Disciplinary Orders and Regulatory Decisions

DATE PUBLISHED: 4 MARCH 2020

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. Mr John Derrick Gardner FCA of
Cheltenham, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 10 December 2019

Type of Member Member

Terms of complaint

1. Mr John Gardner FCA failed to ensure his client, 'A' Limited, had sufficient realised profits available in accordance with Section 830 of the Companies Act 2006, to declare the following dividend distribution:

Year ended	Date of accountant's report	Profits available for distribution	Dividend distribution
31 March 2016	16 December 2016	16 December 2016	£30,600

2. Mr John Gardner FCA incorrectly completed the corporation tax return for 'A' Limited for the year ended 31 March 2014, in that it showed that loans to participators had been repaid when they had not, resulting in 'A' Limited failing to make a corporation tax payment of £8,332.

3. Mr John Gardner FCA incorrectly completed the corporation tax return for 'A' Limited for the year ended 31 March 2015, in that it showed that loans to participators had been repaid when they had not, resulting in 'A' Limited failing to make a corporation tax payment of £7,650.

4. Mr John Gardner FCA, on behalf of 'B', prepared the financial statements of 'A' Limited for the year ended 31 March 2016 that did not comply with The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008, as they did not contain a note explaining the non-comparability of corresponding amounts for the preceding financial year with the financial statements that had been filed for that former period.

Mr John Derrick Gardner is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b. For complaints 1 and 4 liability arises under the bye-laws effective from 03 October 2016. For complaints 2 and 3, liability arises under the bye-laws effective from July 2013 – December 2015. For completeness, the liability under the respective bye-laws is the same from each respective year save for the pre-amble to liability per se.

4.1b July 2013 –December 2015: A member or provisional member shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member or provisional member at the time of the occurrence giving rise to that liability:

b. if he has performed his professional work or the duties of his employment, or conducted his practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, the Institute or the professional of accountancy.'

4.b October 2016: 4.1 ‘A member, provisional member, foundation qualification holder or foundation qualification student (all hereinafter referred to as ‘respondent’) shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member provisional member, foundation qualification holder or foundation qualification student at the time of the occurrence giving rise to that liability:

b. if he has performed his professional work or the duties of his employment, or conducted his practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, ICAEW or the profession of accountancy.’

Hearing date

10 December 2019

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

A severe reprimand, together with a financial penalty of £1500. The Respondent is ordered to pay the costs of £9,839.

Procedural matters and findings

The Tribunal was satisfied that it was appropriate to proceed in the absence of the Respondent, who had notice of the hearing and who confirmed he would not be attending.

Parties present

The Respondent did not attend and was not represented.

Represented

Ms Jessica Sutherland-Mack appeared on behalf of the Investigation Committee

Hearing in public or private

The hearing was in public

Decision on service

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

Documents considered by the Tribunal

The Tribunal considered the documents contained in the Investigation Committee's (IC's) bundle.

The Investigation Committee's (IC's) case

Background

1. The complaint against the Respondent relates to the affairs of 'A' Limited, which was a client of the Respondent. 'A' Limited was incorporated on 16 January 2012 and until 18 March 2013 had three directors, Mr 'C', Mr 'D' and Mr 'E'. They all held an equal shareholding of 50 ordinary shares each of the 150 ordinary shares in issue. The shares carried equal voting and dividend rights.

2. On 19 March 2013, each of the above shareholders transferred 10 ordinary shares to Mr 'F', making him a 20% shareholder in the company. This is shown in the annual return dated 16 January 2014. The shares held from 19 March 2013 are therefore broken down as follows:

   Mr 'C' 40 ordinary shares (26.6%)
   Mr 'D' 40 ordinary shares (26.6%)
   Mr 'E' 40 ordinary shares (26.6%) and;
   Mr 'F' 30 ordinary shares (20%).

3. 'G' Limited, is a company of which the Respondent was a director and shareholder. It had been appointed company secretary to 'A' Limited upon the latter's incorporation. The company secretarial services included filing its statutory accounts and annual returns at Companies House. The Respondent was the only director of this company.

4. 'B' was an unincorporated entity separate to 'G' Limited and the Respondent was a partner. 'B' was engaged to provide accountancy services to 'A' Limited and had prepared the company's accounts since incorporation. The Respondent was the engagement partner. The Respondent therefore held the role of company secretary and accountant, through his two separate entities, and the complaint is considered against the Respondent personally by virtue of the roles he held.

Complaint 1

Legal requirements – treatment of dividends

5. Section 830 of Part 23 of the Companies Act 2006 ('CA2006') states the circumstances when a distribution can be legally made:

   "Distributions to be made only out of the profits available for the purpose

   A company may only make a distribution out of profits available for the purpose.

A company's profits available for distribution are its accumulated, realised profits, so far as not previously utilised by distribution or capitalisation, less its accumulated, realised losses, so far as not previously written off in a reduction or reorganisation of capital duly made. ……."

6. The accounts of 'A' Limited for the year ended 31 March 2015 show that the amounts owed from directors to the company at the balance sheet date were £30,600; these are shown in other debtors at the 2015 year-end. 'A' Limited declared a dividend of £30,600 in the year ending 31 March 2016 to clear these overdrawn balances.

7. The dividend declared amounted to £10,200 each to Messrs 'C', 'D' and 'E', but did not include any amount for Mr 'F', who was a shareholder in the company at that time. The Respondent has advised that although 'G' Ltd provided company secretarial services to 'A' Limited, no paperwork was prepared for the payment of the dividend.

8. Mr 'F' contacted the Respondent by email on 9 March 2017 and queried why he had not been included in the dividend payment. Mr 'F', as a 20% shareholder was entitled to receive a dividend of £7,650 regarding the dividend declared on 31 March 2016. Mr 'F' subsequently raised this complaint with ICAEW. For completeness, this particular complaint was considered during the investigation but not taken forward. While it was an error to exclude Mr 'F' from the 2016 dividend there was no evidence that the Respondent had done so deliberately, it happened on one occasion, and Mr 'F' had, once contacted by the Respondent, agreed to waive his dividend entitlement. This was therefore a one-off event dealt with swiftly once brought to the Respondent's attention.

9. The statutory accounts for 'A' Limited for the year ended 31 March 2016 show that for the year ended 31 March 2016, the company generated a loss of £4,471 and had accumulated profits brought forward of £20,009, therefore it had an accumulated profit reserve of £15,538; distributable reserves equal to this amount were available from which to pay dividends. This meant that the declaration of a total dividend payment of £30,600 for the year ending 31 March 2016 was not permitted as the company had insufficient distributable reserves from which to pay the dividends.

10. In the accounts for the year ended 31 March 2014 the 'A' directors (Messrs 'C', 'D' and 'E') withdrew a collective amount of £33,329 in addition to their salaries. The Respondent prepared the 2014 'A' Limited accounts and wrote to the directors to advise them that they would not be able to treat the amount of £33,329 as dividends, as the company was still insolvent.

11. Provided the company had sufficient realised reserves to do so, as each of the directors was a shareholder, the amounts withdrawn by the directors of £33,329 could be treated as dividends, subject to appropriate legal paperwork having been completed. However, as 'A' Limited did not have sufficient realised reserves at that time to make such payments, they could not repay the overdrawn loan account with dividends. Consequently, the excess payments drawn by the directors of £33,329 were treated as loans advanced to the directors and included within the debtors balance in the 2014 year-end accounts.

12. The accounts prepared by 'B' for the year ended 31 March 2014 showed 'A' Limited had retained losses at 31 March 2014 of £3,959 and amounts owed to the company by the directors of £33,329.

13. In his letter of 5 January 2015, the Respondent advised the directors that bonuses would be processed through the company's payroll in March 2015 for each of them. The net bonuses arising were said to be £16,470.68 each, but rather than being physically paid to the directors, were treated as repaying the overdrawn balances due from each of the directors at 31 March 2014. This would have cleared the overdrawn directors' loan account balance that had been outstanding at 31 March 2014. However, it would not have cleared the tax owed and due by 1st January 2015 of £8,332 (see Complaint 2 below).

14. The same position arose during 2015, with further amounts withdrawn from the company by the directors. The accounts for the year ended 31 March 2015 show that overdrawn directors' loan account balances had arisen again, and totalled £30,600 owed to the company by the directors at the year-end. When preparing the 2016 accounts, the Respondent noted that the amounts owed to the company by the directors from 2015 of £30,600 had still not been repaid to the company. Therefore, this amount remained outstanding from the directors for more than nine months after the year-end and a s455 tax liability arose of £7,650 (see Complaint 3 below).

15. A dividend for the sum of £30,600 was declared by the company in its 2016 accounts to clear the overdrawn directors' loan balances of £30,600 that had been brought forward. The Respondent advised that he converted the £30,600 of the directors' drawings into a dividend to clear the overdrawn directors' loan accounts at 31st March 2015, taking the view that this was a pragmatic decision. There is no paperwork for the dividends.

16. The Respondent wrote to 'A' Limited on 15 December 2016 and enclosed the company's accounts for the year ended 31 March 2016 for approval. He advised that the overdrawn balances from 2015 had been cleared with dividends and advised what the personal tax position would be for the directors, stating that if they completed tax returns the dividends would need to be included.

17. Whilst the Respondent had processed a dividend of £30,600 through the 2016 accounts to clear the brought forward overdrawn loan accounts, the 2016 accounts showed that the company had insufficient profits to declare the £30,600 dividend. The retained profit position was as follows:

	£
Profit brought forward at 1 April 2015	20,009
Loss for the year to 31 March 2016	(4,471)
Retained profits available (distributable reserves) at March 2016	15,538
Dividend paid	30,600
Retained loss at 31 March 2016	(15,062)

18. The table shows that at 31 March 2016, the company only had retained profits of £15,538 available for distribution as dividends. By processing the full £30,600, Mr Gardner moved the company into a net liability position of £14,912 (the retained loss shown above of £15,062 less the company's share capital of £150) and breached the requirements of section 830 of the CA2006.

Complaints 2 and 3

19. Section 455 of the Corporation Tax Act 2010 ('CTA') and previously section 419 of the Income and Corporation Taxes Act 1988 (hereafter referred to as s455 tax) requires the following in respect of tax due from companies on overdrawn directors' loan accounts:

    When a director (or any other participator in a close company) is made a loan which is left outstanding for more than 9 months after the company's accounting period end, the company will be required to pay tax under s455 CTA 2010.

20. Section 455 tax is payable at 25% of the outstanding loan balance (32.5% for loans made on or after 6 April 2016). Tax is due 9 months and one day after the end of the accounting period in which the liability arises.

21. When the loan is repaid in full or in part s455 tax is fully or proportionally repayable 9 months and one day after the end of the accounting period in which the repayment is made.

22. If loans are made within an accounting period, but repaid or written off earlier than nine months and one day after the end of the period then relief is granted for the tax that would otherwise be payable. So, for a loan arising in the accounting period to 31 March 2014, provided the loan was repaid or written off by 1 January 2015 then the Section 455/419 corporation tax arising would not physically need to be paid as relief is claimed at the point of submitting the corporation tax return to HM Revenue and Customs.

Complaint 2

23. As set out above, the directors' loan accounts were first overdrawn for the year ended 31 March 2014, by £33,329. Corporation tax would therefore have been payable by 'A' Limited at the rate of 25% of the outstanding loan balance (£8,332) if this amount remained unpaid at 1 January 2015.

24. The 2014 accounts were not required to reflect a provision for this tax as the liability would not arise until the following accounting year (ie, to 31 March 2015), by which time the tax should have been settled as it would have been payable to HMRC by the company on 1 January 2015. The 2014 overdrawn balance of £33,329 was ultimately settled by a bonus processed through the company's payroll in March 2015.

25. The corporation tax return prepared and submitted by the Respondent, on behalf of the company, in respect of the year ended 31 March 2014 shows that overdrawn balances of £33,329 had arisen in the year, but also states that the balances were repaid by 31 December 2014. On this basis, relief was claimed at the point of submission, meaning that the s455 tax arising would not need to be paid to HMRC and the tax return stated that no tax was due.

26. This was not correct, as the bonuses were processed through the payroll in March 2015, and therefore the overdrawn loan balance was not cleared until March 2015. The £8,332 arising on the £33,329 was due on 1 January 2015 and should have been accounted for to HMRC.

27. It is not known why the Respondent stated on both tax returns that the loans had been repaid within nine months of the year-end when in fact they had not. He was asked to explain this but has not responded.

Complaint 3

28. The directors continued to withdraw excess funds from the company during 2015 and by 31 March 2015, overdrawn director's loan account balances of £30,600 existed. Corporation tax was therefore payable on these overdrawn amounts if the loans were not repaid by 1 January 2016.

29. The corporation tax return prepared and submitted by the Respondent in respect of the year ended 31 March 2015 shows that overdrawn balances of £30,600 had arisen in the year, but states that the balances were repaid by 1 April 2015.

30. As with the 2014 return, on this basis, relief was claimed at the point of submission, meaning that the s455 tax liability arising, of £7,650 was not due by 'A' Limited. This indicated to HM Revenue and Customs that the loans had been repaid within 9 months and they would not have sought collection of the section 455 tax otherwise payable on 1 January 2016.

31. The 2015 accounts were not finalised until 25 January 2016 and the Respondent wrote to the directors on 23 January 2016 advising them of the £7,650 s455 tax due for the overdrawn directors' loan accounts at 31 March 2015. This letter contradicts the information in the company's 2015 tax return, which states that the loans had been cleared on 1 April 2015.

32. The Respondent advised there is no paperwork for the dividends. In his letter to ICAEW of 26 April 2017, he stated that he took a pragmatic decision to pay the dividend and assist the company within the accounts for the year to 31 March 2016 to clear the overdrawn loan balances from 2015. He states that HMRC was pressing for the payment of the s455 tax arising in respect of the 2015 balances when he had been preparing the subsequent, 2016, accounts. It was on this basis that the dividend had been declared. This incorrect declaration of a dividend (complaint 1) resulted in the £7,650 corporation tax failing to be paid.

33. It is unknown why the Respondent told the directors that HMRC were pressing for payment of the s455 tax, as the tax return submitted for the year ended 31 March 2014 did not declare that the loans were still outstanding 9 months after the year-end and showed no tax payable for the year. HMRC should therefore have not been expecting the payment of any s455 tax if they had been informed that the loans had been repaid within the 9 month period. The Respondent was asked to explain this but has not responded.

Complaint 4

Accounting requirements – change in comparative figures

34. The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (Schedule 1 Part 1 Section A Paragraph 7) (Doc 16 B/173) states:

    7 "(1) For every item shown in the balance sheet or profit and loss account the corresponding amount for the immediately preceding financial year must also be shown

    2) Where that corresponding amount is not comparable with the amount to be shown for the item in question in respect of the financial year to which the balance sheet or profit and loss account relates, the former amount may be adjusted, and particulars of the non-comparability and of any adjustment must be disclosed in a note to the accounts."

35. The abbreviated accounts filed at Companies House for 'A' Limited for the year ended 31 March 2016 reflected a different balance for the 2015 comparative total debtors and total creditors figures when compared to the 2015 figures that were included in the abbreviated accounts that had been filed for the year ended 31 March 2015. The difference between the 2015 figures in the 2015 accounts, and the 2015 comparatives shown in the 2016 accounts is as below.

Account balance	2015 figure shown in the abbreviated accounts for the year ended 31 March 2015 (£) (Doc 14)	2015 comparative figure shown in the abbreviated accounts for the year ended 31 March 2016 (£) (Doc 29)	Difference (£)
Debtors	78,170	85,820	7,650
Creditors	169,776	177,426	7,650

36. The full accounts for the year ended 31 March 2015 shows that no provision had been made in those accounts for the s455 tax liability of £7,650 arising on the overdrawn directors' loan account balances that had not been cleared from the previous year.

37. However, the comparative 2015 figures recorded in the 2016 full accounts do include provision for the £7,650, as both the debtors and creditors figures in the accounts increased by that same amount.

38. The 2016 accounts prepared by the Respondent did not contain disclosure of, or the reason for, the adjustment that had been made to the 2015 comparatives, as required by the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008. Any user of the accounts would therefore not have been aware that the 2015 numbers had changed between the two sets of accounts. Whilst the net impact on the balance sheet was nil, the two balances netting each other off, disclosure of the changes to the comparatives was still required.

39. The Respondent was asked to explain the reason why the 2016 accounts did not include a disclosure note to explain the difference in the comparatives but he has not given any explanation.

The Respondent's Case

40. The Respondent did not appear, and has not responded to requests for information as to whether he acted as alleged, and, if he did act as alleged, his explanation for his conduct.

Issues of fact and law

41. The Tribunal had to consider whether or not each of the complaints had been proved to the requisite standard. This required an analysis of the evidence alleged to support each complaint, and a consideration of whether or not the Respondent has performed his professional work incompetently to such an extent or on such a number of occasions as to bring discredit upon himself or the profession of accountancy.

Conclusions and reasons for decision

42. The Tribunal is satisfied that when the dividend of £30,600 was declared for the year ended 31st March 2016, it was incumbent upon the Respondent to ensure there were sufficient realised profits available to make the dividend distribution. The Respondent was more than familiar with the financial history of 'A' Limited, and did not ensure those sufficient realised profits were available. The Respondent has asserted that he took a pragmatic decision to pay the dividend and support the company, but omitted, in our view, to ensure 'A' Limited complied with s.830 CA 2006.

43. In the year ended 31st March 2014, the loans to directors amounted to a total of £33,329. Those loans were not repaid within 9 months of the year end, and accordingly corporation tax in the sum of £8,322 was due. We are satisfied that the Respondent incorrectly completed the corporation tax return showing those loans had been repaid when they had not. No explanation has been given for this action, and the Tribunal was concerned that a member of the ICAEW was putting forward a tax return which cannot have been accurate. HMRC depend upon the profession to provide proper and supportable information.

44. The same occurred in the year ended 31st March 2015. In that year the loans to directors were £30,600, they had not been repaid within 9 months of the year end, and the corporation tax due was £7,650. Yet again, we are satisfied that the Respondent incorrectly completed the corporation tax return showing those loans had been repaid when they had not. No explanation has been given for this action, and the same comments apply as above regarding the importance of a member of the profession providing accurate returns.

45. Finally, we are satisfied that the financial statements for 'A' Limited for the year ended 31st March 2016 failed to contain a note explaining the non-comparability of corresponding accounts for the previous year. The adjustment related to the corporation tax arising on the directors' loan account balances, and while there was no net impact upon the balance sheet, no disclosure of or explanation for the difference was given.

46. We are quite satisfied that all of these complaints are made out, and in each case the Respondent has performed his professional work incompetently to such an extent or on such a number of occasions as to bring discredit upon himself or the profession of accountancy.

Matters relevant to sentencing

47. The Respondent has no previous findings of misconduct, and has now retired from practice. The Tribunal considered the *Guidance on Sanctions*. We remind ourselves that the key principles are protection of the public, maintaining the reputation of the profession, upholding proper standards of conduct within the profession, and the correction and deterrence of misconduct. We consider the complaint fell under the general heading, Ethics, para m. The Respondent had the required expertise but carried out work of a very poor nature. The starting point was accordingly a severe reprimand and a category D financial penalty (£5,000).

48. The aggravating feature was the repeated failures by the Respondent to complete an accurate corporation tax return. We received no evidence of adverse financial consequences for HMRC, or the company, a mitigating factor. We take into account the relatively small sums which were involved, and the fact that the Respondent has retired with no previous findings of misconduct.

Sentencing Order

49. Having considered all of these factors, we concluded that a fair and proportionate sentencing order was a severe reprimand and a financial penalty. No financial information was provided by the Respondent. We decided that the fair and proportionate financial penalty was the reduced figure of £1,500. We also order that the costs of £9,839 (which we scrutinised and found to be fair and reasonable) be paid by the Respondent.

Decision on publicity

Publication with name

Chairman	Mr Richard Jones QC	
Accountant Member	Mr Jon Newell FCA	
Non Accountant Member	Mr Nigel Dodds	**038760**

2. Mrs 'X' [FCA] of
North Yorkshire, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 11 December 2019

Type of Member Member

Terms of complaint

Between February 2012 and September 2016, Mrs 'X' FCA dishonestly claimed £164,368.80 in expenses from 'A' for rail tickets

Mrs 'X' FCA is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a

Hearing date

11 December 2019

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes, by admission
All heads of complaint proven	Yes
Sentencing order	Exclusion and an order to pay a contribution to the ICAEW's costs in the sum of £4485.92
Parties present	Mrs 'X' (the Respondent) was present but nor represented. The IC was represented by Ms Silpa Tozer.
Hearing in public or private	The hearing was in private. An application was made by the Respondent on 17 October 2019 for the hearing to be in private, which was granted by the Chairman.
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.

The Investigation Committee's (IC's) case

The Respondent, while employed by 'A' LLP as a Senior Manager between 31 May 2005 and 21 October 2016, claimed rail fares totalling £164,368.80 as expenses, but did not notify the firm that she had received refunds for these tickets from Virgin Trains and therefore had not validly incurred the expense.

The Respondent self-reported this matter to ICAEW on 24 October 2016 and 'A' LLP also reported this matter to ICAEW on 31 October 2016.

In September 2016 British Transport Police contacted 'A' LLP after Virgin Trains raised concerns over the high volume of refunds being claimed by the Respondent. This prompted 'A' LLP to conduct an investigation into the Respondent's use of her corporate Amex card.

The firm discovered that the Respondent had claimed expenses for train tickets where she had received subsequent refunds from Virgin Trains of approximately £40k in the sample 6 month period reviewed. 'A' LLP's subsequent investigation found that the Respondent received 373 refunds totalling £164,368.80 between 13 February 2012 and 23 September 2016. She was dismissed with immediate effect on 21 October 2016.

