfied itself that no lesser penalty was appropriate. A mitigating factor was the defendant's clean disciplinary record. Aggravating factors were the repeated

occurrences of professional misconduct and the defendant's lack of co-operation in the investigation and prosecution of the complaint.

**Sentencing Order**

1. Reprimand
2. Fine of £2,550
3. Costs of £1,199.

**Decision on publicity**

Publication with name.

**Non Accountant Chairman**

Mr Peter Williamson

**Accountant Member**

Mr Martin Ward

**Accountant Member**

Mr David Kaye

**Legal Assessor**

Mr Dominic Spenser Underhill

**023958**

## INVESTIGATION COMMITTEE CONSENT ORDERS

### 5 Clear Vision Accountancy Ltd

Consent order made on 1 February 2016

With the agreement of Clear Vision Accountancy Ltd of 1 Abacus House, Newlands Road, Corsham, Wiltshire, SN13 0BH, the Investigation Committee made an order that the firm be severely reprimanded, fined £9,000 and pay costs of £1,305 with respect to a complaint that:

Between 7 February 2008 and 4 September 2014 Clear Vision Accountancy Ltd failed to carry out cold file reviews contrary to Audit Regulation 3.20 which requires a firm to monitor, at least annually, how effectively it is complying with the Audit Regulations.

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028806

### 6 Haines Watts Exeter LLP

Consent order made on 4 February 2016

With the agreement of Haines Watts Exeter LLP of 3 Southernhay West, Exeter, EX1 1JG, the Investigation Committee made an order that the firm be severely reprimanded, fined £10,800 and pay costs of £4,813 with respect to a complaint that:

1. On 15 January 2013, Haines Watts Exeter LLP improperly issued an accountant's report to the Solicitors Regulation Authority in respect of X & Co for the year ended 31 August 2012 when the firm failed to make further enquiries regarding differences shown between the payee per certain paid cheques and the client ledger to determine whether client money had been improperly withdrawn from the client bank account, contrary to Rule 20 of the Solicitors Accounts Rules 2011.
2. On 4 February 2014, Haines Watts Exeter LLP improperly issued an accountant's report to the Solicitors Regulation Authority in respect of X & Co for the year ended 31 August 2013 when the firm failed to make further enquiries regarding differences shown between the payee per certain paid cheques and the client ledger to determine the extent to which client money had been improperly withdrawn from the client bank account, contrary to Rule 20 of the Solicitors Accounts Rules 2011.

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020251

## **7 Miss Gillian Mary Prophet ACA**

Consent order made on 8 February 2016

With the agreement of Miss Gillian Mary Prophet of Tregolds, 20 Moorlands Road, Fishponds, Bristol, BS16 3LF, the Investigation Committee made an order that she be severely reprimanded, fined £5,100 and pay costs of £3,755 with respect to a complaint that:

1. Between 30 May 2012 and 21 August 2015 Miss Gillian Prophet ACA failed to complete the VAT return for the period to 29 April 2012 for her client the late Mr X.
2. Between 31 May 2012 and 11 August 2013 Miss Gillian Prophet ACA failed to cancel the VAT registration for her client the late Mr X.
3. Between 30 May 2012 and 21 August 2015 Miss Gillian Prophet ACA failed to complete the 2011-12 and 2012-13 self-assessment tax returns for her client the late Mr X.
4. Miss Gillian Prophet ACA failed to file the 2012-13 self-assessment tax return for her client Mrs Y by the deadline of 31 January 2014.
5. Between March 2014 and 5 March 2015, Miss Gillian Prophet ACA failed to return documents belonging to her client Mrs Y.
6. Between 24 March 2014 and 21 August 2015 Miss Gillian Prophet ACA failed to reply to her client Mrs Y's letters of complaint dated 24 March 2014 and 25 July 2014.

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**024874**

## **8 Mr Andrew David Richmond FCA**

Consent order made on 8 February 2016

With the agreement of Mr Andrew David Richmond of Suite 243 Linen Hall, 162-168 Regent Street, London, W1B 5TB, the Investigation Committee made an order that he be reprimanded, fined £1,000 and pay costs of £1,380 with respect to a complaint that:

Between 31 July 2013 and 16 July 2015 Mr Richmond FCA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51a.

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**028861**



## REGULATORY DECISIONS

### AUDIT REGISTRATION COMMITTEE

#### ORDER – 11 NOVEMBER 2015

##### 9 Publicity statement

SPW (UK) LLP, Gable House, 239 Regents Park Road, London, N3 3LF, 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 regulation 4.04 for allowing two audit reports to be signed by an individual in the firm who was not, at the time, properly appointed as a responsible individual.

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030342

#### ORDER – 20 JANUARY 2016

##### 10 Publicity statement

Malcolm Prior & Co, 4 Timber Lane, Caterham, Surrey, CR3 6LZ, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.01 in that the firm acted as auditor of an entity for at least three consecutive years where the firm's total fees for both audit and non-audit services receivable from the entity regularly exceeded 15% of the annual fee income of the firm.

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029525

#### ORDER – 20 JANUARY 2016

##### 11 Publicity statement

Paterson Brodie, Cliveden Chambers, Cliveden Place, Longton, Stoke-on-Trent, ST3 4JB, has agreed to pay a regulatory penalty of £5,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breaches of audit regulation 3.01 in that a person in a position to influence the conduct and outcome of the audit acted as joint-trustee of two trusts that together held a financial interest in the audit client that was material to the trust.

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030877

## ORDER – 20 JANUARY 2016

### 12 Publicity statement

Laytons, 6 Manchester Road, Buxton, Derbyshire, SK17 6SB, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Audit Regulation 2.01 in that the firm accepted two audit appointments and subsequently signed two audit reports while the firm did not hold audit registration.

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**029387**

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