The Respondent was informed that the decision was based on the 6 months reviewed but that investigations were ongoing to establish the full extent of the issue and she would be required to pay back the full amount of refunds claimed. Investigations were also ongoing to confirm whether any of the expense claims had been charged to clients.

On conclusion of the investigation, a settlement agreement was reached with the Respondent in June 2018 under which she agreed to repay to 'A' LLP over seven and a half years the total of £164,368.80 wrongfully claimed by her.

The Respondent claimed refunds from Virgin Trains for approximately 78% of the tickets purchased. The Respondent informed 'A' LLP during the disciplinary process that she could not change the dates of the tickets if she no longer required them, because that was not possible on the particular type of ticket she purchased; so she sent the tickets back for a refund instead. The Respondent confirmed that she generally knew how long she would be in London, as she would book a hotel. She also confirmed that she was aware of the refunds going in to the Amex account.

The Respondent said that when meetings in London were cancelled, she would either use tickets for alternative meetings or refund them. She said she did not think of it as buying more tickets than she needed as she did try and buy tickets for planned travel and she would refund what she did not need to settle the Amex card.

The Respondent also confirmed to 'A' LLP that she had charged the expenses to client codes but that the majority of those clients were on fixed fees so would not have been charged for the expenses. Fixed fees are agreed in advance inclusive of any costs and expenses. 'A' LLP confirmed that their investigation concluded that no clients were invoiced for these expenses.

The Respondent confirmed to 'A' LLP as part of the disciplinary process that she was aware that she had breached the 'A' LLP Amex policy. The Respondent also accepted that she had claimed expenses for train tickets for which she had received refunds.

A review of the Respondent's credit card statements shows that the Respondent was using her card to make personal payments and therefore the refunds being received for the train tickets offset those personal expenses as well as settling the previously paid-for train tickets. There remained a balance owing on the credit card each month which fluctuated and the full amount was not being settled on a monthly basis.

The Respondent's representations

The Respondent informed 'A' LLP that her expenses and refunds were 'out of control' and had 'caught up with her.' She said she did not intend for it to happen, but got herself into a 'vicious cycle' and should have held her hands up at the beginning, but it 'spiralled.' The Respondent admitted she had not been organised with her refunds and payments.

The Respondent confirmed in the 'A' LLP disciplinary hearing that she was aware that claiming the train tickets in this way, without submitting the associated refunds, was fraudulent. However, she explained that she had always intended to repay the money but was struggling with debt problems and had 'put her debt issues in a box'.

The Respondent explained that she had been stressed and had found her job stressful with her demanding home life. She explained this started when [private].

The Respondent explained during PCD's investigation that she had built up a significant amount of debt through personal credit cards and unsecured loans and had very little disposable income. She found she was struggling to cope with a demanding job, raising a family and meeting her financial commitments.

She first claimed a refund in 2012 as she had booked tickets for client meetings that were either cancelled or rearranged so the tickets were sent back to Virgin Trains for a refund. She had claimed the train tickets as expenses from 'A' LLP whilst she was waiting for the refunds to enable her to settle the balance on her corporate Amex card and intended to refund the expenses back to 'A' LLP once she received the refund from Virgin Trains. However, she found her mounting debt problems meant this did not happen and with the amount owing to 'A' LLP increasing over the years, her ability to repay it became more and more difficult.

The Respondent said she has sought help from several places including a debt charity to manage her debts, which are now paid in full following the sale of her home. She has also had counselling support to help her manage stress and money worries.

The Respondent provided a statement to ICAEW stating that she was sorry. She explained that [private] and acknowledged that she did not handle it well. In particular [private].

The Respondent felt that losing her job at ‘A’ LLP was like the end of the world but it forced her to face her problems. With the help of her family and the sale of her house, she has managed to pay off her debts and the majority of the amount due to ‘A’ LLP. She continues to make the remaining payments in line with the agreement reached with ‘A’ LLP and acknowledges that she should have turned to her family for support much earlier.

The Respondent now works for a food manufacturing business which does not pay well but enables her to focus on the needs of her family. Furthermore, she has set up a blog to help others who are experiencing similar problems and hopes that she will be able to develop this further in the future. The Respondent has no desire or intention to ever go back into accountancy; whilst she enjoyed her studies, she did not enjoy the job. She accepts that she may lose her ICAEW membership and she is willing to forgo that.

Conclusions and reasons for decision

The Respondent was present and admitted the complaint. The tribunal therefore found the complaint proved.

Matters relevant to sanction

The tribunal took the following aggravating and mitigating factors into account.

As aggravating factors, the tribunal noted that the Respondent’s actions were deliberate and dishonest. The amount wrongly claimed by the Respondent was a very substantial sum and her actions took place over a lengthy period - four and a half years. She abused a position of trust within the firm.

As to mitigating factors, the Respondent reported her actions to ICAEW three days after her dismissal. She has lost her job with ‘A’ LLP and accepts she will no longer work as a chartered accountant. The Respondent was [private] and this may have contributed to her actions. She has engaged with the disciplinary process and has accepted responsibility for her actions and shown remorse. No client was prejudiced as a result of her actions and the Respondent is making every effort to repay the full amount to ‘A’ LLP.

The tribunal has had regard to the ICAEW's *Guidance on Sanctions* (effective from July 1 2019). Where the tribunal finds a complaint proved, it is obliged to determine the appropriate sanction in relation to the following key principles:

- Protecting the public
- Maintaining the reputation of the profession
- Upholding proper standards of conduct within the profession
- Correction and deterrence of misconduct

The tribunal had regard to Section 9 of the Guidance and to paragraph c of that section: Failure to comply with the Fundamental Principle of Integrity where, for a very serious complaint falling into this category, the starting point for sanction is Exclusion and a Category C financial penalty.

Sanction

The tribunal regarded the complaint as a very serious one. The tribunal determined that the only penalty that it could impose which met these principles was exclusion and it therefore ordered that the Respondent be excluded. In view of the Respondent's limited means it did not impose a financial penalty as well. The IC made an application for costs in the sum of £7427.17. While the tribunal noted that a very substantial proportion of the costs incurred both before and after investigation had already been discounted, the tribunal questioned why it had taken the Institute three years since the matter had been referred to them by the Respondent to bring the matter to the IC. The tribunal did not regard the length of time it had taken to conclude the investigation (noting that much of the work had been done by 'A' LLP) and carry out post-investigation work and the concomitant cost as reasonably incurred. The tribunal noted that better case management at the investigation stage would have identified the inherent simplicity of the complaint.

The tribunal made an order against the Respondent for costs in the sum of £4,485.92, halving the amounts claimed under the heads of investigation of the complaint and post-investigation. The amount of costs was to be paid within 12 months of the date of the hearing

Decision on publicity

Following the ruling of the Chairman on 23 October 2019, the tribunal directs that publication of this decision shall not identify the Respondent or her family.

Chairman	Mrs Rosalind Wright QC	
Accountant Member	Mr Michael Barton	
Non Accountant Member	Mr Graham Humby	**036386**

3. Mr Paul Raymond Kelly [FCA] of
Leeds, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 11 December 2019

Type of Member Member

Terms of complaint

On 13 June 2018, at Preston Crown Court, Mr Paul Kelly was convicted of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk.

Mr Paul Kelly is therefore liable to disciplinary action under Disciplinary Bye-law 4.1e and 4.2g

Hearing date

11 December 2019

Previous hearing date(s)

N/A

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes, by admission
Sentencing order	Exclusion and order to pay contribution to the ICAEW's costs of £4259.67
Parties present	Mr Paul Kelly, the Respondent, appeared by videolink. He was not represented. The IC was represented by Ms Silpa Tozer.
Hearing in public or private	The hearing was in public An application was made by the Respondent on 21 October 2019 for the hearing to be in private. This application was refused by the Chairman on 1 November 2019.

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

The Investigation Committee's (IC's) case

This complaint arises out of a conviction on 13 June 2018.

The Respondent was convicted at Preston Crown Court of dishonestly making false representation to make gain for self/another or cause loss to other/expose other to risk, contrary to section 2 of the Fraud Act 2006.

The Respondent was sentenced to 20 months imprisonment on 27 July 2018.

The matter was brought to ICAEW's attention by the Police who confirmed that the Respondent had been indicted on two counts but that he had only been convicted of one.

The facts are set out in the transcript of the proceedings on 27 July 2018 and the sentencing remarks of Her Honour Judge Lloyd.

The Respondent was convicted with four co-defendants who were also involved in the frauds. They were Mr 'A', Mr 'B', Ms 'C' and Ms 'D'.

The matter was said to have come to light following an arson attack at 'E' in 2016. Detectives from 'F' and financial investigators from 'H' uncovered a series of fraudulent activities relating to the business. In 2014, Mr 'A' had agreed to purchase the business from Mr and Mrs 'G' for £1.6 million. Mr 'A' showed Mr and Mrs 'G' fraudulent documents to evidence his proof of funding, but was ultimately unable to obtain funding and therefore rented the business with an option to buy. A three year lease was agreed and Mr 'A' moved into the farm in March 2016. However, four months later a fire destroyed the business.

During the investigation it was found that Mr 'A' was involved in several other scams.

HHJ Lloyd set out in her sentencing remarks that Mr 'A' committed frauds, which resulted in overall losses of over £1.2 million, which were committed while Mr 'A' was the subject of several bankruptcy orders. In addition, Mr 'A' was also convicted of arson, in an attempt to raise funds from the insurance, and of perverting the course of justice. Mr 'A' was sentenced to 17 years and 9 months imprisonment.

The Respondent had produced a business plan on Mr ‘A’s behalf, to assist him with obtaining funding for Mr & Mrs ‘G’s business. The Respondent was found to have made representations to the ‘I’, which were, and which he knew were or might be untrue or misleading, namely that Mr ‘B’ had transferred property into ‘E’ Ltd and that the transfer was funded by a director’s loan. This was not the case because Mr ‘B’ did not own the land and therefore could not have transferred it into ‘E’ Ltd.

In the Respondent’s Police interviews, he had said that he understood that Mr ‘A’ owned the land but he was unable to be a director and so he ascribed it to Mr ‘B’. In the pre-sentence report, the Respondent said he was aware it was not Mr ‘A’s or Mr ‘B’s land, and he was aware that the transfer of the land to ‘E’ Ltd had not taken place when he completed the business plan.

In relation to the Respondent, HHJ Lloyd said that the Respondent knew that Mr ‘A’ was dishonest and a fraudster, and yet was prepared to do business with him.

HHJ Lloyd highlighted that a mortgage application prepared by the Respondent “was deliberately prepared without any reference to Mr ‘A’ as the person who was really running the business and with the fiction that Mr ‘B’ had put the 'S' land into the company and yet [he] signed it off knowing that the significant sum would be loaned based on these assertions. Without the so-called director's loan, ‘E’ Ltd had no assets against which to borrow.”

HHJ Lloyd went on to say “I must assume that you, too, intended to become involved in the business. Otherwise, why become a director, why loan cash, and why present a fictitious business plan to the mortgage company which hid very relevant and important facts, namely that the directors had no money or property to use as a loan facility and that Mr ‘B’ was a director in only but name.”

HHJ Lloyd also commented that “as a professional man, you were prepared to sign your name to an important but dishonest document which was entirely misleading. Furthermore, when you were initially questioned by the police as a potential witness, it soon became very clear to them that you were lying.”

HHJ Lloyd said that, as an accountant, the Respondent should have known better

As the Respondent did not enter a guilty plea, HHJ Lloyd said that there was no credit in terms of sentencing and no remorse. She therefore sentenced the Respondent to 20 months imprisonment.

The Respondent’s submissions made both in writing to the IC and orally at the tribunal:

- In 2016, he was contacted by Mr ‘A’ to request assistance with a business plan. The Respondent met with Mr ‘A’ and Mr ‘B’. The Respondent stated that he prepared the business plan based on information provided by Mr ‘A’ and Mr ‘B’, and in the plan it was stated that the land was being brought into the company by the director, Mr ‘B’, through a directors’ loan account.

- The accounting treatment in the business plan was correct but Barclays rejected the proposal.

- The company then sought finance from a sub-prime lender and he was contacted by the broker for some information. The broker stated that he had read the business plan and it provided useful background information, but was of no relevance to his funding criteria, which was based on a loan percentage to asset (land) value.

- That he was copied into correspondence from which it was apparent that the land was not being brought in by Mr 'B', but by two 25% shareholders, however this was after the business plan had been produced.

- The company raised £416,000, which was deposited in a solicitors' client account, and partly drawn down by the company. However, following the fire in July 2016, the funds were frozen by the Police.

- He met with Police to explain the structure of the business and the funding arrangements. The Respondent stated that he was asked in Police interview who he thought owned the land and he said he thought it was owned by Mr 'A'. As a result, he stated that the charge was brought against him.
- He considered that he had provided evidence to the Police which completely destroyed their case. He believed the Police considered that he posed a major threat to their case against Mr 'A' so they decided to fabricate a scenario whereby the Respondent had been in league with Mr 'A' and Mr 'B'.
- He felt extremely let down by his legal representation as it should have been a relatively easy charge to defend and although his legal advisers had advised him not to appeal, he was considering an appeal to the Court of Appeal, primarily around the poor representation he considered he received at trial.
- He felt that he had produced a business plan based on information provided to him by the representatives of the company. Whilst he accepted that, in hindsight, he was a little naïve, he did not consider his actions were fraudulent.
- The judge's sentencing remarks contained a number of factual errors.
- He was never a director of the company.

Conclusions and reasons for decision

The Respondent admitted that he had been convicted of an indictable offence, namely an offence of fraud, contrary to Section 2, Fraud Act, 2006, and the tribunal therefore found the complaint proved.

Matters relevant to sanction

The tribunal has taken into account the following mitigating and aggravating factors. In mitigation, the tribunal was told that there was no previous disciplinary finding against the Respondent.

The tribunal took into account the Respondent's apology for "any actions that may have discredited and potentially jeopardised the trust the public places in ICAEW".

The Respondent had engaged with ICAEW and had attended the tribunal hearing.

The tribunal notes that the Respondent does not accept the findings of the jury at Preston Crown Court and felt he was let down by poor legal representation on which he was considering basing an appeal.

The tribunal had regard to the following aggravating factor:

The offence for which the Respondent was convicted is a serious one and directly relates to his profession as a chartered accountant and to his membership of ICAEW. His conduct and his subsequent conviction and sentence have brought discredit on the Respondent himself, the Institute and the profession of accountancy.

The tribunal had regard to ICAEW's *Guidance on Sanctions*, effective from 1 July 2019.

Where the tribunal finds a complaint proved, it is obliged to determine the appropriate sanction in relation to the following key principles:

• Protecting the public

• Maintaining the reputation of the profession

• Upholding proper standards of conduct within the profession

• Correction and deterrence of misconduct

The tribunal had regard to Section 4 of the Guidance, where, for a complaint alleging any offence where the member receives a custodial sentence (suspended or not) the starting point for sanction is exclusion.

Sanction and Costs

The tribunal determined that the only penalty that it could impose which met these principles was exclusion. The tribunal ordered that the Respondent be excluded.

The tribunal considered whether it was appropriate to impose a financial penalty and having regarded to the Respondent's statement of his financial circumstances decided it would not be appropriate to impose a financial penalty.

The IC applied for an order for costs. The tribunal had regard to the schedule of costs provided by the IC and regarded them as reasonably incurred. The tribunal determined that the Respondent should pay the full costs claimed by the IC in the sum of £4259.67.

Decision on publicity

The Tribunal directs that a record of this decision shall be published and the Respondent shall be named in that record.

Chair	Mrs Rosalind Wright QC	
Accountant Member	Mr Michael Barton	
Non Accountant Member	Mr Graham Humby	**040635**

4. Mr Kwong Sang Ng ACA of
Hong Kong

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 11 December 2019

Type of Member Associate Member

Terms of complaint

Between 1 April 2013 and 26 May 2015 Mr Kwong Sang Ng ACA failed to comply with paragraphs 17, 48 and 57 of HKSQC 1 as he failed to implement and document adequate quality control policies and procedures with respect to quality control within his firm and he failed to undertake a practice monitoring review.

On 17 June 2014 Mr Kwong Sang Ng ACA submitted an EQS to the Hong Kong Institute of Certified Public Accountants which stated that a monitoring review had been completed and documented during the year ending 31 March 2014 when he knew that this was either false or misleading.

The Respondent is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a

Hearing date

11 December 2019

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes
All heads of complaint proven	Yes
Sentencing order	Severe reprimand and a fine of £3000. The Respondent was ordered to pay a contribution to ICAEW's costs of £4929.67.

Procedural matters and findings

Parties present	Mr Kwong Sang Ng (the Respondent) was not present and was not represented. The Investigation Committee (IC) was represented by Ms Silpa Tozar.
Hearing in public or private	The hearing was in public

Decision on service	The tribunal was satisfied on the basis of the witness statement dated 26 September 2019 of Diane Waller, committee administrator employed by the Institute, exhibiting a letter and attached documents, being the IC's bundle, that she had sent to the Respondent on the same date, that service of the papers had been effected In accordance with regulations 3-5 of the Disciplinary Committee Regulations.
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle

Findings on preliminary matters - Proceeding in the absence of the Respondent

The Respondent has engaged with the Institute's disciplinary process. The tribunal was satisfied that having regard to the relevant authorities, Tait v The Royal College of Veterinary Surgeons [2003] UKPC 34 and R v Jones (Anthony) [2003] AC 1, HL, that it should proceed in the absence of the Respondent. In particular it was satisfied that –

- As the Respondent lives and works in Hong Kong, an adjournment of the proceedings was not likely to result in the Respondent's attendance at a future date; and
- That any disadvantage to the Respondent in not being able to present his case was outweighed by the public interest in proceeding with it on the date fixed for hearing.

The Investigation Committee's (IC's) case

The Respondent is a dual member of ICAEW and the Hong Kong Institute of Certified Public Accountants (HKICPA). At the time of the matters leading to the complaint, the Respondent was the sole partner of 'A', which was a firm undertaking audits based in Hong Kong. As the Respondent is a member of ICAEW he continues to be regulated by ICAEW.

HKICPA wrote to ICAEW on 3 February 2017 informing ICAEW of disciplinary action taken against the Respondent and enclosed a press release detailing the disciplinary finding.

The press release disclosed that the Respondent's "Practice failed to establish, maintain and document an effective system of quality control in respect of monitoring". In addition, the Respondent "was found to have provided false or misleading answers in the electronic self-assessment questionnaire which were submitted to the reviewer".

In the HKICPA proceedings, the Respondent "admitted the complaint against him".

The Respondent was reprimanded and had his practising certificate withdrawn for one year. He was also fined HK$65,000 (approximately £6,200) and ordered to pay costs of HK$26,123 (approximately £2,500).

Relevant HKICPA Rules and Regulations

Hong Kong Standards on Quality Control 1 (HKSQC 1) 'Quality Control for firms that perform audits and reviews of financial statements, and other assurance and related services engagements' sets out the requirements for firms to have quality control procedures when conducting audit work in Hong Kong. In particular, paragraphs 17, 48 and 57 state:

> 17: "The firm shall document its policies and procedures and communicate them to the firm's personnel"
> 48: "The firm shall establish a monitoring process designed to provide it with reasonable assurance that the policies and procedures relating to the system of quality control are relevant, adequate and operating effectively. This process shall:
>
> > (a) Include an ongoing consideration and evaluation of the firm's system of quality control including, on a cyclical basis, inspection of at least one completed engagement for each engagement partner;
> > (b) Require responsibility for the monitoring process to be assigned to a partner or partners or other persons with sufficient and appropriate experience and authority in the firm to assume that responsibility; and
> > (c) Require that those performing the engagement or the engagement quality control review are not involved in inspecting the engagement
>
> 57: "The firm shall establish policies and procedures requiring appropriate documentation to provide evidence of the operation of each element of its system of quality control"

HKICPA conduct monitoring visits to firms in a similar way to that of QAD's visits to ICAEW audit registered firms. These are known as Practice Reviews. HKICPA also require firms to annually submit certain information to HKICPA, which is a similar process to ICAEW's annual returns process. This annual submission is known as an EQS.

On 17 June 2014, the Respondent submitted his firm's 2014 EQS where he confirmed that a monitoring review (as required annually by HKSQC 1) had been completed by himself between 1 April 2013 and 31 March 2014. He specified that it had been carried out in month 1 of 2014. He further confirmed that:

- The review included a review of the implementation of the firm-wide quality control procedures.
- A review of completed audit engagement files.
- The results of the monitoring review procedures, results and follow up action plan had been documented.

Between 26 and 29 May 2015, HKICPA conducted a practice review at the Respondent's firm and found no evidence that he had implemented and documented adequate quality control policies and procedures with respect to undertaking a practice monitoring review contrary to HKSQC 1. Furthermore, the Practice wrongly reported in the EQS that a monitoring review had been performed.

In his letters to HKICPA dated 22 July 2015 and 2 August 2015 following the practice review, the Respondent stated that he considered the monitoring review to be a continuous process and may not necessarily be in 'written form' but this would be addressed going forward. He further explained that the self-assessment questionnaire had been completed to the best of his knowledge and that he believed that it was correct, but stated that he would ensure that more time and effort was put into completing future questionnaires. He stated that the completed file monitoring review would be carried out by the end of December 2015.

The Institute wrote to the Respondent on 7 February 2017 informing him that the matter was being investigated by ICAEW. He was requested to provide copies of all relevant documents, which he did. This included a copy of a letter to him dated 23 September 2016 from the Practice Review Committee confirming that appropriate steps had been taken by his practice following the issues that had been identified and that no further action was required by the Practice Review Committee.

The Respondent remained in control of 'A' until 21 September 2016, when his practising certificate was withdrawn by HKICPA. At this point, control of the practice was transferred to Mr 'B'. The Respondent reapplied for and was granted a practising certificate by HKICPA on 1 January 2018.

Respondent's Representations

The Respondent made representations by letter to the Institute dated 6 and 21 November 2017. The Respondent states that he is an honest man. He explained that he was not familiar with HKSQC 1 and considered that a monitoring review was a continuous process where he would discuss issues arising with staff when the need arose.

He further stated that he had now resolved all issues to the satisfaction of the Practice Review Committee and if he could go back he would have ensured that he communicated better with the committee. He considers that there may have been a misunderstanding by the Practice Review Committee that has resulted in disciplinary action being taken against him. He added that if he had received the letter from the Practice Review Committee prior to 23 September 2016, he would have been able to demonstrate to the Disciplinary Committee that corrective action has been taken.

Investigation Committee's submission

The IC submitted that between 1 April 2013 and 26 May 2015, the Respondent failed to comply with paragraphs 17, 48 and 57 of HKSQC 1 by failing to implement and document adequate quality control policies and procedures with respect to quality control within his firm and he failed to undertake a practice monitoring review. It is submitted that this conduct is likely to bring discredit on himself, the Institute or the profession of accountancy.

It is further submitted that on 17 June 2014, the Respondent submitted an EQS to the HKICPA which stated that a monitoring review had been completed and documented during the year ending 31 March 2014 when he knew that this was either false or misleading. For the avoidance of doubt, the Investigation Committee is not alleging that the Respondent acted dishonestly. It is submitted that the Respondent's conduct in this regard is also likely to bring discredit on himself, the Institute or the profession of accountancy.

Issues of fact and law

The Respondent has not admitted the complaints in these proceedings.

Bye-law 7.2 of the Institute's Disciplinary Bye-laws (DBL) in force from October 2019 provide that –

The fact that a respondent or respondent firm
a. has been the subject of an adverse finding (not set aside on appeal or otherwise) in respect of his conduct, being a finding in proceedings .... before a regulatory body .....
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) or 5.1(a), as the case may be.

The reference to a "regulatory body" in Bye-law 7.2 does not include a finding of the HKICPA.

The IC is not able, therefore to rely on the finding by the HKICPA as conclusive evidence of the commission of an act or default. It therefore has perforce been obliged to bring proceedings based on the Respondent's alleged underlying conduct and for the original breach of the HKICPA's rules which were the subject of the HKICPA's disciplinary proceedings on 11 August 2016.

However, DBL 7.2 also provides that the following shall be prima facie evidence of any facts found or unfit behaviour, as the case may be, for the purposes of these bye-laws: ...

c. a finding of fact in any proceedings before, or report by, any professional or regulatory body (whether in the United Kingdom or elsewhere provided that, if the body is outside the United Kingdom, the country in which the body is based has courts of competent jurisdiction...

The tribunal of the HKICPA which decide the Respondent's case in August 2016 is a professional or regulatory body to which DBL 7.2.c applies.

The tribunal was therefore able to treat as prima facie evidence the findings of fact made in the proceedings before the tribunal of the HKICPA in August 2016.

The tribunal took account of the admissions the Respondent made in the HKIPCA proceedings.

The tribunal had to be satisfied on the basis of a balance of probabilities that the Respondent had failed to comply with paragraphs 17, 48 and 57 of HKSQC 1 by failing to implement and document adequate quality control policies and procedures with respect to quality control within his firm and he failed to undertake a practice monitoring review; and that, on 17 June the Respondent submitted an EQS to the HKICPA which stated that a monitoring review had been completed and documented during the year ending 31 March 2014 when he knew that this was either false or misleading.

If the tribunal was satisfied that he had failed to comply as set out above and had submitted a false or misleading EQS to the HKICPA, that this constituted misconduct contrary to the Institute's Disciplinary Bye-law 4.1a, in that, in the course of carrying out professional work or otherwise he committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy.

Conclusions and reasons for decision

The tribunal found the facts set out in the complaint proved. Furthermore the tribunal found that the facts proved constituted misconduct in that they constituted acts likely to bring discredit on the Respondent himself, the Institute or the profession of accountancy.

Matters relevant to sanction

The tribunal took into account the following aggravating factors:

The tribunal found that attempting to deceive a professional regulatory body as was found proved in the second complaint was a serious matter.

The Respondent had not engaged with the investigation and indeed had sought to withdraw his membership of the Institute while the investigation was ongoing.

By way of mitigating factors, the tribunal took into account the Respondent's representations set out in his letters to the Institute of 6 and 21 November 2017, as referred to above. In addition, the tribunal was informed that there were no previous disciplinary findings against the Respondent by the Institute and that he had been reprimanded, fined and suspended from practice for a year by the HKICPA for these disciplinary offences.

The tribunal had regard to the Institute's Guidance on Sanctions, effective from 1 July 2019.

Where the tribunal finds a complaint proved, it is obliged to determine the appropriate sanction in relation to the following key principles:

- Protecting the public
- Maintaining the reputation of the profession
- Upholding proper standards of conduct within the profession
- Correction and deterrence of misconduct

The tribunal had regard to Section 11 of the Guidance – Other Regulatory and Compliance Issues paragraphs f and g and to Section 9 Ethics, paragraph e, providing false or misleading information, for which the starting point for a sanction for a serious breach of this provision was a severe reprimand and a Category D financial penalty.

Sanction and Costs

The tribunal considered that the appropriate penalty was a severe reprimand and a financial penalty of £3000. The IC applied for costs in the sum of £4929.67 which the tribunal considered were reasonably incurred. The tribunal made an order that the Respondent pay a contribution to ICAEW's costs of £4929.67.

Decision on publicity

The Tribunal directs that a record of this decision shall be published and the Respondent shall be named in that record.

Chair	Mrs Rosalind Wright QC	
Accountant Member	Mr Michael Barton	
Non Accountant Member	Mr Graham Humby	**037816**

5. **Mr Kyrell Turner-Bernard** of
London, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 4 December 2019

Type of Member

Provisional member

Terms of complaint

On 20 April 2018, at Woolwich Crown Court, Mr Kyrell Turner-Bernard was convicted of perverting the course of justice.

Mr Kyrell Turner-Bernard is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(e) and 4.2(g)

Hearing date

4 December 2019

Previous hearing date(s)

N/A

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	Severe reprimand

Procedural matters and findings

Parties present	Mr Turner-Bernard The IC
Represented	Sonia Stean for 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 Investigation Committee's (IC's) bundle

Background

1. On 1 April 2015, on the Borough Green Road in Kent, a BMW motor vehicle had been detected speeding. The registered keeper at the time was found in the name of a car rental company, with whom the Respondent was doing a work placement at that time. A notice of intended prosecution was sent out and requested for the name and address of the driver. The person who was nominated by the company was the Respondent and, as is usual practice, a notice of intended prosecution was sent to his home address. The Respondent returned the section 172 notice, falsely declaring that he was not driving at the time. Someone else was nominated.

2. A notice of intended prosecution was sent to the nominated person at the address which was given and that was signed and returned apparently by him, accepting liability for the offence. In 2017, the person who had been nominated in the notice (who was in fact a real person) realised that his driving licence had been endorsed with a speeding offence and that the address on his licence had been changed to the address which was submitted by the Respondent**.** The nominated person made a statutory declaration at his local Magistrates' Court stating that he had no knowledge of the offence in question and confirmed that he was not the driver, nor had he completed the section 172 notice of intended prosecution.

3. The nominated person also confirmed that he did not live at the address which was cited on the notice and that he did not have any knowledge of the address. As a result of that information, or armed with that information the police attended the Respondent's home address and he was interviewed during which time he made full admissions to the offence.

4. On 20 April 2018, at Woolwich Crown Court, the Respondent was convicted of perverting the course of justice. HHJ Shorrock considered the aggravating features in this case to be that the Respondent had not only lied about being the driver, he had also filled in a notice pretending to be the man who was the driver. This person as a result of the Respondent's actions had found his driving licence endorsed with penalty points for an offence he had not committed.

5. In mitigation, HHJ Shorrock recognised that the Respondent was a young man in his twenties. He was somebody with considerable potential and this matter aside, a man of excellent character. However, he stated that perverting the course of justice is a very serious offence and *'for obvious reasons the courts have to take a dim view when people behave as you did'*. The Judge did note that when the Respondent found himself in similar circumstances on a second occasion he subsequently behaved as would have been expected of someone with his character. In terms of sentence, HHJ Shorrock stated that *'the court of appeal has said time and again that people who commit this kind of offence must go straight to prison'* and that the correct starting point for an offence of this kind, where an innocent person is prosecuted as a result of the dishonesty is one of nine months. HHJ Shorrock reduced the starting point because of the Respondent's age, excellent character and the way he had behaved subsequently to one of six months. HHJ Shorrock further reduced the sentence to one of four months imprisonment to reflect the Respondent's early guilty plea and full co-operation from the point that he was arrested.

6. The Respondent explained that he received the speeding ticket in relation to delivering the car to a client. He stated that his branch colleagues informed him that they had a protocol in place for dealing with these sanctions and that he should leave it with them to return. He states that in hindsight he was naïve and greatly regrets his actions.

7. The Respondent has provided copies of character references that had been submitted on his behalf at his sentencing hearing at Woolwich Crown Court. As noted, the Respondent states that he is full of regret and he knows that he has matured a lot since.

8. The Respondent still hopes to become a chartered accountant.

Conclusions and reasons for decision

9. The tribunal found the complaint proven on the Respondent's own admission.

10. The Respondent had been convicted of an indictable offence and was therefore in breach of Disciplinary Bye-law 4.1.e and 4.2.g whereby a provisional member is in breach if convicted of an indictable offence.

Matters relevant to sentencing

11. The tribunal took into account its *Guidance on Sentencing* and in particular that the starting point for a breach such as this was exclusion from being a provisional member. The Tribunal first noted the aggravating feature that a member of the public had suffered as a result of his actions. The Tribunal however, whilst taking very seriously the offence he had committed accepted that the Respondent was genuinely remorseful. The Tribunal considered his mitigation including that the offence had been committed when he was relatively young, and before he became a provisional member. He had self-reported and cooperated with both the police and then the IC in their investigations.

12. It did appear that there had been encouragement from within the firm he worked in, which whilst not an excuse, taken alongside his relative young age at the time, did go some way to explaining his major error of judgement. He had served a prison sentence and it did appear that he understood what he had done wrong and learned from his experiences. He had already faced wider negative consequences in that he lost his training position with 'X'.

13. The tribunal was of the view that given his strong mitigation, the appropriate sanction was a severe reprimand. Taking into account that he was unemployed, it did not order him to pay any costs.

Sentencing Order

14. As noted above, the tribunal decided to impose a severe reprimand and no order as to costs.

Decision on publicity

15. Publicity with names.

Non Accountant Chair	Mrs Mary Kelly	
Accountant Member	Mr Michael Barton FCA	
Non Accountant Member	Mr Nigel Dodds	
Legal Assessor	Ms Melanie Carter	**045054**

APPEAL COMMITTEE ORDERS

6. Mr Benjamin Peter White ACA of
Manchester, United Kingdom

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 16 December 2019

Type of Member	Member
Date of Disciplinary Tribunal Hearing	12 March, 3 and 4 May, 5 and 6 June, 10 and 11 September, 22 October and 30 November 2018
Date of Appeal Panel Hearing	16 December 2019

Terms of complaint found proven before the Disciplinary Tribunal

2. Between 31 August 2012 and 19 July 2014 Mr B White ACA failed to deal in a timely manner with the affairs of Ms 'A' in that he:

   (b) Failed to submit tax returns for Ms 'A' for the years ended 5 April 2010, 2011, 2012 and 2013.

3. Between 13 November 2013 and 19 July 2014 Mr B White ACA failed to deal in a timely manner with the annulment of Ms 'A's bankruptcy order dated 13 November 2013.

5. Between 7 October 2014 and 14 May 2015 Mr B White ACA failed to respond to a letter dated 6 October 2014 from 'B' requesting professional clearance and handover information regarding Ms 'A'.

Sentencing Order of the Tribunal of the Disciplinary Committee

1. Severe reprimand;
2. Fine of £10,000; and
3. Pay costs of £59,300

Appeal against finding?	Yes
Appeal against Sentencing order?	Yes
Appeal against Costs	Yes

Decision of Appeal Panel	1. The appeal against finding is dismissed. 2. The appeal against the sentencing order is allowed to the extent that the fine is reduced to £7,500 but otherwise the sentencing order is to stand. 3. The appeal against the costs order is dismissed. 4. The appellant is ordered to pay the costs of the appeal assessed at £23,322.50

Procedural matters and findings

1 The Investigation Committee (IC) was represented by Mr Tom Coates of Counsel and the Appellant by Mr Simon Butler of Counsel

2 The hearing was in public.

3 No preliminary application was made.

Grounds of appeal

4 The complaints should have been made against the firm and not the Appellant individually (abandoned at the appeal hearing)

5 The Disciplinary Committee (DC) had ignored the advice of the legal assessor (abandoned)

6 The DC had wrongly made findings of fact without hearing expert evidence (abandoned)

7 As to complaint 2(b), the DC was wrong to find that the Appellant could and should have submitted tax returns on behalf of his client containing estimated or provisional figures or, if he could have done so, had made a justifiable professional decision that this was inappropriate in the circumstances.

8 As to complaint 3, the Appellant had not failed to take any step reasonably open to him and, in event, could not, on the strict construction of the wording of the complaint, be said to have been 'dealing with' the annulment (this being the province of a lawyer).

9 As to complaint 5, the strict construction of the wording of the complaint constrained the IC to prove that the letter of 6 October 2014 referred to in the complaint had been received by the Appellant's firm in the normal course of posting and the fact that a copy had been sent and received in December 2014 was irrelevant to the strict construction of the complaint. Alternatively as the Appellant had delegated the response to the letter to subordinate staff he could not be held responsible for the admitted fact that no response was made to the letter.

10 The sentencing order of a severe reprimand was disproportionate and the costs order both excessive and disproportionate.

Decision

11 The appeal against finding is dismissed.

12 The appeal against the sentencing order is allowed to the extent that the fine is reduced to £7,500 but otherwise the sentencing order is to stand.

13 The appeal against the costs order is dismissed.

14 The appellant is ordered to pay the costs of the appeal assessed at £23,322.50

Reasons for decision

15 The Appeal Committee (AC) delivered a detailed written judgment. What follows is a summary.

16 On complaint 2(b), the AC considered that there had been ample material before the DC to justify its finding that the Appellant could and should have obtained the necessary information and submitted tax returns on his client's behalf containing estimated or provisional figures. He could and should have engaged on his client's behalf with HMRC which had been pressing for returns for several years and were threatening to issue a statutory demand for an estimated tax liability which the Appellant knew was well in excess of his client's potential actual liability. The Appellant had failed to take appropriate (or any) action when the statutory demand was received or after she had been adjudicated bankrupt.

17 On complaint 3, the AC was satisfied that the Appellant had undertaken to 'deal with' the annulment of his client's bankruptcy to the extent that it was necessary for an account to prepare the necessary accounts and to negotiate with HMRC as principal and petitioning creditor. The Appellant had led his client to believe that he was actively pursuing the annulment and that this could be achieved. This was untrue and the Appellant had told admitted lies to his client. Consequently the DC had had ample material on which to conclude that complaint 3 had been made out.

18 As to complaint 3, the AC held the argument on the construction of the complaint as limited to receipt of the 6 October 2014 letter first time round was misconceived and that failure to respond to the letter when it was admittedly received in December 2014 was the personal and culpable responsibility of the Appellant.

19 As to the sentencing order, the AC found that a severe reprimand was fully justified and in accordance with the Guidelines but, taking into account all the Appellant's circumstances as at the time of the appeal, it was appropriate to reduce the fine to £7,500. The AC considered that, in making the costs order, the DC had exercised its discretion in a proper manner and its decision could not be interfered with.

20 In the light of its conclusions as to the merits of the appeal, an order that the Appellant pay the IC's costs of the appeal was inevitable and the AC assessed those costs at £23,322.50.

Non Accountant Chairman	Mr Richard Mawrey QC	
Accountant Member	Mr Brian Fisher FCA	
Accountant Member	Mr Mike Ranson FCA	
Non Accountant Member	Mrs Ruth Todd	
Non Accountant Member	Mr David Fisher	**024379**

BEFORE THE APPEAL COMMITTEE OF THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

ON APPEAL FROM THE DECISION OF THE DISCIPLINARY COMMITTEE OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ENGLAND AND WALES

BETWEEN:

BENJAMIN PETER WHITE ACA

Appellant

-and-

THE INVESTIGATION COMMITTEE OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ENGLAND AND WALES

Respondent

Judgment

1 Ms 'A' was a member of a girl band known as the 'C'. Although the personnel of the group varied from time to time, it had essentially operated as a partnership. By 2011, 'C' had broken up and Ms 'A' and another singer, Ms 'D', were in dispute with the third member of the group, Ms 'E', and were attempting to resolve their differences. The accounting and tax affairs of the group and its members were in some disarray.

2 Toward the end of 2011, Ms 'A' engaged the services of the Appellant (Mr White) to try to sort out the accountancy and tax affairs of 'C' and of Ms 'A' personally. Mr White was a director and 49% shareholder of 'F' Limited, trading as 'G' an accountancy practice based in Manchester and London. Mr White practiced in Manchester and was effectively the principal of the practice.

3 Mr White undertook to deal with the affairs of 'C' and Ms 'A' and at all times Ms 'A' regarded him as the accountant dealing with her affairs, although, understandably some accountancy tasks would necessarily be carried out by other members of staff.

4 It turned out that Ms 'A' had not filed tax returns for some years and HMRC had made very large assessments of her tax liability. No accounts or returns having been filed and no payments having been made by Ms 'A', on 29 July 2013 HMRC issued a statutory demand for some £648,513. As neither tax returns nor payment had been forthcoming in the interim, HMRC petitioned for bankruptcy and on 13 November 2013 Ms 'A' was adjudicated bankrupt. She was naturally upset about this and looked to Mr White to do something about it. Ms 'A' wanted the bankruptcy annulled and pressed Mr White to take steps to this end.

5 By the summer of 2014, however, Ms 'A' had become dissatisfied with the manner in which Mr White was handling her affairs and in the autumn of that year she transferred those affairs from Mr White to other accountants. Ms 'A' then made a complaint to the Institute and the matter was investigated by the Respondent Investigation Committee (the IC). As a result the IC preferred five complaints against Mr White.

6 The complaints were:

> ***1. Between 31 May 2012 and 30 January 2014 Mr B White ACA failed to deal in a timely manner with the affairs of 'C' in that he:***
>
> ***(a) Failed to finalise the accounts of 'C' for the years ended 31 March 2011 and 31 March 2012 until December 2013.***

(b) Failed to submit tax returns for 'C' for the years ended 5 April 2011 and 5 April 2012 until 31 January 2014.

2. Between 31 August 2012 and 19 July 2014 Mr B White ACA failed to deal in a timely manner with the affairs of Ms 'A' in that he:

(a) Failed to finalise accounts for Ms 'A' for the years ended 31 March 2010, 2011, 2012 and 2013.

(b) Failed to submit tax returns for Ms 'A' for the years ended 5 April 2010, 2011, 2012 and 2013

3. Between 13 November 2013 and 19 July 2014 Mr B White ACA failed to deal in a timely manner with the annulment of Ms 'A's bankruptcy order dated 13 November 2013.

4. Mr B White ACA failed to investigate a complaint made by Ms 'A' on 29 June 2014 and resent on the 2 July 2014 as required by Disciplinary Bye-law 11.2.

5. Between 7 October 2014 and 14 May 2015 Mr B White ACA failed to respond to a letter dated 6 October 2014 from 'B' requesting professional clearance and handover information regarding Ms 'A'.

7 A lengthy hearing took place before the Disciplinary Committee (the DC) in May, June and September 2018. As is usual, the DC comprised two lay members and one member of the Institute who, as it happened, had some insolvency experience while not having an exclusively insolvency practice. The IC and Mr White were represented by counsel (in Mr White's case, leading counsel). Both Ms 'A' and Mr White gave oral evidence (Mr White for some two days). On 11 September 2018 in a reasoned decision, the DC came to the following conclusions:

a) Complaints 1, 2(a) and 4 were found to be not proved and were dismissed
b) Complaints 2(b), 3 and 5 were found proved.

8 Unusually, Mr White applied for a review of those findings before the DC and filed further evidence. On 22 October 2018 a review hearing took place. Although there was a dispute as to the extent of the DC's jurisdiction to hear a review and as to its powers on such a review, the DC took the approach most favourable to Mr White but concluded that, even on this basis, Mr White had failed to establish grounds for a review of the September decision.

9 On 30 November 2018 there was a final hearing on the question of penalty, and the DC decided to impose the penalty of a severe reprimand and a fine of £10,000. On the question of costs the DC decided that

a) It would not have had power to make any costs order in Mr White's favour and would not have done so if it had had the power.
b) The IC's claim for costs should be discounted by 40% to reflect the fact that the IC had only been successful in part, resulting in an order for costs against Mr White of £59,300.

10 Mr White appealed against the findings, the penalty and the costs order and his appeal was heard on 16 December 2019.

11 The basis on which appeals to the Appeal Committee (the AC) are constituted are to be found in the Appeal Rules which provide:

26.2 The notice of appeal shall be accompanied by a statement of the respondent / respondent firm's grounds of appeal, which shall comprise one or more of the following only:

a. that the tribunal erred in law or in its interpretation of any bye-law, any regulation (whether made by ICAEW or otherwise) or relevant technical standard or guidance; or

b. that the hearing was not conducted fairly due to a serious procedural irregularity; or

c that significant, new evidence is available which was not available to the respondent / respondent firm at the time of the hearing, and which the respondent / respondent firm could not, with reasonable diligence, have been expected to obtain; or

d. that the tribunal based its findings or any order on a material mistake of fact or a series of mistakes of fact; or

e. that the order (including any order for the award of costs) was unreasonable having regard to all the circumstances made known to the tribunal at the hearing.

12 It was not disputed before the AC that this means that an appeal to the AC follows the form of an appeal to the Court of Appeal (Civil), namely that it is a review rather than a new hearing. From this it follows that it would take strong grounds for an appellate tribunal to depart from findings of fact (*a fortiori* findings of credibility of witnesses giving oral evidence) made by the lower tribunal. In the event, Mr White did not invite the AC to take that course.

13 The grounds of appeal was a lengthy document in which a considerable number of points were taken. Some of those points were not easily arguable. Counsel representing Mr White, Mr Simon Butler, took the correct course of concentrating on those points which were arguable and presenting a skilful and succinct argument in their favour. To the extent that those arguments proved unsuccessful, this is no criticism of the attractive and persuasive manner in which they were presented.

Findings: complaint 2(b)

14 The DC concluded, rightly in our view, that the case made against Mr White for failing to finalise the accounts and submit tax returns for 'C' (complaint 1) and for failing to finalise Ms 'A's personal accounts (complaint 2(a) had not been proved). Clearly there was insufficient material to finalise either sets of accounts or indeed to reduce those of 'C' into a condition which might be acceptable to HMRC.

15 The position with regard to Ms 'A's personal tax returns was, however, somewhat different. While it was true to say that Mr White did not possess sufficient material to finalise her accounts, it was incumbent on him to take such steps as he could to regularise Ms 'A's position with HMRC. Mr White took on her personal affairs in late 2011 and, by mid-2013, the situation had deteriorated to the point where HMRC was threatening bankruptcy proceedings. In those circumstances it was Mr White's duty to his client to make strenuous efforts to obtain from her such information as he would need to progress her accounts and to do his best to induce HMRC to hold back. After all, by mid-2013, Mr White had had charge of Ms 'A's affairs for about 18 months.

16 The DC held, again in our view correctly, that any professional person must take into account the personal circumstances and position of the client. The appropriate manner of dealing with a client who is a high-flying business executive may be different from that of the proverbial 'little old lady'. In this instance, Ms 'A' had had a successful career in the pop world but, as she herself testified before the DC, she had had people to take care of the business side of her life. Clearly, as the DC considered, a young woman who was not herself experienced in financial matters would require professional handling appropriate to her circumstances.

17 Having examined the relevant documents (which were quite voluminous) and having heard Mr White's evidence (and the further evidence on the review), the DC concluded that Mr White did possess sufficient information to produce estimated figures for Ms 'A's income and expenditure sufficient to have put in tax returns on her behalf. In paragraph 93 of the DC's decision it said:

> ***… the Tribunal was of the view that it must have been feasible to have put in estimates for her income and liabilities for the purposes of Ms 'A's tax returns. HMRC had made assessments against Ms 'A' in the light of the default in submitting returns. By mid 2013 the Tribunal finds that HMRC had seriously increased the pressure on Ms 'A' as is set out in paragraphs 14 and 15 above. It was putting pressure on Ms 'A' through 'G' as her accountants for actual returns to be submitted, if it was the situation that her actual liability to HMRC for outstanding tax was, or was likely to be, much less than the assessed position. In relation to her 'C' and personal income, the Tribunal took the view that Mr White could have got figures broadly accurate at least on the information they had as at about the middle of 2013 onwards. 'G' and Mr White could have submitted figures showing a likely income for Ms 'A' for the purposes of mitigating the assessed tax position. The Tribunal concluded that the earlier submission of the outstanding returns on this basis by 'G' would have assisted Ms 'A' to convince HMRC that her liability for tax was significantly lower than the assessed amount which stood at approximately £500,000. For this reason the Tribunal considers that the timely submission of the returns was of the utmost importance.***

18 The DC rejected Mr White's contention that it was inappropriate to put submit tax returns with estimated figures even in the desperate situation in which Ms 'A' found herself. It found that

> ***There had been considerable pressure brought to bear by HMRC by mid May 2013 and yet Mr White had taken no steps to ensure that he or his staff had contacted HMRC prior to the bankruptcy. The Tribunal took the view that Mr White should have submitted the tax returns with provisional figures.***

19 The Tribunal also rejected the argument that, given the size of Ms 'A's potential liabilities to HMRC (even on revised figures) and her potential liability arising out of the breakup of 'C', her situation was so disastrous that bankruptcy was the inevitable consequence. Although this argument was pursued (though with no great enthusiasm) by Mr Butler at the appeal, it is clearly flawed. If a professional person fails to conduct his client's affairs with proper professional care and skill, it is no defence to disciplinary proceedings (as opposed to an action for professional negligence) that the failings had made no difference to the ultimate result. A solicitor whose neglect of his client's affairs in a litigious matter amounts to a breach of disciplinary rules cannot be heard to say that his client would have lost his case in any event. It is the conduct of the professional that is being considered not the outcome of the work for which the professional was engaged.

20 In the event the DC concluded that, had Mr White engaged with HMRC and submitted returns with estimated or provisional figures, there was a reasonable possibility that a dialogue would have ensued, with the result that HMRC might not have taken bankruptcy proceedings when it did or in the amount it did.

21 The DC was of the view that this was a matter on which it did not require the assistance of an expert witness. Although the original grounds of appeal included the contention that the DC was wrong to decide the matter without an expert and had, indeed, assumed both an expert's and a prosecutor's role in so doing, Mr Butler expressly disavowed these arguments on the appeal and was entirely right to do so.

22 The case presented on appeal was posited on the submission that the decision whether or not to put in tax returns with estimated or provisional figures was, in essence, a judgment call. Mr White's judgment as a professional accountant was that, until he was in a position to put in finalised accounts (which, by common consent, he was not at the relevant time), he would not countenance the submission of provisional returns.

23 The suggestion was also pursued on appeal that it had not been fair to Mr White to take complaint 2(b) as connoting a failure to submit returns with estimated figures as this was not the case put to him by the IC. It became clear during the appeal, however, that the basis of this complaint being the failure to put in such returns was apparent from the IC's formulation of the allegations against Mr White at the outset and that this case had been put by the IC both in its opening of the case to the DC and in its cross-examination of Mr White.

24 This panel was satisfied that the basis on which the DC had found complaint 2(b) proved had been integral to the IC's case throughout and that Mr White had had a full opportunity to answer it (indeed had had a second bite of the cherry in the review). The AC therefore concluded that Mr White had had a fair hearing on this issue.

25 Returning, then, to the substance of the complaint and to the DC's findings that Mr White's failure to progress Ms 'A's personal tax affairs, his failure to engage with (indeed to communicate with) HMRC on her behalf and his failure to contemplate (let alone to compile and submit) tax returns using estimated figures, the question the AC has to ask itself is whether those findings come within any of the categories where an appellate tribunal should intervene.

26 The AC was unanimously of the opinion that there was ample material before the DC to justify its findings. We could not detect (and were not invited to detect) any error of law and we rejected any suggestion of a serious (or any) procedural irregularity. There was no new evidence before the AC nor was the panel shown any material mistake of fact made by the DC. In short, none of the criteria for interfering with the DC's decision had been made out.

27 In those circumstances, the AC had no hesitation in dismissing the appeal in relation to complaint 2(b).

Findings: complaint 3

28 This concerned the failure of Mr White to deal with the annulment of Ms 'A's bankruptcy in a timely manner.

29 Between the bankruptcy in November 2013 and Ms 'A's handing over her affairs to new accountants, 'B' in October 2014, Mr White and his company were the only accountants concerned with Ms 'A's accounts and tax affairs. It was not a matter of any great dispute that the steps taken by Mr White to put her affairs into a condition where it might have been feasible to approach HMRC with a view to securing an annulment of the order were, at best, minimal.

30 It was also apparent before the DC that, to use the DC's well-merited word, Mr White's treatment of Ms 'A's affairs in relation to the annulment was 'cavalier'. He made no strenuous efforts to put her accounts into better order even though she had (admittedly after some prompting) produced her bank statements. He did not engage with HMRC. There were lengthy periods in which he did not communicate with Ms 'A' or return her, increasingly frantic, pleas for help. Shortly after the bankruptcy Ms 'A' was approached by 'H' asking about the order and Mr White blandly told her to inform the newspaper that the order had been a mistake and would be lifted the following Tuesday. This was, as Mr White well knew, a blatant falsehood but Ms 'A' duly complied and this appeared in 'H' accordingly. While she may not have believed that her annulment would be so speedily achieved as that, Ms 'A' was encouraged throughout the ensuing eight months or so to believe that Mr White was, so to speak, 'on the job' and that the annulment was being pursued.

31 Perhaps the most shocking aspect of this episode was that, when Ms 'A' had sent ever more desperate texts and emails to Mr White enquiring about progress, all of which had been ignored, in July 2014 Mr White responded to the last in the series by telling Ms 'A' that he had not received all her earlier communications. This was, as Mr White was constrained to admit in cross-examination, a thumping lie, though he attempted to pass it off as merely 'tactical'. The DC took a very dim view of this, a view shared by this panel. For any professional to lie to his client must surely and always be unpardonable.

32 In summary, from November 2013 to August 2014, Mr White encouraged Ms 'A' to believe that he was progressing matters to the point where an annulment might be sought whereas in reality he was doing little or nothing. Furthermore at no time did Mr White tell his client either that her chances of annulment were slight (still less non-existent) or that, as he was not himself an insolvency specialist, she might do well to consult someone who was.

33 Again we are satisfied that the DC had ample material on which to conclude that Mr White had failed to 'deal with' the annulment of Ms 'A's bankruptcy order and that complaint 3 was made out.

34 On appeal, however, Mr Butler took what he frankly conceded was a technical point arising from the wording of the complaint. His argument was that the only person who could 'deal with' an annulment was a lawyer, because annulment is a legal process for which an application must be made to the court and the grounds for annulment are severely limited by the applicable legislation. Mr White is not, of course, a lawyer so would not have been able to prepare and present an application for annulment. Consequently it could not be said that he had undertaken to 'deal with' the annulment and the DC had been wrong to treat him as having done so.

35 While scoring highly for ingenuity, this argument is, at bottom, misconceived. The words 'deal with' are in common parlance and have no technical meaning, still less a meaning that connotes, in this context, carrying out the legal processes necessary to apply for annulment of a bankruptcy order. It is significant that, when Ms 'A' told Mr White that she was going to transfer to another accountant, he himself used the term 'deal with' when discussing his and the new accountant's role.

36 If a bankrupt who has been made the subject of an order at the behest of HMRC wishes to obtain an annulment of her bankruptcy, then (absent technical objections to the order such as non-service) she is going to have to produce accounts sufficient to show either that she does not owe the money claimed or that she can quantify how much she owes and make reasonable proposals to discharge it. For this part of the exercise, the services of an accountant are essential. Once the accounts are in order, the matter can then be passed to the lawyers but the accountant must 'deal with' the matter to get it to that position.

37 It is irrelevant for these purposes to say that Ms 'A's debts were so huge that she would never have succeeded in obtaining an annulment – the charge is failing to deal with her affairs, not failing to obtain an annulment. Nor it is relevant that her new accountants did not apply for an annulment either. As was pointed out by the IC, the bankruptcy would have been automatically discharged one year after being made in any event.

38 Thus the panel is satisfied that Mr White did undertake to 'deal with' the annulment in the ordinary sense of that expression and that he failed woefully in that undertaking to the point where the DC's finding of breach of the rules was fully justified.

39 Accordingly, the appeal against the findings on complaint 3 is also dismissed.

Findings: complaint 5

40 As it turned out this complaint was within very small compass. In October 2014, Ms 'A' ceased to instruct Mr White and engaged the services of 'B' Limited. On 6 October 2014, 'B' wrote to 'G' the usual letter on handover in which it asked for certain information and nine[1] categories of document. It also asked as it usual, whether there were any professional reasons why 'B' should not accept the appointment. Patently it was the professional duty of the person charged with Ms 'A's affairs, namely Mr White, to respond to all these matters. The complaint alleged that Mr White had failed to do so.

41 Both at the hearing and at the subsequent review an inordinate amount of time and evidence was dedicated to Mr White's contention that the letter of 6 October had not been received in the normal course of postage. It was, however, common ground that on 4 December 2014 'B' had sent a chasing letter enclosing a copy of the 6 October 2014 letter and asking for a response, and it was also common ground that this letter *was* received. More to the point, it was indisputable that Mr White had not responded to the letter by the following May, when a further request was made by 'B' and, for the first time, there was contact between 'G' and 'B'.

[1] Mis-numbered as ten)

42 Apart from a somewhat half-hearted attempt by Mr Butler in reply to resurrect the contention that, as Mr White had delegated the response to 'B's letter to a colleague, he could not be personally liable, a contention rightly rejected by the DC, the sole plank of his argument was the non-receipt of the letter first time round. Before the DC, the factual issue of its receipt was decided in his favour in that the DC gave him the benefit of the doubt and decided that the IC had not proved receipt in October 2014.

43 Thus it was Mr White's contention that the complaint had to be proved with the utmost strictness so that, unless the letter could be proved to have been delivered in October 2014, the fact that the identical copy was received in December 2014 and the fact that no response whatsoever was given to the letter for a further six months were of no account. Putting it bluntly, this contention is, on its face absurd. It is not even correct if one attempts to apply rules of construction that would appear pernickety to a 19th century conveyancer. The complaint refers to 'a letter dated 6 October 2014' and the letter bearing that date was admittedly received, albeit in copy form and two months later. Had Mr White responded (or ensured that there was a proper response) in December 2014, of course, complaint 5 would never have been contemplated.

44 Thus, while Mr Butler's argument faithfully articulated what appears to be somewhat of an idée fixe of his client, it was clearly unsustainable and the DC was patently right to find this complaint proved. The appeal on this complaint is consequently dismissed.

45 In the upshot, therefore, Mr White's appeal on all three remaining complaints is dismissed.

Penalty

46 Penalty was the subject of a separate hearing at which both parties were represented by counsel, albeit, in the case of Mr White, by different counsel from before.

47 In reviewing the DC's approach to penalty, it was clear to this panel that the DC had fully before its eyes the *Guidance as to Sanctions* and applied it correctly. It accepted the substantial mitigating factors put forward by Mr White but it also accepted that there were aggravating factors. Mr Butler criticised the conclusion[2] that the failings identified by the Tribunal had been 'one of the causal factors in [Ms 'A's] bankruptcy'. Put that way, it is not felicitously expressed. Mr White's failings did not cause her bankruptcy – her debts were her own – but it was fair to say that, had be acted with proper professionalism, Ms 'A's bankruptcy might have been avoided or postponed or, at the very least, involved a sum well below that for which the petition was presented.

48 The DC was, in our view, entirely right to take a serious view of Mr White's neglect of Ms 'A' in the summer of 2014 and, in particular, the fact that he lied to her about having received the numerous requests for information.

49 Whether one placed the complaints individually in Category C or Category D in the schedule in the Guidance, it seemed to the AC that, viewed singly or cumulatively, they fully merited the severe reprimand imposed by the DC and the panel was not persuaded to depart from that.

50 On the other hand, looking at the matter in the round and taking into account Mr White's substantial liabilities both for the costs of the DC and his own costs, together with the financial difficulties in which his company has found itself since the DC's decision, the AC took the view that, from the standpoint of the present, it would be appropriate to reduce the fine to one of £7,500. This is not to say that the DC was wrong in principle but circumstances alter cases.

51 Thus the decision on penalty is that the severe reprimand stands but the fine is reduced to £7,500.

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2 Record of 30 November 2018 para 7(a).

Costs

52 It was common ground that the DC would not have had the power to award any costs to Mr White even had it been minded to do so.

53 The issue was therefore whether the DC had exercised what Mr Butler correctly conceded was its discretion to make an award of 60% of the IC's costs in a manner which was fair and proportionate in the circumstances. In considering this matter, it was accepted that the starting point for the IC's costs below had been a greatly reduced figure for the preliminary costs of the investigation and prosecution.

54 Looking at the matter objectively the panel did not consider that the exercise of the DC's discretion had been unreasonable and that 60% of the IC's costs was a fair apportionment, particularly bearing in mind that the costs of the review would be wholly to Mr White's charge as the review had been rightly found to have been misconceived both in law and in fact.

55 The panel is thus not persuaded to interfere with the order for costs of £59,300 made below.

56 As for the costs of the appeal, it was not seriously argued that the reduction in the fine (which had taken up very little of the panel's time) was sufficient to absolve Mr White from bearing the IC's full costs of the appeal, which were unfortunately swollen by the fact that the appeal had not only been listed as a three-day hearing (a listing for which Mr Butler bore no responsibility) but had been adjourned, at Mr White's request, from a three-day hearing fixed for May 2019.

57 The panel assessed the costs of the appeal at £25,322.50 and ordered that they be paid by Mr White.

58 The panel would like to conclude by commending both Mr Butler and Mr Coates (representing the IC) for the skilful and expeditious manner in which this appeal was argued: no tenable argument was omitted and none was laboured. **024379**

6. Mr Benjamin Peter White ACA of
Manchester, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 3 and 4 May and 5 and 6 June and 10 September 2018

Type of Member Member

Terms of complaint

1. Between 31 May 2012 and 30 January 2014 Mr B White ACA failed to deal in a timely manner with the affairs of 'C' in that he:

    a) Failed to finalise the accounts of 'C' for the years ended 31 March 2011 and 31 March 2012 until December 2013.

    b) Failed to submit tax returns for 'C' for the years ended 5 April 2011 and 5 April 2012 until 31 January 2014.

2. Between 31 August 2012 and 19 July 2014 Mr B White ACA failed to deal in a timely manner with the affairs of Ms 'A' in that he:

    a) Failed to finalise accounts for Ms 'A' for the years ended 31 March 2010, 2011, 2012 and 2013.

    b) Failed to submit tax returns for Ms 'A' for the years ended 5 April 2010, 2011, 2012 and 2013.

3. Between 13 November 2013 and 19 July 2014 Mr B White ACA failed to deal in a timely manner with the annulment of Ms 'A's bankruptcy order dated 13 November 2013.

4. Mr B White ACA failed to investigate a complaint made by Ms 'A' on 29 June 2014 and resent on the 2 July 2014 as required by Disciplinary Bye-law 11.2.

5. Between 7 October 2014 and 14 May 2015 Mr B White ACA failed to respond to a letter dated 6 October 2014 from 'B' requesting professional clearance and handover information regarding Ms 'A'.

If proven, the member may be liable to disciplinary action under Disciplinary Bye-law 4.1b for heads 1, 2, 3 and 5 and 4.1c for head 4.

Disciplinary Bye-law 4.1b states:

4.1 'A member, provisional member, foundation qualification holder or foundation qualification student (all hereinafter referred to as 'respondent') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder or foundation qualification student at the time of the occurrence giving rise to that liability:

    b if he has performed his professional work or the duties of his employment, or conducted his practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, the Institute or the profession of accountancy.'

Disciplinary Bye-law 4.1c states:

4.1 'A member, provisional member, foundation qualification holder or foundation qualification student (all hereinafter referred to as 'respondent') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder or foundation qualification student at the time of the occurrence giving rise to that liability:

c if 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 dates

3 & 4 May, 5 & 6 June, 10 September 2018

Previous hearing date(s)

12 March 2018	Preliminary hearing (see separate record of decision)
Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes in part
All heads of complaint proven	Proven – 2(b), 3 and 5 Not proven – 1, 2(a) and 4
Parties present	Ben White The Investigation Committee (IC)
Represented	Ms O'Rourke of counsel represented Mr White Mr Coates of counsel 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 IC's bundle together with documents submitted by the defendant. During the hearing, various additional documents were admitted in evidence.

Decision

1. A panel of the Disciplinary Committee (the Tribunal) of the ICAEW met on the above dates to hear the complaint against Mr Ben White (BW), a member of the ICAEW. It found the complaint proven in part. This decision is issued to the parties in advance of the Tribunal reconvening in order to consider any possible sanction and cost order.

2. The following individuals and companies referred to in this decision are:

Ms 'A'	Complainant. Former member of music band which operated as a partnership called 'C'
Ms 'E'	Former member of 'C'
Ms 'D'	Member of 'C'
Ben White (BW)	Engagement partner, director and 49% shareholder of 'F'
'G'	Trading name of 'F'
Mr 'I'	Partner in 'G'
Ms 'J'	Employee of 'G'
Ms 'K'	Employee of 'G'
Ms 'L'	Solicitor involved in 'C' name dispute (representing Ms 'E')

Mr ‘M’	Director or manager of ‘P’ Limited (and other related companies) which appears to have provided management services to the ‘C’ and its members from time to time.
‘B’	Ms ‘A’s accountants following her parting with ‘G’
Mr ‘N’	Employee of ‘G’
Ms ‘O’	Risk Assessment Ethics Partner, director and 51% shareholder of ‘G’

Background

3. Ms ‘A’ made a complaint to the ICAEW with regard to BW’s conduct of her financial affairs. Ms ‘A’ was a member of the singing group, ‘C’. The group was originally formed in 1998. In 2001, Ms ‘D’ replaced one of the founding members. Ms ‘A’ replaced another founding member in 2005. Ms ‘E’, a founding member, was replaced in 2009 by Ms ‘Q’. Ms ‘D’, Ms ‘A’ and Ms ‘Q’ performed as ‘C’ until 2011 when they split up. ‘C’ was operated as a partnership during its period of trading.

4. BW, the defendant, is a Director and 49% shareholder of ‘F’ (trading as ‘G’), an accountancy practice based in Manchester and London. BW is based in Manchester.

5. Ms ‘A’ was introduced to ‘G’ by Mr ‘M’ towards the end of 2011, to bring the accounts of ‘C’ up to date and to assist with the reporting requirements of a settlement agreement that both partners had entered into with a former band member, Ms ‘E’. The agreement was in arrears at the time.

6. In 2011, Ms ‘A’ and Ms ‘D’ had also entered into a deed of settlement with Ms ‘E’ regarding the use of ‘C’s name. The terms of the agreement are in essence, apart from various lump sums to be paid to Ms ‘E’ on completion, or in respect of discrete matters such as a ‘R’ advertisement, that Ms ‘A’ and Ms ‘D’ were required to provide accounting information to Ms ‘E’ in respect of ‘C’s income for certain periods and were further required to pay Ms ‘E’ a percentage of that income.

7. Whilst completing the work for ‘C’, BW identified the extent of liabilities owed by the band and informed ‘P’ Limited, who advised they could potentially help by paying up to £100,000 to acquire the name of the band. ‘P’ Limited asked BW to negotiate with the creditors to agree a settlement; if the outlay would be no more than the £100,000, they were prepared to pay for the name. Negotiations for ‘P’ Limited to purchase ‘C’s name from Ms ‘A’ and the other band member, Ms ‘D’, started around September 2012. ‘G’ was acting on behalf of ‘P’ Limited.

8. Ms ‘A’ told the Tribunal that in her view she had formally engaged ‘G’ to act as her accountants at the end of 2011, following dealing with them in the course of the negotiations for the acquisition of ‘C’s name. She believed she had engaged ‘G’ for both her personal tax and ‘C’.

9. BW disputed that Ms ‘A’ had formally been her client, never having received a signed letter of engagement and never having been paid. However, it was accepted by the parties in the course of the hearing that an engagement had arisen through a course of dealing.

10. ‘G’ commenced actual work for Ms ‘A’ when they submitted to her a series of forms/letters of authority for her signature, including HMRC form 64-8, on 31 August 2012. All those forms were signed and returned (save that HMRC did not accept the electronic signature on the form 64-8) by 11 September 2012 at the latest.

11. There had been a meeting between BW and Ms ‘A’ (with Mr ‘M’ of ‘P’ Limited, present for the first part of the meeting) on 14 June 2012. BW produced a note of that meeting that he had prepared and handed it to the Tribunal. Items 4 to 6 on that list all related to Ms ‘A’s personal affairs, and the preparation of tax returns on her behalf. Ms ‘A’s evidence was that she signed a letter of engagement at that meeting.

12. ‘G’ corresponded with Mr ‘S’, ‘C’ and Ms ‘A’s then accountants, asking for professional clearance to transfer the files and associated documentation 6 weeks later on 26 October 2012. They received the information Mr ‘S’ had by 5 December 2012.

13. On 23 January 2013, Mr ‘I’ emailed Ms ‘A’ asking for personal financial information. Nothing appeared to have been done to obtain bank statements from Ms ‘A’ between 31 August 2012 and 23 January 2013. Rather, Mr ‘I’s “to do list” dated 26 February 2013 shows that, at that date, his outstanding task in relation to Ms ‘A’ was “Chase up accounts information so we can attempt to bring up to date”. BW accepted in oral evidence that nothing was done on Ms ‘A’s affairs between the end of March 2013 following the departure of Mr ‘I’ from ‘G’ and the middle of May 2013 when Mr ‘N’ of ‘G’ appears to have become involved.

14. On 15 May 2013, ‘G’ were notified by HMRC’s late stage debt resolution department of an estimated determination of £564,000 against Ms ‘A’. As a result, ‘G’ provided HMRC with another form 64-8 (this time properly signed) and were informed that HMRC were considering bankruptcy action and had sent a warning letter to Ms ‘A’.

15. On 29 July 2013 Ms ‘A’ was issued with a Statutory Demand for payment of £648,513.14 from HMRC. This arose after HMRC had issued estimated assessments against her as a result of ‘A’s tax returns being outstanding. The amounts of those assessments are set out in the detail of the Statutory Demand. In due course bankruptcy proceedings were initiated by HMRC against Ms ‘A’ as a result of non-payment. In the course of her evidence Ms ‘A’ denied having been served with the bankruptcy petition. It is not necessary for us to make any finding on this point, save to note that no application to set aside the petition for non-service appears to have been made. Ms ‘A’ told the Tribunal that she was advised by BW that the estimate was in excess of the true liability. Ms ‘A’ was made bankrupt on HMRC’s petition on 13 November 2013. There followed a series of text and email communications between Ms ‘A’ and BW with regard to the possible annulment of her bankruptcy.

16. On 29 November 2013, Ms 'A' was contacted (through her manager) by a journalist at 'H' in connection with her bankruptcy. Ms 'A' forwarded the email to BW, who replied in a text message saying, "*Your manager should send an email to say that the bankruptcy order is an error and will be lifted on Tuesday*". On 12 March 2014, in response to a text from Ms 'A' asking "*has the process started for the annulment*?", BW replied, "*I spoke to HMRC around two weeks ago. We can apply for the annulment as soon as we have the information that is required*." On 14 April 2014, in response to Ms 'A's message stating that she had sent her bank statements to BW, BW texted, "*well done that's great. It won't be until HMRC have processed the information that we need to produce before they can look at the annulment*".

17. On 4 May 2014, BW says it will take another few weeks to prepare Ms 'A's accounts up to date. On 18 May 2014 he says she will have everything by the end of the week (Friday 23 May 2014). On 28 May 2014, in response to Ms 'A's email asking for an update on the annulment, BW stated, *"The accounts information and draft tax information will be ready for me to check by Friday. We can then move to submit this to HMRC and have your bankruptcy annulled*". 'G' tells Ms 'A' that that BW will have the accounts ready to be checked by Friday (30 May). Correspondence shows that Ms 'A' chases for an update between 1 and 10 June 2014. She gets a response on 11 June 2014 stating that an employee at 'G' has been trying to contact her and needs a response to her email. In response, Ms 'A' confirms that she has responded and also provides her response to BW by text. BW acknowledges the response and says they should now be able to finalise everything in the morning (12 June).

18. Ms 'A' does not then chase again until 28 June 2014 and asks for confirmation that her tax returns have been filed and an update. BW responds on 5 July 2014 saying they are still working on her expenses "*so we can reduce your tax liability as far as possible; this should then allow your annulment to be performed*".

19. On 29 June 2014, Ms 'A' sends a letter of complaint to 'G'. The emails provided show that Ms 'A' re-sent the complaint to BW on 2 July 2014 and chased for a response on 5 July 2014. An email on 5 July 2014 from BW says he did not receive her previous emails. Ms 'A' responds saying that she had tried to contact him by email, phoning the office and his mobile as well as texting him and she had not had a response. In a further email on 5 July 2014, Ms 'A' makes it clear that she is not happy and wants him to deal with her complaint.

20. On 11 July 2014, a 'G' employee asks Ms 'A' for an estimate of her other personal expenditure such as travelling, hair, make up, clothing etc. as they are deductible in her profession.

21. Ms 'A' appointed new accountants, 'B', on 20 July 2014.

22. Ms 'A's new accountant requested clearance information from BW on 6 October 2014. Ms 'A' chased by email on 2 December 2014 and a spreadsheet of her income and expenses was provided by email on 4 December. On 23 December 2014 BW said he had no further information. Ms 'A' made a subject access request (SAR) on 23 April 2015. She was provided with copies of 'C's accounts on 14 May 2015 and 'C' tax returns on 3 June 2015.

Head of complaint 1 – (a) Failure to finalise accounts and (b) submit tax returns for 'C'

The IC's Submissions

23. BW's delay in finalising the 2011 and 2012 'C's accounts and tax returns was argued to be excessive, unjustified and sufficient to amount to a breach of Disciplinary Bye-law 4.1(b) on the grounds that BW failed to deal with 'C's financial affairs in a timely manner and thereby performed his practice inefficiently. The conduct underlying all of the Heads of complaint was said to be both as the partner dealing directly with Ms 'A' but also as supervising partner in relation to Ms 'A's affairs.

24. Neither tax return was filed until 31 January 2014: the 2011 tax return was therefore 2 years late and the 2012 tax return was 1 year late. 'C's 2011 and 2012 accounts do not appear to have been finalised until December 2013 – 1 year and 7 months after BW was engaged with the express purpose of bringing up to date the financial affairs of 'C'.

25. The IC characterised the delays as follows:

    (a) 'G' were formally engaged on 31 May 2012. By that stage, 'G' had already had substantial communication with Mr 'S' and had in fact received almost all the information that Mr 'S' had in respect of 'C'.

    (b) There is no documentary evidence of work being undertaken on 'C's affairs for the next 2 ½ months – until 16 August 2012.

    (c) No further work appears to have occurred for another 2 months, until 10 October 2012.

    (d) Thereafter, there is very little documentary evidence (in the form of internal emails) that any further work was done on 'C's accounts for the very substantial period, until they were brought up to date in December 2013 (see email from BW to Ms 'A', 24 December 2013). BW has provided his firm's WIP History Report with respect to 'C' and no time appears to have been incurred between 9 December 2012 and 13 October 2013 with respect to 'C's accounts and tax returns at all. During this period 'G' did incur time with respect to Ms 'E's settlement.

    (e) The tax returns were not filed until 31 January 2014. No explanation as to why this was so appears from the contemporaneous documents. Indeed, even the employees of 'G', in their internal emails to one another, do not appear to have been aware of the reason why the returns were not filed: see email from Ms 'T' to BW, 19 December 2013, where she notes that the returns have been prepared but asks "is there any reason now why we can't file this".

26. BW argues that the accounts and tax returns could not be finalised until 'C's creditor position was resolved. The IC points out however that, setting aside Ms 'E's dispute, amounts were agreed with all creditors by the end of November 2012 at the latest; so the creditor position could not, in their view, justify the delay until December 2013.

27. The IC does not accept that it was not possible to finalise the accounts until settlements with creditors were known; it submitted that the accounts could have been prepared on the basis of the information available with an explanation in the accounts and tax returns of any provisional matters. It was argued that submission of tax returns which contain provisional numbers is acceptable to HMRC providing that the return states that it includes provisional numbers.

BW's Submissions

28. Counsel for BW made the following arguments with regard to this Head of complaint:

    (a) It was incumbent on the IC to prove its case. The burden of proof fell on the IC and it was not for BW to explain himself or provide justification for what had happened. Thus, the IC had to prove a failure to deal with 'C's financial affairs in a timely manner before even considering BW's responses to the complaint.

(b) The IC needed to adduce expert evidence with regard to what could be properly perceived to be timely or otherwise in this context. There needed to be expert advice as to what, in the particular circumstances of these matters, needed to be done, how long was a reasonable time to take to do this and so on. The Tribunal should not rely upon the specialist expertise of its panel members, although the inherent expertise of this specialist Tribunal was acknowledged. No specialist advice beyond this inherent expertise should be received from panel members.

(c) It was notable that neither Mr 'M' nor Ms 'D' had complained.

(d) 'C's financial affairs were in a bad state at the time they were passed to 'G' and it took a long time to bring everything up to date. BW said that he and 'G' had to spend time reconciling opening balances from the information and bank statements received from Mr 'S'.

(e) Settling the creditor position delayed the finalisation of the accounts. BW argues that the accounts and tax returns could not be finalised until 'C's creditor position was resolved.

(f) Ms 'E's dispute substantially delayed the preparation of the accounts and returns. BW stressed that the dispute was complicated and involved an aggressive lawyer, Ms 'L', the need to obtain approval of accounts from Ms 'E' and that this dispute needed to be materially resolved before accounts could be finalised and tax returns submitted to HMRC.

(g) Given the uncertainties surrounding the settlement agreement with Ms 'E', BW could not have prepared draft accounts and tax returns on an interim basis. Given the figures involved, the complexity of the affairs and the extent of the dispute, HMRC could not have placed any reliance on interim figures.

(h) In all the circumstances, the IC had failed to prove a failure to deal with the affairs of 'C' in a timely fashion.

Head of complaint 2 – (a) Failure to finalise accounts and (b) Failure to submit tax returns for Ms 'A'

The IC's Submissions

29. BW's delay in finalising the accounts and tax returns of Ms 'A' (for the 4 years between 2010 and 2013) was said to be excessive and unjustified. The IC argued that BW acted inefficiently in failing to deal with her financial affairs in a timely fashion such as to breach Disciplinary Bye-law 4.1(b).

30. The period of delay for each set of accounts and tax returns, taking the date of BW's engagement as 31 August 2012 and the date of his disengagement as 20 July 2014, was as follows:

(a) the 2010 tax return (to 5 April) had still not been filed 3 years and 5 months after the filing deadline which was 31 January 2011;

(b) the 2011 tax return had not been filed 2 years and 5 months after the filing deadline which was 31 January 2012 ;

(c) the 2012 tax return had not been filed 1 year and 5 months after the filing deadline which was 31 January 2013; and

(d) the 2013 tax return had not been filed 5 months after the filing deadline which was 31 January 2014.

31. The IC asserted that the failure to file Ms 'A's tax returns had the very serious consequence that on 13 November 2013 Ms 'A' was made bankrupt by HMRC on the basis of her estimated tax liabilities. BW was well aware of impending bankruptcy proceedings – and the real risk that Ms 'A' would be made bankrupt – because HMRC had contacted him about this. He nevertheless had still failed to file any tax information for Ms 'A' over 8 months later when he was eventually disengaged by Ms 'A'.

32. It was claimed by the IC that BW's failure to handle Ms 'A's affairs efficiently was all the more grave as it was said that Ms 'A' could be fairly characterised as a vulnerable client. Although her evidence was that she engaged when necessary and asked questions of her professional advisers, she stated, the IC argued, convincingly that – as a performer – she was "coddled" and told consistently not to worry about matters other than her music. She entrusted her affairs completely to a professional and was seriously let down.

33. On 15 May 2013, 'G' had been notified by HMRC's late stage debt resolution department of an estimated determination of £564,000 against their client, Ms 'A'. On 12 June 2013, HMRC told Mr 'N' that, unless they received a payment proposal by 14 June 2013, they would commence bankruptcy proceedings against Ms 'A'. Notwithstanding this threat, the IC submitted that there is no indication in the contemporaneous documents that 'G' even emailed Ms 'A', let alone tried to gather additional information to bring her accounts up to date.

34. Notwithstanding Ms 'A's bankruptcy on 13 November 2013, the IC contends that no further work appears to have been done on her accounts and tax returns until 24 December 2013 – nearly 6 months after HMRC's threats of bankruptcy – when BW asks Ms 'A' for her bank statements from January 2010 so as to prepare a schedule of her personal income for the purposes of the dispute with Ms 'E'.

35. There was a conflict in the evidence regarding when Ms 'A' sent 'G' her bank statements. Ms 'A' was clear that she did so twice and that she provided these soon after BW's email of 24 December 2013. In any event, it was said to be clear that Ms 'A' had provided all of the statements by 29 April 2014. Even though BW now had all the information he had requested to prepare Ms 'A's accounts and tax returns, he nevertheless had failed to do the same by 20 July 2014 when he was dismissed, nearly 3 months later.

36. BW's failure to work with proper efficiency on Ms 'A's personal affairs was said to be all the more egregious given that Ms 'A' repeatedly chased BW to act more quickly with respect to her accounts. BW, when he provided any response to these enquiries, frequently promised that he would complete the work by a date which he subsequently missed. Ms 'A' sent BW, by the IC's estimation, 22 emails chasing up the preparation of the accounts and providing 'G' with information when requested. Ms 'A' received only 8 communications from 'G' during this period, and only 4 from BW. It was argued that the majority of Ms 'A's communications, even those which made serious complaints about BW's conduct, went unanswered.

37. BW initially attempted to justify his failure to respond on the basis that he was getting "three to four hundred emails a day". In cross-examination, he then accepted that he did not answer Ms 'A's emails and that he should have done: "*I accept I should, in hindsight, have responded to emails but, in terms of the work done, this is still less than six weeks after we have been supplied with the very basic source information*". The excuse he gave to Ms 'A' at the time, in his email of 5 July 2014, was "*I haven't received any messages from you until this one*". He accepted in cross-examination that that was not true.

38. It was argued that if BW and 'G' needed more time, the proper course would have been to respond to Ms 'A' in writing : (a) requesting more time; (b) explaining the complicated nature of the task; (c) pointing out that Ms 'A' had only recently provided bank statements. BW did none of these things. Instead, it was argued, he ignored Ms 'A's emails and then untruthfully stated that he had not received them in his email of 5 July 2014.

39. In any event, the IC submitted that the late provision of information does not excuse BW's conduct in failing to finalise the accounts for nearly 3 months after the statements were provided, and in asking for these statements only twice by email in a 2 year period.

40. The IC did not accept that 'C's accounts had to be finalised first prior to addressing or finalising Ms 'A's accounts. There was no reason, it was said, why both workstreams could not have been run in parallel. Certainly BW could have obtained information from Ms 'A' on her personal income and done work on this in parallel with work on 'C's accounts. As soon as 'C's accounts were finalised, he would then have been in a position to finalise Ms 'A's information as well. However, there was a delay of 7 months between the completion of 'C's information and BW's eventual disengagement by Ms 'A' (when Ms 'A's personal returns were still not completed). BW accepted in principle that this approach could work, but said that 'G' only had so many resources and he had not been paid. The IC argued that whether a client paid or not was not relevant to the necessary and minimum professional standards expected of a chartered accountant.

BW's Submissions

41. Counsel for BW argued, again, that the Tribunal was not able to form a view as to timeliness without expert evidence, in particular as to an analysis of what should have been done by when. Critically, the IC was seeking to reverse the burden of proof in failing to substantiate that there had been any failure to deal with Ms 'A's affairs in a timely fashion and in merely seeking to negate what they called BW's "*purported justifications*". It was for the IC to prove its case, not for BW to excuse or explain any delays.

42. The IC had failed to address the evidence put forward by BW as to what had been happening when he was said to have taken her on as a client. At that point, rather, he had been helping her out with discreet problems with her landlord changing the locks and she had signed a few forms to enable that. This had not been the same as formally taking on Ms 'A' as a client to do her accounts and submit tax returns. She was not to be believed with regard to her statement that she had signed a letter of engagement at their meeting in January 2012. The earliest she could be said to be a client would be by course of conduct, when the letter of engagement was sent out in October 2012.

43. If thereafter he had been a bit slow, that did not fall below the standard of a reasonable accountant. It did not show inefficiency. A lack of alacrity or courtesy in responding to Ms 'A's communications was not relevant to this complaint, which was to be construed strictly. The charge was as to timeliness alone.

44. Ms 'A's bankruptcy was not a consequence of the delays in the tax returns being filed. Rather, this was a result of her not paying any tax for a number of years and that she had, in effect, no assets. She was not vulnerable, rather she was an intelligent, articulate woman who had been self-employed for a number of years and therefore understood what was required of her. She simply buried her head in the sand.

45. The IC claimed that nothing appeared to have been done to get bank statements from Ms 'A' between 31 August 2012 and 23 January 2013. That was incorrect as she had failed to sign the letter of engagement or respond to requests for AML information. A letter chasing her should have been sent. Ms 'A' dipped in and out of contact and then called in a crisis towards the end of August 2012 (with regard to her landlord). Then she went silent again. She had been a very difficult and unresponsive person with whom to deal.

46. The IC had failed to take into account that BW had, perfectly reasonably and normally for a partner in his circumstances, delegated most of the day to day tasks to his staff. Thus, insofar as there were delays, these were not his delays. He had acted reasonably as a supervising partner, but he (or his staff under supervision) could not be expected to work on her account every day, given his wider responsibilities to other clients and his overseas travel commitments.

47. Her failure to engage is typified by the fact that Ms 'A' did not provide her bank statements for 4 months and not before 28 April 2014. BW explained that the delay in dealing with Ms 'A's tax returns was due to the absence of her bank statements for the relevant period. He said they requested online access in August 2012 but this was not completed and copy bank statements were requested in 2013 and 2014. He said Ms 'A' requested the statements from the bank in March 2014 and provided them in May 2014. They then analysed the statements and matched them to the income from the rights agency statements. In July 2014 another employee asked Ms 'A' for additional expenses.

48. The issues that remained unresolved were not just 'C's income. There was also the need to reconcile income and expenditure and outstanding financial payments relating to Ms 'A's personal income (eg: 'R' payment). Until these had all been finalised, 'G' could not finalise the accounts. This was not done before July 2014, so there had been no delay and no failure to act in a timely fashion.

Head of complaint 3 – Failure to deal with Ms 'A's bankruptcy annulment

The IC's Submissions

49. The IC argued that BW failed to act in a timely manner with respect to the annulment of Ms 'A's bankruptcy , the first stage of which would have been to file up to date tax returns. Ms 'A' was made bankrupt on 13 November 2013, but BW had failed to take proper steps towards annulment – including filing up to date tax returns as a first step – by 20 July 2014 when dismissed as her accountant. This was in spite of his many indications that he would do so.

50. BW must have known about the bankruptcy since either May or June 2013, during which time HMRC specifically threatened to start bankruptcy proceedings against Ms 'A' unless a payment plan was put in place. On 18 September 2013, in an email from Ms 'J' to Mr 'N', Ms 'J' states "*Please can you urgently let me have the contact details for HMRC re Ms 'A' and any reference numbers*". Whilst BW told the Tribunal he did not know the circumstances of this email, it suggests contact between 'G' and HMRC at a time when bankruptcy proceedings must have been afoot. It would be very unusual if 'G' and thereby BW did not know what was going on.

51. There is further contact with HMRC in October 2013. On 9 October 2013, BW received an urgent call from Ms 'A' re tax, which is recorded in the email from 'G's receptionist. She then states that Ms 'A' is chasing in her email of the same date. BW replies: "*I am dealing with the bank and HMRC and have proposals that I am waiting to here [sic] from re both*". In the IC's submission, this communication with HMRC must have been about the impending bankruptcy as well. BW's explanation that this was "*an error*" is unsatisfactory (and even if it is right, the error was communicated to Ms 'A', who was told BW was handling HMRC).

52. Ms 'A's phone records show an unusually high number of calls to BW during November 2013: on 10, 25, 27, 28, 29 November. There are 18 calls overall and 16 texts. It was submitted that it was highly likely that these calls concerned the bankruptcy. BW accepted that the call on 29 November may have concerned the contact by the journalist from 'H' about Ms 'A's bankruptcy, and did not positively deny that the others did not concern this. BW was then forwarded correspondence with the journalist from 'H' on 29 November 2013. It was therefore said that on any view, he knew about the bankruptcy by that date. He gave a different and incorrect impression in his written evidence where he suggested that he had no idea Ms 'A' was bankrupt until she told Ms 'L' in an email dated 19 December 2013.

53. The IC argued that BW clearly had enough information about an impending bankruptcy to take action – including by requesting a copy of the relevant information from HMRC, the Court file or another source. He did not do so.

54. It was submitted that the professional relationship between Ms 'A' and BW was relatively informal. The documents before the Tribunal and BW's evidence clearly establish, it was said, that BW assumed responsibility with respect to the bankruptcy and at the very least gave Ms 'A' every appearance that he was acting. It was argued that he communicated with Ms 'A' about the annulment, and gave her information about how it could be progressed, on numerous occasions (all of which are consistent with Ms 'A's evidence that she was assured the bankruptcy could be annulled):

    (a) The Tribunal was invited to consider the emails from Ms 'A' to BW from May 2014 to July 2014. The central focus of these emails is the progress of the bankruptcy annulment. At no point does BW respond with respect to any of these emails by stating that he is not engaged to deal with the bankruptcy, that it was outwith his sphere of competency or that Ms 'A' should seek the advice of a specialist insolvency practitioner.

    (b) This omission was said to be all the more surprising given that BW's evidence was that he understood at the time that Ms 'A' had in fact engaged such a practitioner, a Mr 'U'. BW never contacted him to liaise with respect of the annulment. He further never responded to Ms 'A' by saying that she should direct queries with respect to her annulment to Mr 'U'. The Tribunal was invited to reject BW's contention about Mr 'U'. It is not borne out by his conduct at the time. It was further argued to be inherently unlikely because Mr 'U' is or was part of the Insolvency Service, and not a specialist insolvency practitioner.

    (c) Indeed, BW – although he maintained his denial that he was engaged with respect to the bankruptcy – came close to conceding that he was engaged to deal with what he called "*the first phase*", i.e. submitting up to date tax returns. He stated :

        > *"We were dealing with the first phase that had been explained to us by HMRC, which was to bring the accounts and tax return up to date. Then once we had done that, then we ourselves would have researched to find who would be appropriate for Ms 'A' to see and to engage on that. That is, again, the strategy that we were going down, but it was absolutely clear that there was absolutely little point in doing anything else until the tax returns and accounts had been brought up to date."*

    (d) Even if BW did not have the formal expertise to conduct an annulment application, he showed himself throughout his engagement with Ms 'A' as someone who was willing to engage in tasks ordinarily carried out by a lawyer. He frequently negotiated with lawyers with a view to settling disputes and on one occasion agreed the terms of a consent order in High Court litigation on behalf of Ms 'D'.

55. BW's account of a conversation with Ms 'A' on 12 June 2013 is not credible and the Tribunal was invited to reject it:

(a) Ms 'A's evidence was that she was shocked and highly distressed by her bankruptcy. This is consistent with her attempts to chase BW to progress the annulment in May to July 2014. The notion that she would have accepted in June 2013 that nothing could be done to prevent it, and so been content to ignore HMRC's request for tax returns and a payment proposal, was said to be highly improbable.

(b) It was further argued to be inherently improbable that a conversation took place, the result of which was that both BW and Ms 'A' accepted that HMRC's emails should be ignored with the inevitable consequence of bankruptcy. A normal reaction would have been to seek more time, however unlikely that it would be granted.

(c) There is no record of this conversation on BW's mobile phone log. BW later stated that he often did not take attendance notes, but would sometimes send an email relating to a transaction or with action points following a meeting or call. He has produced no such email.

BW's Submissions

56. Counsel for BW submitted that it should be clear that he would never have accepted the instruction to deal with the annulment as he did not have the expertise; he knew little about the bankruptcy and was never provided with any information or documentation about it by Ms 'A'.

57. That BW was never engaged to deal with Ms 'A's annulment is evidenced by the fact that she never gave BW the name of her Trustee in Bankruptcy or was ever properly put in touch with Mr 'U'. Ms 'A' had "*stuck her head in the sand*" and hoped it would go away.

58. BW stated that on or around 12 June 2013, he had a conversation by phone with Ms 'A' in which, broadly, they discussed impending bankruptcy and agreed there was nothing that could be done. This evidence should be accepted, given her lack of assets, and seen as supporting a situation in which credibly BW had not been taken on to pursue an annulment. A significant liability of approximately £100,000 would remain and therefore it was unlikely that Ms 'A' would be able to get the bankruptcy annulled. He said he had explained this to Ms 'A' on the phone on a number of occasions.

59. BW's response with regard to 'H' had been merely a helpful suggestion of a line to take, to fight off the press. There was no engagement to act in relation to the annulment and this response and other communications did not give rise to an engagement by course of conduct. She would have known full well that the bankruptcy would not be lifted within days of being ordered. BW's counsel suggested that perhaps he should not have said that it would be lifted "*by Tuesday*", but the charge was not that he had misled the client or that he had explained something inadequately to a client. The charge was that he had failed to deal with the annulment in a timely manner and the complaint needed to be strictly and narrowly construed.

60. The extent of his engagement was to finalise her accounts as this was an obvious first step to her being able to engage an insolvency practitioner, if appropriate, to seek to get her annulment lifted. In any event, it had not been set aside by the date of the disciplinary hearing. This was consistent with a situation in which there would have been no point in seeking to lift the annulment, Ms 'A' not having any assets.

61. It is clear that Ms 'A' did not tell either the Trustee in Bankruptcy or the Insolvency Service that BW was dealing with annulment as neither had been in touch with BW. Any liaising with HMRC had been on account of their being a major creditor.

62. A great deal of resources was being expended on 'C's affairs and specifically Ms 'E's dispute. As such, BW could not have been expected to pursue Ms 'A's statements and other personal information more quickly and thereby have taken any steps to avoid or have the bankruptcy annulled, given that sorting 'C' matters out was the first step. In any event, he had repeatedly communicated with Ms 'A' that no steps in relation to the *bankruptcy* could be taken until her accounts were finalised. At that stage, 'G' were then disengaged as accountants, so there had been no chance to pursue the annulment, even if so engaged.

Head of complaint 4 - Failure to respond to a complaint

The IC's Submissions

63. The IC relied upon Disciplinary Bye-law 11.2 which provides in material part: "If a firm receives a complaint concerning any services it has provided or failed to provide to a client or former client, it shall forthwith cause the complaint to be investigated by a principal."

64. The issue had arisen whether or not Disciplinary Bye-law 11.2 imposes an obligation on BW as an individual, given that it refers to "*a firm*" and BW is not *"a firm"* within the definitions at Disciplinary Bye-law 1.2. The IC's stance was that Disciplinary Bye-law 11.2 does impose an obligation on BW to investigate complaints for the following reasons:

(a) Disciplinary Bye-law 11.2 provides that if a firm receives a complaint concerning any services it has provided or failed to provide to a client, *"it shall forthwith cause the complaint to be investigated by a principal*". That wording imposes a corresponding obligation on the relevant principal to investigate the complaint. It would be odd if the provision were to oblige a firm to refer a complaint to a principal, but not oblige the principal to undertake the investigation; that could create a potential lacuna. BW falls within the definition of a principal within Disciplinary Bye-law 1.2.

(b) That this is clearly the intention underlying Disciplinary Bye-law 11.2 is confirmed by ICAEW's Guidance, The duty on firms to investigate complaints – guidance (effective from 31 August 2006). This provides (emphasis added):

> *"1.4.1 Personal responsibility lies with the investigating principal, once they have received the complaint, to ensure that:*
>
> • *the steps in any formal complaints procedure (see above) are complied with;*
>
> • *they deal personally with the complaint, thoroughly, expeditiously and with courtesy;*
>
> • *the senior principal (or their nominee) is informed of the progress of the investigation;*
>
> • *if the investigation does not resolve the complaint, in the case of a client remaining dissatisfied, the procedure set out in section 3 below is properly concluded.*
>
> *1.4.2 Although the requirement to investigate complaints is framed so as to lie upon the firm, a principal - who has been informed by the client of a complaint and who fails to pursue it in accordance with the above - may personally become liable to disciplinary action also."*

(c) Alternatively, it was argued that even though Disciplinary Bye-law 11.2 primarily refers to a firm, a principal of that firm who fails to deal with a complaint should have secondary or derivate disciplinary liability for the firm's omission in this respect.

65. BW told the Tribunal that the email was *"long and rambling*" and that he did not consider that it amounted to a formal complaint. The IC's position is that its contents are extremely serious and plainly a complaint which should have been dealt with.

66. It was irrelevant, the IC argued, that Ms 'A' had not followed the contractual complaints procedure that 'G' had in place and which referred to Ms 'O' in the first instance. If a complaint is not so referred, it was submitted that this does not mean that the firm is under no obligation to deal with it as a matter of Disciplinary Bye-law 11.2. If that were correct, a firm could protect itself from liability by prescribing a complaints procedure that was difficult to adhere to.

67. Finally on this Head of complaint, BW has said that he himself could not have investigated the complaint as he was the subject of it. Again, the IC submitted that this is no answer to why he did not pass it onto a director who could have investigated it, rather than ignoring it entirely.

BW's Submissions

68. Counsel for BW submitted that on a strict reading of Disciplinary Bye-law 11.2, it being necessary in a disciplinary context to construe this matter narrowly, there was no obligation placed upon any person other than the firm. The Guidance made no difference to this as, properly read, the only personal liability that could be imposed would be on the investigating partner, who was not BW.

69. The way in which this head of complaint was drafted was such that there was no potential liability on BW. Even if it applied to BW, he could not investigate matters that concerned himself and Ms 'A' should have raised these matters by the correct contractual route, that is to Ms 'O'.

Head of complaint 5 – Failure to provide handover

The IC's Submissions

70. When Ms 'A' engaged her new accountants, 'B', BW failed to respond to their requests for Ms 'A's information by a professional clearance letter dated 6 October 2014, in a timely manner. BW did not provide 'B' or Ms 'A' with complete information about her until she sent a SAR to 'G'.

71. 'B' did not receive a response to the professional clearance letter. They then sent a chasing email on 2 December 2014. On the same day, Ms 'A' emailed BW asking him to pass over information to the new accountants. BW replied to Ms 'A's email (but not to 'B's letter) the same day stating, "*I was under the impression that have sent everything* [sic]". In fact, nothing had been sent.

72. On 28 April 2015, Ms 'A' sent a SAR to 'G' requesting copies of 'C's accounts and tax returns in their possession. She received a reply on 3 June 2015. There still appears to have been no response to 'B's professional clearance letter.

73. BW stated in response to a question from the Tribunal that his investigation into whether the letter had been received was "*not very thorough*". It appears that he was informed by Ms 'O' that there was no record of the letter having been received. In support of this, BW produced his firm's post log for a limited period up to and including the 9 October 2014. The IC submitted that at best, this establishes that 'G' did not receive the letter on or before 9 October 2014. He has not produced any other evidence. BW himself stated that he did not examine the post log or perform the investigation with respect to Head 5.

74. BW's explanation is inconsistent with the explanation he provided to ICAEW in the course of the investigation, when he said that "*the original letter was missed by the manager, as they were on leave at the time, and not responded to*".

75. The IC submitted that further and in any event, even if the letter of 6 October 2014 was not received, that would not excuse BW's failure to provide 'C's information until he received the SAR. 'C's information was clearly relevant to Ms 'A's personal financial information – indeed this is part of BW's case – and 'B' had expressly requested "*any other information pertinent to the client's affairs*". BW conceded in his evidence: "*I don't actually know, none of the information looks like it was sent to 'B'. I have to say, I don't know why*."

BW's Submissions

76. Counsel for BW argued that it was for the IC to prove its case. There was evidence by way of the log that the 6 October 2014 letter had not been received. The IC had no evidence to substantiate that it had been received and therefore that there had been a failure to deal in a timely fashion with the request for clearance.

Conclusions and reasons for decision

77. The Tribunal found the complaint proven in part.

The oral evidence

78. The Tribunal heard lengthy evidence from the two principal witnesses, BW, the defendant, and Ms 'A' for ICAEW. Counsel for BW invited the Tribunal to see this case as essentially one of credibility between the two witnesses, BW and Ms 'A'. The Tribunal took the view that Ms 'A's evidence was only one part of the case against BW, but agreed that credibility was relevant.

79. The Tribunal was of the view that BW's evidence could not wholly be trusted. BW at several times conceded that, in emails he had sent to the various characters underlying these proceedings, he had given them misinformation with a view to being "*tactical*". For example, in response to Ms 'A's repeated complaints and chasing emails between May to July 2014, he stated in an email to her of 5 July 2014, *"I haven't received any messages from you until this one*". He conceded in cross-examination that this was not true. He further told Ms 'L' (Ms 'E's lawyer) and other parties certain things which were not true regarding 'C's creditor position, or the status of his engagement by Ms 'A'. He explained this as *"being tactical*" and "*bend the truth slightly to be able to represent those two individuals as best we could*".

80. The Tribunal was of the view, not that BW was deliberately seeking to mislead, rather that it was not getting the full story and that he was being economical with the truth. In this regard, it was to be noted that BW recanted on matters he had set out in his written evidence at several points. For example, he stated in his witness statement that his colleague, Mr 'I', contacted Ms 'A' on numerous occasions from January to March 2013 to chase up missing information. He stated in cross-examination that he did not know whether that was the case, the documentary evidence in fact not substantiating the assertion in the witness statement. As a further example, he stated in his witness statement that he was unaware of Ms 'A's bankruptcy until 19 December 2013. He conceded in cross-examination that he knew about it in November 2013. Counsel for BW explained these discrepancies by saying that her client had not had the benefit of legal advice at that stage. However, given that his witness statement was as to facts, the Tribunal did not find this explanation satisfactory.

81. In contrast, Ms 'A's evidence was considered by the Tribunal to be on the whole reliable, taking into account the fact that she was being asked questions about matters occurring a number of years previously. She had genuine and serious grievances about the way BW had handled her affairs. She perhaps did not fully understand the detail of some of her financial affairs but she gave a convincing explanation as to why that was the case:

> *"We are told that everything is always getting sorted. I am someone who asked a hell of a lot of questions. I make lists. I contact people to find out what is going on with this and that. And on top of that, we were travelling a hell of a lot, I did not know where the hell we were half the time -- working so much that it is almost impossible to be able to keep up to date with absolutely everything, especially when the people you pay, that the trust*
>
> *-- management and so forth -- tell you that everything is in order. "Don't worry about this. Don't worry about that. I have got this covered. Just do your job", you know, it is*
>
> *---*
>
> *I was always given the impression that everything was being done ---*
>
> *Call me stupid -- all I know is that, because of the fact of -- maybe we had been coddled, because of being in 'C'. Everything was -- like I was telling you -- like everything is being done for you. They always say, "Don't worry about that. Don't worry about that darling." Even if I asked questions, and I would make my list, and try and find out where this money went, because it seemed to be moving from different accounts and what-not. Being made to feel inadequate, "Don't worry about it, love." But it obviously didn't help me, for sure."*

82. The Tribunal accepted that she was someone whose affairs were closely managed, and she was not required to keep a close eye on them. As a result, she relied heavily on the professionals whom she engaged.

83. Counsel for BW accused Ms 'A' of failing to engage, of not paying for the services she received and in general of being a difficult client. In particular it was put on a number of occasions to Ms 'A' that she had continually failed to take seriously her own responsibility to work with BW, to provide documents in a timely fashion and to respond to requests (eg: for anti-money laundering information). Even if and insofar as true, this would not absolve BW of responsibility. The Tribunal was of the view that Ms 'A' was never properly prompted or chased with regard to her affairs. It was the case that Ms 'A' had been slow in providing her documents at various stages, but it had been BW's responsibility, as supervising partner of the staff working on her account, to ensure that she was adequately and appropriately chased.

84. Ms 'A' has been accused of lying with respect to several issues, in particular with regard to when she received a statutory demand. The Tribunal accepted that she may have meant to refer to the bankruptcy order and that this was a genuine error. In any event, the Tribunal accepted the IC's submission that Ms 'A's evidence, while important, was not the cornerstone of ICAEW's case. The Tribunal was satisfied that it had sufficient material to find certain heads of complaint proved on the basis of BW's own evidence and the underlying contemporaneous documents. These give a sufficiently clear factual picture as to what had happened.

Head of complaint 1 – (a) Failure to finalise accounts and (b) Failure to submit tax returns for 'C'

85. The Tribunal found this Head of complaint not proven. The Tribunal was mindful that the burden of proof lay with the IC. It was not satisfied that the IC had discharged this burden with regard to Head 1 of the complaint. In particular, the IC had failed to analyse the work that was required to be done in order to finalise the accounts for 'C' in sufficient detail to substantiate this Head of complaint. 'C's business was undoubtedly complex. It was not clear to the Tribunal what a timely conduct of the accounts and tax returns would have required, given the complexities involved in these affairs.

86. Thus, whilst it was the case that the amounts to be paid to creditors had been agreed by November 2012 and there had nevertheless been delays to December 2013, the IC had not proven that the work being undertaken under BW's supervision was insufficient for this period. Of particular note was that it was clear from the timesheets produced by BW that considerable work was being undertaken in relation to Ms 'E's dispute. The IC had failed to adduce evidence in relation to Ms 'E's settlement. She had been a creditor and was entitled under the settlement agreement to a percentage of the profits from 'C'. She had to approve 'C's accounts before they could be finalised. The dispute with Ms 'E' and the amounts payable to her over the relevant period needed to be resolved before any meaningful figures could be presented to HMRC, such that draft figures to HMRC were likely inappropriate. In this regard, the Tribunal did not have enough information to assess for itself whether the amounts involved in Ms 'E's dispute and ongoing liability to pay were material to 'C's financial affairs, thereby delaying the ability to finalise the accounts and the ability to provide meaningful figures to HMRC for the purposes of tax liability.

87. That said, the delays were out of the ordinary and on this basis alone, the Tribunal could understand why Ms 'A' had complained and why the IC had investigated this matter. However, the burden lay with the IC to prove its case and on this basis, this Head was not found against BW.

Head of complaint 2 – (a) Failure to finalise accounts and (b) failure to submit tax returns for Ms 'A'

88. The Tribunal found this Head of complaint not proven in relation to the particulars at paragraph (a) and proven in relation to the particulars at paragraph (b).

89. For the avoidance of doubt the tribunal is satisfied that Ms 'A' had been taken on by 'G' as a client by 31 August 2012 by virtue of the conduct described in paragraph 10 above. It is undisputed and in any event we find that when 'G' took on Ms 'A' as a client, at least one tax return for the period ended 5 April 2010 was already overdue.

90. The correspondence provided shows that BW appears to have missed several of his own deadlines, the first being at the end of May 2014. By 11 July 2014, 'G' were only just for the first time requesting estimates for expenditure from Ms 'A'. There appear to be some delays in 'A' providing the bank statements, although in evidence she maintained that she was on this occasion sending bank statements for the second time. However, as stated previously, the Tribunal finds that Ms 'A' had engaged 'G' since the end of August 2012 in relation to her personal accounts and tax returns. By then, two HMRC deadlines had been missed, being 31 January 2011 for her April 2010 return, and 31 January 2012 for her April 2011 return. Another deadline was coming up on 31 January 2013 in respect of her April 2012 return in addition to her other outstanding returns. Yet notwithstanding this position, BW does not appear to have asked for or chased Ms 'A' for the requisite information at an early point in the timeline and only requested further or outstanding information at a very late stage.

91. BW has provided correspondence suggesting delays in receiving the information from the previous accountant and confusion over whether they were engaged to provide services for Ms 'A'. However, this has been taken into consideration and the Tribunal notes that the starting date of the complaint is 31 August 2012. This is the point where 'G' sent a form 64-8 and other authority letters to Ms 'A'. Any delays in the old accountant providing information were prior to this date and it is noted that such delays have been excluded on the wording of the complaint. Further, although there was some delay in submitting an originally signed form 64-8 to HMRC, this would not have prevented the firm from completing work on the accounts and tax returns.

92. However, part (a) of this Complaint specifically alleges that the Defendant failed to finalise the relevant accounts. The Tribunal is of the view that, despite what again appeared to be extraordinary delays in relation to attending to the accounts, the IC has failed to discharge the burden of proving that these could be finalised given Ms 'E's dispute. The figures for 'C' did need to be finalised in order to assess Ms 'A's income from 'C' and as such, her accounts could not in turn be finalised. For this reason, the Tribunal found that it could not be said that BW had failed to finalise Ms 'A's accounts in a timely fashion. As explained above, the IC had failed to prove its case with regard to the impact of Ms 'E's dispute on 'C's affairs and this meant in turn that part (a) in Head 2 was also not proven. It was a close call in relation to this part of the complaint. There did appear to be a delay of 7 months between the completion of 'C' information and BW's disengagement (when Ms 'A's personal returns were still not completed). However, on balance the Tribunal took the view that this was not in and of itself sufficient, even if it amounted to inefficiency, to amount to discredit (on its own or cumulatively).

93. However, the Tribunal was of the view that it must have been feasible to have put in estimates for her income and liabilities for the purposes of Ms 'A's tax returns. HMRC had made assessments against Ms 'A' in the light of the default in submitting returns. By mid 2013 the Tribunal finds that HMRC had seriously increased the pressure on Ms 'A' as is set out in paragraphs 14 and 15 above. It was putting pressure on Ms 'A' through 'G' as her accountants for actual returns to be submitted, if it was the situation that her actual liability to HMRC for outstanding tax was, or was likely to be, much less than the assessed position. In relation to her 'C' and personal income, the Tribunal took the view that BW could have got figures broadly accurate at least on the information they had as at about the middle of 2013 onwards. 'G' and BW could have submitted figures showing a likely income for Ms 'A' for the purposes of mitigating the assessed tax position. The Tribunal concluded that the earlier submission of the outstanding returns on this basis by 'G' would have assisted Ms 'A' to convince HMRC that her liability for tax was significantly lower than the assessed amount which stood at approximately £500,000. For this reason the Tribunal considers that the timely submission of the returns was of the utmost importance. A figure of £100,634 was discussed in the 'G' internal correspondence as being the true figure for Ms 'A's tax liability (see for example email 28 May 2014 Ms 'K' to the Defendant). However it is not necessary for the tribunal to make any findings in this respect. It was suggested in evidence and in argument that for her tax liability to have been at £500,000 Ms 'A' would have had to have earned millions of pounds over the six years. While this may be somewhat exaggerated, the submission of provisional returns would, in the Tribunal's view, have assisted the dialogue required to be had with HMRC in mid 2013 arising out of the protracted failure by or on behalf of Ms 'A' to submit a number of her personal tax returns. In these circumstances, it is entirely possible that HMRC would not have pursued bankruptcy or that Ms 'A' could have obtained funds from third parties to discharge such reduced liabilities.

94. There had been considerable pressure brought to bear by HMRC by mid May 2013 and yet BW had taken no steps to ensure that he or his staff had contacted HMRC prior to the bankruptcy. The Tribunal took the view that BW should have submitted the tax returns with provisional figures. This was a different position to 'C' returns because:

    (a) The amounts in relation to Ms 'A's affairs were much smaller and this would have only required an estimate, in effect, of one or two figures in each of her returns.

    (b) The position would not have been an ongoing problem given that Ms 'A' had left 'C', such that she was not earning additional sums from 'C'. In contrast, Ms 'E' needed to continue approving the accounts for 'C', such that provisional figures for 'C's tax returns were likely to be more problematic.

95. The Tribunal took the filing deadlines as important dates for ascertaining the timeliness of the steps BW could have been expected to take. Whilst in theory such deadlines can be missed without any major adverse impact, it is a matter of common knowledge that the repeated missing of tax deadlines would be likely to heighten the chances, as happened here, of significant negative consequences including bankruptcy, if the HMRC's requests were not addressed, including by the filing of returns. The submission made by counsel for BW that HMRC was only interested in payment in the middle 2013, as justification why tax returns were not filed on Ms 'A's behalf in response to its specific requests, is rejected. In this regard, the Tribunal was of the view that expert evidence was not required. This was such a matter of common knowledge that it was not even necessary to draw upon the Tribunal's inherent expertise as being a specialist Tribunal dealing with accountancy affairs.

96. In these circumstances, the Tribunal was of the view that BW had failed to deal with and to submit to HMRC Ms 'A's tax returns in a timely fashion and that this amounted to inefficiency in the conduct of his practice. It was further satisfied that this brought disrepute on himself, the profession of accountancy and the ICAEW, given the serious consequences this had for Ms 'A'. This was thereby a breach of Disciplinary Bye-law 4.1(b).

Head of complaint 3 – Failure to deal with Ms 'A's bankruptcy annulment

97. The Tribunal found this Head of complaint proven.

98. The Tribunal refers to Paragraph 52 above and finds that BW knew about the bankruptcy by the end of November 2013. The correspondence provided and documented in the agreed chronology shows Ms 'A' repeatedly asking about the accounts and the annulment and when it would be completed. The emails Ms 'A' sent make it clear that she believes that BW is dealing with the annulment on her behalf. In particular, in a text message on 12 March 2014, Ms 'A' asks BW if he has spoken to HMRC to go through the annulment, what was said, who did he speak to and has the process started. BW's response the same day was that he had spoken to HMRC two weeks ago and they can apply for an annulment once they have filed the required tax returns. None of the responses from BW in the emails provided say he is not dealing with the annulment.

99. BW notes that he was aware from May 2013 that HMRC were intending to issue bankruptcy proceedings against Ms 'A'. He notes that the annulment could not be considered until the outstanding tax returns and accounts were completed.

100. The Tribunal finds that at the same time as BW learned about her bankruptcy, BW clearly led Ms 'A' to believe he was dealing with the annulment. The Tribunal did not moreover find his denial that he was dealing with the annulment credible. He was cavalier as to the niceties of what was required. He was not prohibited as an accountant from applying for the annulment, albeit she or he would have needed to engage solicitors. Whilst he was not an Insolvency specialist, the Tribunal was satisfied that he had taken on this aspect of her affairs, and that he did so by the end of November 2013.

101. He had as a matter of fact liaised with HMRC. By the 29 June 2014 complaint letter (see below), he had still not assisted in any way with seeking an annulment. It was irrelevant that she had still not applied to annul her bankruptcy – it was clear from the contemporaneous communications that this was what she had wanted BW to do and that he had been leading her to believe that this was a task he had taken on. At no point did he explain that he was not working for her in this manner or that he was only engaged to work on the accounts.

102. That she had not provided the necessary information was not relevant, as it would have been BW's role to ask his client for what he needed and there is no evidence that he did so.

103. When Ms 'A' informed BW that she had appointed a new accountant in July 2014, he acknowledged that she may want someone else to deal with the annulment of the bankruptcy, having previously said they should be able to submit the tax returns and move to get it annulled in May 2014. The Tribunal is of the view that this supports the conclusion that he was dealing with the annulment.

104. The fact that Ms 'A's annulment had still not been addressed by the time that 'G' were dismissed indicated a clear lack of timeliness. Again, no expert evidence was required to reach this conclusion given the evident negative consequences of bankruptcy and the clear distress Ms 'A' was demonstrating in her correspondence.

105. The Tribunal concluded that BW's failure to deal in a timely manner with the annulment was inefficiency which was discreditable to himself, the profession of accountancy and ICAEW. This was thereby a breach of Disciplinary Bye-law 4.1(b).

Head of complaint 4 – Failure to respond to a complaint

106. The Tribunal found this Head of complaint not proven.

107. The Tribunal was clear that it had to construe the Disciplinary Bye-laws narrowly given the disciplinary context and was not satisfied that Disciplinary Bye-law 11.2 imposed any personal responsibility on any partner of the firm, be it the investigating principal or any other partner.

108. Ms 'A' had clearly made a serious complaint which was not dealt with by 'G'. Whilst it might have been said that BW should have handed this complaint to Ms 'O', and that this was inefficiency, this was not what the charge alleged.

Head of complaint 5 – Failure to provide handover

109. The Tribunal found this Head of complaint proven in part.

110. Whilst the Tribunal was reluctant to accept BW's account that he had not received the letter of 6 October 2014 (his written statement stating that he had), it gave him the benefit of the doubt on this point, given the existence of at least a partial post log. Nevertheless, there had been the chasing letter from 'B' dated 4 December 2014 and there had not been any kind of response to this until compliance with the SAR in May 2015. It was inefficiency on the part of BW that he had not provided this clearance.

111. Whilst on its own this Head of complaint (proven in part) would not amount to discredit to BW, the profession of accountancy or ICAEW, taken cumulatively with the discredit accrued from the other Heads of complaint found proven, the Tribunal was of the view that this did amount to a breach of Disciplinary Bye-law 4.1(b).

Conclusion

112. The Tribunal found BW to have acted inefficiently in his professional practice in relation to Ms A's affairs to such an extent as to bring discredit on himself, the profession of accountancy and ICAEW. This was a breach of Disciplinary Bye-law 4.1(b), albeit the complaint was only proved in part. The Tribunal will reconvene to consider any sanction and order as to costs.

Chairman (non Accountant)	Mr Richard Farrant	
Accountant Member	Mr Ian Walker FCA	
Non Accountant Member	Ms Martha Maher	
Legal Assessor	Ms Melanie Carter	**024379**

6. Mr Benjamin Peter White ACA of
Manchester, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 3 and 4 May and 5 and 6 June, 10 and 11 September, 22 October and 30 November 2018

Type of Member Member

Terms of complaint

1. Between 31 May 2012 and 30 January 2014 Mr B White ACA failed to deal in a timely manner with the affairs of 'C' in that he:

    a) Failed to finalise the accounts of 'C' for the years ended 31 March 2011 and 31 March 2012 until December 2013.

    b) Failed to submit tax returns for 'C' for the years ended 5 April 2011 and 5 April 2012 until 31 January 2014.

2. Between 31 August 2012 and 19 July 2014 Mr B White ACA failed to deal in a timely manner with the affairs of Ms 'A' in that he:

    (a) Failed to finalise accounts for Ms 'A' for the years ended 31 March 2010, 2011, 2012 and 2013.

    (b) Failed to submit tax returns for Ms 'A' for the years ended 5 April 2010, 2011, 2012 and 2013.

3. Between 13 November 2013 and 19 July 2014 Mr B White ACA failed to deal in a timely manner with the annulment of Ms 'A's bankruptcy order dated 13 November 2013.

4. Mr B White ACA failed to investigate a complaint made by Ms 'A' on 29 June 2014 and re-sent on the 2 July 2014 as required by Disciplinary Bye-law 11.2.

5. Between 7 October 2014 and 14 May 2015 Mr B White ACA failed to respond to a letter dated 6 October 2014 from 'B' requesting professional clearance and handover information regarding Ms 'A'.

If proven, the member may be liable to disciplinary action under Disciplinary Bye-law 4.1b for Heads 1, 2, 3 and 5 and 4.1c for Head 4.

Disciplinary Bye-law 4.1b states:

4.1 'A member, provisional member, foundation qualification holder or foundation qualification student (all hereinafter referred to as 'respondent') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder or foundation qualification student at the time of the occurrence giving rise to that liability:

    b if he has performed his professional work or the duties of his employment, or conducted his practice, inefficiently or incompetently to such an extent, or on such a

number of occasions, as to bring discredit on himself, the Institute or the profession of accountancy.'

Disciplinary Bye-law 4.1c states:

4.1 'A member, provisional member, foundation qualification holder or foundation qualification student (all hereinafter referred to as 'respondent') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder or foundation qualification student at the time of the occurrence giving rise to that liability:

c if 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.'

Previous hearing date(s)

12 March	Preliminary hearing
3 & 4 May, 5 & 6 June, 10 & 11 September, 22 October 2018	Decision on whether complaint proven and application for review
Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes in part
All heads of complaint proven	Proven – 2(b), 3 and 5 Not proven – 1, 2(a) and 4
Parties present	Ben White The Investigation Committee (IC)
Represented	Ms O'Halloran of counsel represented Mr White Mr Coates of counsel represented the IC
Hearing in public or private	The hearing was in public

Decision

1. The Tribunal held a last hearing date, to decide upon sanctions and costs in this matter further to the record of decision sent to the parties on 8 October 2018. That recorded the Tribunal's decision that the complaint against Mr White was proved in part.

Sanction

2. Counsel for Mr White suggested that no sanction would be appropriate and made the following points in mitigation:

    a. He otherwise had an unblemished record for 25 years of membership;

    b. He had suffered enough as matters stood given in particular that, it was said, over half of the allegations had not been proven. Defending this matter had been very stressful, costly and time consuming;

    c. He had not gained anything personally from the issues as he had never been paid by Ms 'A;

    d. It was said that much of the work had been done by others and he had been unfairly blamed for their work;

    e. Ms 'A' had been slow in providing necessary information;

    f. It was argued that even if provisional figures had been provided to HMRC, this would have made little difference to the outcome for Ms 'A' (particularly in the circumstances in which she remained, it was said, in bankruptcy);

    g. There was no risk to the public;

    h. The matters were at the lower end of seriousness;

    i. They spanned a relatively short period of time;

    j. Mr White had fully cooperated with the investigation.

3. The IC made no submissions on sanction.

Decision as to sanction

4. The Tribunal took into account the ICAEW's *Guidance as to Sanctions* and certain of the mitigation put forward on behalf of Mr White (see above). Thus, amongst the other points, it took into account his otherwise unblemished record, that some of these matters were at the lower end of seriousness and there was no risk to the public arising from these matters.

5. The Tribunal did not accept however that non-payment of fees by a client should make any difference to what were, in effect, minimum standards of professional conduct. In its view, moreover, the failings identified had not spanned a short period of time, even allowing for the identification of mid-2013 as a date by when provisional figures could have been provided to HMRC. If it is the case moreover, that Ms 'A' remained in bankruptcy (although this was never evidenced) this did not, in the Tribunal's view, impact on its assessment of the likely consequences for Ms 'A' of Mr White's failings. The complaint needed to be judged primarily in the context of the factors at the time. In light of the myriad of other circumstances which could have led to whatever the current situation is with Ms 'A's finances, these were not something the Tribunal should reasonably take into account. Finally, as found in the original decision, the fact that much of the actual work undertaken was by his staff did not amount to

mitigation given the extent of his personal knowledge and that he had had the supervisory responsibility.

6. As acknowledged by counsel for Mr White at the hearing, many of the points raised in oral submissions were properly points that would be made on appeal. As noted, these covered findings already made by the Tribunal in its original decision (and to some extent reconsidered at the last hearing further to an application for review).

7. The Tribunal was of the view that aggravating features were that:

   (a) In particular, one of the causal factors in Ms 'A's bankruptcy was likely to have been the failings identified by the Tribunal (as against the expectations he had given her that he was dealing with the annulment);

   (b) Mr White had to some extent attempted to deflect Ms 'A's efforts to regularize her position (see paragraph 79 of original decision, noting that he told Ms 'A' that he had not received a chaser email from her, when that was not the case);

   (c) The Tribunal took the view that Mr White's conduct overall had not been negligent or mere oversight. He had been reckless or acting with wilful blindness as to his client's needs and the appropriate professional standards that should have governed his work. The Tribunal, in particular, was struck by Mr White's rejection of the idea that he needed to take into account of his client's (Ms 'A's) particular circumstances – that is, that she was a full time performer who had been actively encouraged to rely heavily on her professional advisers and management. As stated in paragraph 82 of the original decision her affairs were "closely managed".

8. Other than in relation to the findings in Head 3, which the Tribunal considered to be serious, it did acknowledge that the failings were at the lower end of breaches. Nevertheless, Head 3, in its view, was the most serious allegation and overall, it was clear that Mr White had fallen significantly below the standards expected of chartered accountants. Given its findings on Head 3 and the aggravating features, it took the view that a severe reprimand and a fine was warranted.

9. In light of the above, it decided to impose the following sanctions:

   d) Severe reprimand; and

   e) Fine of £10,000;

Costs

Application as to costs by Mr White

10. Counsel for Mr White put forward an application that the IC pay him his costs.

11. Thus, she invited the Tribunal to apply the Disciplinary Bye-laws (DBLs) previously in force ie: those in force from 11 October 2017 to 14 October 2018 ("the previous DBLs"). This was on the basis that these were in force when the complaint had been preferred by the IC in December 2017. It was argued that the DBLs currently in force, that is from 15 October 2018 to date ("the current DBLs") did not apply to this case. The importance of this was that under the current DBLs a new provision had been introduced limiting the ability of members to seek an order for costs to where the whole of the complaint had been dismissed. Under the previous DBLs, it was at the discretion of the Tribunal whether or not to award costs where a complaint was only partially proven.

12. This issue turned on the provision governing the coming into force of the current DBLs, that is DBL 1.5A of the current DBLs. This provides:

> '1.5A For the purposes of these *bye-laws*:
>
> a) the liability of a person or body to disciplinary action under these *bye-laws* on a *complaint* or *complaints*, whether the complaint or complaints came to the attention of the *head of staff* before or after the amendment of these *bye-laws*, is to be determined in accordance with the provisions of the *bye-laws* and *regulations* in force at the time when the facts or matters complained of occurred;
>
> but
>
> b) with the exception of *bye-laws* 4, 5, 6 and 6A, all disciplinary proceedings under these bye-laws are to be conducted in accordance with the provisions of the *bye-laws* and *regulations* in force at the time of the proceedings.'

13. Counsel for Mr White relied upon the phrase in DBL 1.5A(b) of the current DBLs, "in force at the time of the proceedings" to mean when the complaint was referred by the IC. Thus it was argued, Mr White was entitled to make an application for costs under DBL 33.1A of the previous DBLs. This provides:

> b) '33.1A If the *tribunal* appointed to hear a *formal complaint* dismisses the complaint as wholly unproved or finds that the *complaint* has been proved in part only, it may order *ICAEW* to pay to the *defendant* by way of costs such sum as the *tribunal* may (subject to and in accordance with *regulations*) in its absolute discretion determine.'

14. Counsel for the IC argued instead that the proper effect of DBL 1.5A(b) of the current DBLs was such that procedural and not substantive matters (which fell under subparagraph a) were to be governed by the DBLs in force "at the time of the proceedings", which in this case meant the point in time when the particular issue came to be determined during the ongoing proceedings, that is, the date of this hearing. The DBLs in force at the date of this hearing, are the current DBLs. Thus it was argued, DBL 33.1A of the current DBLs applied. That provides:

> '33.1A If the *tribunal* dismisses all *formal complaints* as unproved, it may order *ICAEW* to pay to the *respondent* or *respondent firm* by way of costs such sum as the *tribunal* may, in its absolute discretion, determine, up to such limit as prescribed from time to time in

regulations. If the *respondent* or *respondent firm's* costs exceed the prescribed limit, a *tribunal* may order *ICAEW* to pay a higher amount if it finds that either:

a) the *formal complaint* has, or the *formal complaints* have, been brought in bad faith; or

b) no reasonable person would have brought or pursued that *formal complaint* or those *formal complaints.*'

15. Thus, it was argued that given that part of the complaint had been found proven, Mr White was not able to make an application for costs in his favour except and insofar as DBL 33.1B of the current DBLs applied, which was argued for in the alternative by Mr White's counsel. DBL 33.1B of the current DBLs provides:

'33.1B If the circumstances in paragraphs 1A(a) and (b) do not apply, but the *tribunal* considers that the *respondent* or *respondent firm's* costs have been significantly increased as a result of one or more *formal complaints* being very poorly handled, it may order *ICAEW* to pay to the *respondent* or *respondent firm* by way of costs a sum which, in the opinion of the *tribunal*, reflects the additional costs which should not have been incurred by the *respondent* or *respondent firm*.'

16. Counsel for the IC argued that the phrase, "if in the circumstances in paragraphs 1A(a) and (b) do not apply" had the effect that an application for costs in Mr White's favour could only apply where, as with DBL 33.1A of the current DBLs, all heads of the complaint had been dismissed, which was not the case here. Counsel for Mr White argued that this phrase merely related to the particulars to be found in the subparagraphs (a) and (b), this allowing for a third set of circumstances, those set out in DBL 33.1A, which if met would enable such an application. That provision, as can be seen above, arises where a formal complaint has been "very poorly handled" and in the amount of the "additional costs which should not have been incurred by the *respondent* or *respondent firm*".

17. Counsel for Mr White, in support of her application whether under DBL 33.1A of the previous DBLs or 33.1B of the current DBLs ("poorly handled"), relied upon the three authorities (*R (on the application of Gorlov) v Institute of Chartered Accountants in England and Wales* [2001] EWHC Admin 220, *Baxendale-Walker v Law Society* [2007] EWCA Civ 233 and *Levy v Solicitors Regulation Authority* [2011] EWHC 740 (Admin)) to argue that, given that the IC, in her submission, had lost on more than half of the grounds put forward in this complaint, and on the basis that the prosecution had been unreasonable and a "shambles from start to finish" (*Gorlov*), Mr White should be paid at least 50% of the £59,624.99 legal costs he had incurred. It was further argued that there would be no chilling effect on the regulator in making an award of costs as this would indicate to the public and therefore build confidence, that the regulator was being properly called to account. Essentially, the heads of complaint that were not proven, were on the grounds found not proven (including deficiencies in the way drafted) shown to have been poorly handled.

18. The IC had argued, as noted above, that the current DBLs applied, that therefore Mr White could not make an application for costs under DBL 33.1A as some heads of complaint were proven and that similarly DBL 33.1B did not apply. However, in the alternative, if the Tribunal were not with the IC on the applicability of DBL 33.1A/B, counsel for the IC argued (in light of the above authorities) that the IC's conduct had in no discernable way been unreasonable or "poorly handled". In particular all heads of complaint had been properly arguable and been investigated and prosecuted in a reasonable fashion. As a professional regulator, acting in the public interest, it would be necessary to identify particular factors of unreasonableness or bad faith for the Tribunal to make an award of costs against the regulator, it being the norm for costs not to follow the event in this type of jurisdiction absent those factors. In particular the Tribunal was invited to have regard to the Court of Appeal's endorsement of the words of LJ Moses at paragraphs 39 and 40 in *Baxendale*:

    4. '39 In our judgment Jackson J was right to equate the responsibilities of the Institute in Gorlov with the regulatory actions of the licensing authority in Booth . As Bolton demonstrates, identical, or virtually identical considerations apply when the Law Society is advancing the public interest and ensuring that cases of possible professional misconduct are properly investigated and, if appropriate, made the subject of formal complaint before the Tribunal. Unless the complaint is improperly brought, or, for example, proceeds as it did in Gorlov , as a "shambles from start to finish", when the Law Society is discharging its responsibilities as a regulator of the profession, an order for costs should not ordinarily be made against it on the basis that costs follow the event. The "event" is simply one factor for consideration. It is not a starting point. There is no assumption that an order for costs in favour of a solicitor who has successfully defeated an allegation of professional misconduct will automatically follow. One crucial feature which should inform the Tribunal's costs decision is that the proceedings were brought by the Law Society in exercise of its regulatory responsibility, in the public interest and the maintenance of proper professional standards. For the Law Society to be exposed to the risk of an adverse costs order simply because properly brought proceedings were unsuccessful might have a chilling effect on the exercise of its regulatory obligations, to the public disadvantage. Accordingly, Moses LJ's approach to this issue did not go further than the principles described in this judgment.

    5. 40 In our judgment, in agreement with Moses LJ, the Tribunal misdirected itself when it ordered the Law Society to pay part of the appellant's costs on the basis that the first allegation against him had failed and that costs should follow the event. This overlooked not only the public obligation of the Law Society, as we have analysed it, but the additional fact that the appellant brought the proceedings in relation to both allegations on himself. At the same time the order ignored the costs incurred by the Law Society in relation to the successful pursuit and eventual admission of professional misconduct in relation to the second allegation.'

19. The IC argued that the crucial factor was the public responsibility of ICAEW as regulator, and it not being deterred in the bringing of regulatory proceedings for fear of adverse costs awards.

20. Counsel for the IC drew attention to the comment at paragraph 92 of the original decision as to the burden of proof not being discharged ("It was a close call in relation to this part of the complaint"). A failure to discharge its burden of proof was not the same as saying that the matter had been handled poorly or unreasonably by the IC. Rather this was a matter that came to trial properly and was carefully considered by the IC and then the Tribunal**.**

21. Counsel for the IC pointed out that submissions and cross examination in relation to each of Heads 1 to 3 of the complaint were comparable in complexity and length. The matters were interconnected and any division for these purposes was artificial.

Application as to costs by the IC

22. The IC made an application for costs and referred to its costs schedule. The IC accepted that a costs reduction should be made in light of part of the allegations not being found proven. It was argued that the costs schedule put forward appropriately reflected that, applying a 40% reduction to the costs claimed.

23. In particular, it was argued by the IC that overall, as noted above, there had been nothing unreasonable in the IC's conduct. Even though some heads had not been proven it was a long way off any aspect of the investigation and prosecution being unreasonable, let alone a "shambles" (*Gorlov*). The Tribunal had noted at paragraph 87 of the original decision why Head 1 of the complaint had been brought, even though ultimately not proven ("That said, the delays were out of the ordinary and on this basis alone, the Tribunal could understand why Ms 'A' had complained and why the IC had investigated"). The original decision had noted with regard to Head 2(a) that there had been "extraordinary delays in preparation of the accounts" (see paragraph 92). Finally, Head 4 had been based on an arguable construction of the relevant Bye-law and the accompanying ICAEW Guidance.

24. Counsel for the IC argued that it had "substantively won" as the "real meat" of the complaints lay in Heads 2 to 3 insofar as they related to Ms 'A's tax affairs and on account of the interconnectedness of the matters, Head 1 remained relevant. There was no basis for saying that Head 1 was more important or required more work than Heads 2 and 3 (it was acknowledged that Heads 4 and 5 were relatively minor and not material for the costs arguments). Heads 1 to 3 were all interconnected and related, as was Mr White's defence in this regard.

25. Counsel for Mr White argued that there should be a 60% reduction in costs. However, the IC stated that Mr White had to a material extent inappropriately impeded the progress of this case. This was said to be by way of first, the first day of the proceedings in March. Although the IC and the Tribunal was ready to go ahead, Mr White did not serve his evidence in accordance with the Tribunal's directions and made an unsuccessful application for disclosure (noting also that this request/issue was repeated at every opportunity throughout the proceedings although already resolved). Second, it was argued that the unsuccessful review application had unnecessarily delayed matters and incurred wasted costs. Thus, at least two of the days, it was argued, were unnecessarily introduced by Mr White in his

defence. In these circumstances, the IC took the view that a 40% reduction in costs was warranted. It was further noted that a large amount had been written off before applying the 40% reduction (in fact well over half of costs of investigation). This had been a factually complicated case that had been hard fought in its defence - overall time costs of the IC had been nearly £80,000 but only £33,937 were being claimed.

Decision as to costs

26. The Tribunal did not make an order for costs to be paid by the IC to Mr White. It was not persuaded that the IC had in any way acted unreasonably in investigating or pursuing the complaint against Mr White. All allegations had been properly arguable. Heads 1 to 3 had been interrelated such that the fact that parts were not proven did not mean that they were not properly brought. As noted above, findings of the Tribunal in the original decision indicated already that this was its view. The IC had acted in good faith and there was nothing to indicate delay or unreasonable conduct of these proceedings.

27. The Tribunal decided that in these circumstances, whether judging against the test set out in the *Baxendale* case or that of "poor handling" under DBL 33.1B of the current DBLs, neither were made out. As such, it was not necessary for the Tribunal to decide upon which set of DBLs applied or under which provision Mr White's application was properly made.

28. It did however make an order for costs to be paid by Mr White to the ICAEW, reduced in the way and for the reasons put forward by the IC above. A reduction of 40%, after the large write down noted above, seemed entirely appropriate given that certain heads of complaint had not been proved. The IC only applied the reduction to its own costs and not to the Tribunal's costs. The Tribunal considered in the exercise of its discretion that a reduction ought to apply to all costs. Thus it ordered that Mr White pay £59,300 in costs.

Chairman (non Accountant)	Mr Richard Farrant	
Accountant Member	Mr Ian Walker	
Non Accountant Member	Ms Martha Maher	
Legal Assessor	Ms Melanie Carter	**024379**

CESSATION OF MEMBERSHIP

7. The following individual has ceased to be a member because of failure to pay outstanding fines and costs:

Mr Philip Cooper of Hull, United Kingdom

The ICAEW takes all necessary steps including legal proceedings to recover the money it is owed.

INVESTIGATION COMMITTEE CONSENT ORDERS

8. Mr John Graham Harris FCA

Consent order made on 13 January 2020

With the agreement of Mr John Graham Harris of Altrincham, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £2,100 and pay costs of £2,576 with respect to a complaint that:

Mr John Graham Harris FCA, on behalf of 'A' Limited, issued audit reports on the following financial statements of The 'B' Limited Pension Scheme:

Year ended 30 June 2014; and/or
Year ended 30 June 2015; and/or
Year ended 30 June 2016

in breach of:

a) International Standard on Auditing (UK and Ireland) 220 'Quality control for an audit of financial statements' as he did not take responsibility for the direction, supervision and performance of the audit engagement; and/or

b) International Standard on Auditing (UK and Ireland) 700 'The independent auditor's report on financial statements' as he did not sign or date the audit reports.

049747

9. Malcolm Horton & Co Limited

Consent order made on 13 January 2020

With the agreement of Malcolm Horton & Co Limited of Gravesend, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £2,800 and pay costs of £2,467 with respect to complaints that:

Malcolm Horton & Co Limited, following a Quality Assurance Department visit on 28 April 2010, confirmed:

1 in respect of undertaking anti-money laundering procedures:

A in response to the QAD finding 'no procedures in place to carry out client due diligence on all client' 'Next time we undertake any work for clients we will carry out. This can be recorded on our existing Client Information Form, with particular emphasis on High Risk or Normal Risk.'

and/or

B in response to the QAD finding 'no training'

'We will set up a Training File recording both reading material; studied and courses attended with staff signing.'

2 in respect of client' money regulations:

A in response to the QAD finding 'no bank letter acknowledging trust status'

'Have today written to the bank asking for their assurance in writing'.

and/or

B in response to the QAD finding 'not reconciled at least five weekly'

'We will reconcile on a monthly basis when statement arrives.'

and/or

C in response to the QAD finding 'no annual compliance review'

'Will use helpsheet.'

3 in response to the QAD finding 'Insurance details not disclosed to clients'

'We will include your suggested wording in our Terms & Conditions under a new section 17 and send to all clients (even pre1993) on occasion of next work undertaken'.

038709

10. Hicks and Company

Consent order made on 13 January 2020

With the agreement of Hicks and Company of Harpenden, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £5,000 and pay costs of £1,367 with respect to complaints that:

1a. On 31 January 2018, the firm issued an ATOL Accountants' Report on behalf of "A" Limited for the following periods:

a) Part 1 of the report – year ended 31 March 2017
b) Part 2 of the report – year ended 31 July 2017

when the firm knew it was not registered to issue ATOL Accountants' Reports at that time.

And/or

1b. On 31 January 2018, the firm issued an ATOL Accountants' Report on behalf of "A" Limited for the following periods:

a) Part 1 of the report – year ended 31 March 2017
b) Part 2 of the report – year ended 31 July 2017

when the firm was not registered to issue ATOL Accountants' Reports at that time.

047642

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11. Mr Anthony Ernest William Botting FCA

Consent order made on 13 January 2020

With the agreement of Mr Anthony Ernest William Botting of York, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £3,500; and pay costs of £1,720 in respect of the complaints:

1. Between 25 May 2010 and 25 June 2017 Mr Anthony Botting FCA failed to comply with Money Laundering Regulations 2007 as he failed to implement procedures to document risk assessments and customer due diligence for all clients.

2. Between 26 June 2017 and 12 April 2018 Mr Anthony Botting FCA failed to comply with Money Laundering Regulations 2017 as he failed to implement procedures to document risk assessments and customer due diligence for all clients.

049136

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12. Carter Backer Winter LLP

Consent order made on 13 January 2020

With the agreement of Carter Backer Winter LLP of London, United Kingdom, the Investigation Committee made an order that the firm be reprimanded, fined £2,100 and pay costs of £1,886 with respect to a complaint that:

On 22 August 2017, Carter Backer Winter LLP issued an unqualified, unmodified audit opinion on the financial statements of "A" for the year ending 31 October 2016 which stated that the financial statements had been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice, when this was not the case as the financial statements were not prepared in accordance with the Charities Statement of Recommended Practice 2015 and Financial Reporting Standard 102 applicable in the UK and Republic of Ireland.

043245

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13. RPG Crouch Chapman LLP

Consent order made on 30 January 2020

With the agreement of RPG Crouch Chapman LLP of London, United Kingdom, the Investigation Committee made an order that they be severely reprimanded, fined £33,750; and pay costs of £8,593 in respect of the complaints that:

1. On 30 September 2011 RPG Crouch Chapman LLP issued an audit report on the financial statements of 'A' plc for the year ended 28 February 2011 when the audit was not properly conducted in accordance with

    i) International Standard on Auditing (UK and Ireland) 500 'Audit Evidence', in that the firm failed to obtain sufficient appropriate audit evidence on which to base the audit opinion in respect of:

    a) Other debtors of £1.45m; and/or
    b) Unlisted investments amounting to $3.7m.

    And/or

    ii) International Standard on Auditing (UK and Ireland) 501 'Audit Evidence – specific considerations for selected items' in that the firm failed to carry out adequate procedures to determine whether management's representations of the financial implications of litigation involving the entity were reliable.

2. On 30 August 2012 RPG Crouch Chapman LLP issued an audit report on the financial statements of 'A' plc for the years ended 28 February 2012 when the audit was not properly conducted in accordance with:

   i) International Standard on Auditing (UK and Ireland) 500 'Audit Evidence', in that the firm failed to obtain sufficient appropriate audit evidence on which to base the audit opinion in respect of:

      a) Other debtors of £1.45m; and/or
      b) Unlisted investments amounting to $3.7m.

   And/or

   ii) International Standard on Auditing (UK and Ireland) 501 'Audit Evidence – specific considerations for selected items' in that the firm failed to carry out adequate procedures to determine whether management's representations of the financial implications of litigation involving the entity were reliable.

3. On 30 September 2013 RPG Crouch Chapman LLP issued an audit report on the financial statements of 'A' plc for the years ended 28 February 2013 when the audit was not properly conducted in accordance with:

   i) International Standard on Auditing (UK and Ireland) 500 'Audit Evidence', in that the firm failed to obtain sufficient appropriate audit evidence on which to base the audit opinion in respect of:

      a) Listed and unlisted investments totalling £683k and $3.7m; and/or
      b) Provision for legal costs

   And/or

   ii) International Standard on Auditing (UK and Ireland) 501 'Audit Evidence – specific considerations for selected items' in that the firm failed to carry out adequate procedures to determine whether management's representations of the financial implications of litigation involving the entity were reliable.

   And/or

   iii) International Standard on Auditing (UK and Ireland) 570 'Going concern' in that the firm failed to obtain sufficient appropriate evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial statements.

036031

14. Mr Peter John Thompson FCA

Consent order made on 30 January 2020

With the agreement of Mr Peter John Thompson of Basingstoke, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £2,100 and pay costs of £1,590 in respect of the complaint that:

1. Mr Peter Thompson FCA, on behalf of his firm Peter J. Thompson, following a QAD visit on 2 September 2011, confirmed the following

   a. In respect of the requirement to document a risk assessment on all clients to comply with Money Laundering Regulations 2007:

   "With immediate effect a file note will be kept as part of the final sign-off procedures for each assignment (e.g. accounts and Tax Return preparation) to document the assessment of the risk".

   And/or

   b. In respect of providing all clients with the PII details as required by Provision of Services Regulations 2009:

   "Written disclosure (using the suggested wording) of PII insurer details will be included in the issue of updated Letters of Engagement to all existing clients".

   And/or

   c. In respect of notifying all of the firm's clients of the complaints procedure:

   "Updated Letters of Engagement will be issued using the suggested wordings, and will include the two matters highlighted……The process will be completed by 31 August 2012".

   but a QAD review on 4 January 2019 found that the assurances had not been complied with

15. Mrs Deborah Ann Kelledy ACA

Consent order made on 30 January 2020

With the agreement of Mrs Deborah Ann Kelledy of Bromley, United Kingdom the Investigation Committee made an order that she be reprimanded, fined £2,800, and pay costs of £2,120 with respect to the complaints that:

1. Mrs Deborah Kelledy ACA, on behalf of her firm Kelledy & Co, following a QAD visit on 24 September 2008, confirmed the following:

   I have 'The Smaller Practitioner's Procedures Manual' for Money Laundering which has a client identification checklist. I will use this for all future new clients….There is a Money Laundering Considerations checklist. I will go through this checklist annually for each client when I carry out work for them and leave the checklist on the file as evidence.' but at a QAD desktop review on 29 April 2016, it was found that the assurances had not been complied with.

2. Mrs Deborah Kelledy ACA incorrectly completed the following ICAEW annual returns;

   a. 2015 - as she stated that she had undertaken CDD on all new clients and carried out ongoing CDD on all her clients when this was not the case.

   AND/OR

   b. 2016 – as she stated that she had carried out ongoing CDD on all her clients when this was not the case.

   AND/OR

   c. 2017 – as she stated that she had carried out ongoing CDD on all her clients when this was not the case.

   AND/OR

   d. 2018 - as she stated that she had carried out ongoing CDD on all her clients when this was not the case.

036550

16. Mr Alan Frank Haslam ACA

Consent order made on 30 January 2020

With the agreement of Mr Alan Frank Haslam of King's Lynn, United Kingdom the Investigation Committee made an order that he be severely reprimanded, fined £6,000, and pay costs of £2,683 in respect of the complaints that:

On or around 6 March 2012, Mr Alan Haslam ACA accepted instructions from Mr "A", his business partner, in his capacity as one of the trustees of "B" Trust, to perform a valuation of the shares of "C" plc when:

A. on accepting that instruction from Mr "A", Mr Alan Haslam ACA failed to consider whether the fact that Mr "A" had a personal interest in the valuation was a circumstance which could pose a conflict of interest and lead to a threat to his objectivity and therefore:

   (i) Failed to assess the ethical threat arising from Mr "A"'s personal interest in the valuation;

   and/or

   (ii) Failed to apply any safeguards to reduce the threat to an acceptable level; contrary to Section 220 of the ICAEW Code of Ethics.

AND/OR

B. In performing the share valuation dated 11 April 2012, Mr Alan Haslam ACA did not carry out the share valuation with due skill and care and with proper regard for the technical and professional standards expected of him as a member, in particular he failed to:

   (i) Confirm in writing, instructions on the methodology to be used to perform the share valuation;

   and/or

   (ii) Record in writing all decisions and explanations of assumptions made. contrary to Section 130 of the ICAEW Code of Ethics.

041680

17. Alexander & Co

Consent order made on 30 January 2020

With the agreement of Alexander & Co of Manchester, United Kingdom the Investigation Committee made an order that they be reprimanded, fined £5,000 and pay costs of £2,808 in respect of the complaint that:

> On 25 October 2013, Alexander & Co signed an unqualified audit report on the financial statements of Interactive "A" Limited for the year ended 31 January 2013 when the audit had not been conducted in accordance with International Standard on Auditing (UK & Ireland) 200 'Overall objectives of the independent auditor and the conduct of an audit in accordance with International Standards on Auditing (UK and Ireland), in that they failed to perform the audit with an attitude of professional scepticism in their consideration of information that they were provided with regarding the transfer of trade and assets.

041279

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18. Wilkins Kennedy

Consent order made on 13 February 2020

With the agreement of Wilkins Kennedy of London, United Kingdom the Investigation Committee made an order that they be severely reprimanded, fined £35,000 and pay costs of £44,940

Section 6 Failure of Wilkins Kennedy p**rocesses and policies in relation to the acceptance and continuance of the engagement to act for "B"**

Contrary to the Code of Ethics and, in particular, paragraph 1.6 and sections 210 and 220, from September 2009 to June 2010, in connection with the acceptance of instructions to act for the "B" Group at the same time as continuing to act for the "C" Group, Wilkins Kennedy failed to have in place adequate policies, procedures or systems for the evaluation and/or monitoring of threats to compliance with the fundamental principles arising out of acceptance of engagements which carried higher than normal risk in that Wilkins Kennedy's policies, procedures or systems:

(a) failed to require that the evaluation of threats to compliance with the fundamental principles of objectivity and confidentiality in the acceptance of the "B" Group engagement, and the adequacy of the safeguards being implemented to reduce those threats to an acceptable level, was carried out by a person / persons within the firm who was / were not a member / members of either client engagement team; and / or

(b) failed to require that the procedures put in place to maintain an information barrier between the respective client engagement teams were documented or circulated to all partners and staff working within those client engagement teams; and / or

(c) failed to require that regular monitoring of the relationship between the 'C' Group and the "B" Group was carried out by a person / persons within the firm who was / were not a member / members of either client engagement team; and / or

(d) failed to require that regular monitoring of the scope of work being carried out by Wilkins Kennedy for the "B" Group and the "C" Group was carried out by a person / persons within the firm who was / were not a member / members of either client engagement team; and/or

(e) failed to require that regular monitoring of the effectiveness of any safeguards put in place to reduce threats to compliance with the fundamental principles to an acceptable level was carried out by a person / persons within the firm who was / were not a member / members of either client engagement team.

022400

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19. Wilkins Kennedy

Consent order made on 13 February 2020

With the agreement of Wilkins Kennedy of London, United Kingdom the Investigation Committee made an order that they be severely reprimanded, fined £28,000 and pay costs of £5,121 in respect of the complaints that:

Complaint 1

Contrary to the Code of Ethics paragraph 290, between September 2008 and June 2010, in relation to the professional services it provided to the 'C' Group, Wilkins Kennedy failed to comply with the independence requirements of the APB Ethical Standards resulting in the issuance of an audit report to members of 'I' on financial statements for the year ended 31 March 2008, which purported to be from an independent auditor, when the firm was not independent of its assurance client 'I'.

Complaint 2

Contrary to the Code of Ethics paragraph 290, between September 2009 and June 2010, in relation to the professional services it provided to the 'C' Group, Wilkins Kennedy failed to comply with the independence requirements of the APB Ethical Standards resulting in the issuance of an audit report to members of 'I' on financial statements for the year ended 31 March 2009, which purported to be from an independent auditor, when the firm was not independent of its assurance client 'I'.

052438

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20. Mr Kevin James Thomas Walmsley ACA

Consent order made on 25 February 2020

With the agreement of Mr Kevin James Thomas Walmsley ACA of Egham, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £20,000 and pay costs of £22,500 with respect to a complaint that:

Section 4 Failures in relation to the take-on of 'B' Group as a client

Complaint 1 - Walmsley

Contrary to paragraph 100.4 of the Code, and his duty to comply with the fundamental principles of objectivity and / or professional competence and due care and / or confidentiality, in or around September 2009, in relation to his role in the decision taken by 'A' to accept instructions to act for the 'B' Group, Kevin Walmsley failed to:

(a) evaluate adequately the significance of the threat to compliance with the fundamental principles of objectivity and confidentiality created by 'A's Egham office accepting instructions to act for the 'B' Group at a time when its interests were, or had the potential to be, in conflict with those of 'C' and other 'C' Group companies for whom 'A' was already acting as financial adviser; and / or

(b) consider the threat to compliance with the fundamental principles of confidentiality and objectivity created by Mr 'E' being appointed as the engagement manager for the 'B' Group when he knew that Mr 'E' had been advising 'C' and other 'C' Group companies, and where it was intended that Mr 'E' would continue to advise the 'C' Group as well as the 'B' Group after September 2009; and / or

(c) ensure that informed consent had been obtained from 'C' or other companies in the 'C' Group or Mr 'F' to 'A' accepting instructions to act for the 'B' Group; and / or

(d) put in place suitable safeguards to reduce threats to compliance with the fundamental principles of confidentiality and objectivity to an acceptable level, including in relation to information barriers to stop 'C's confidential information being disclosed to the 'B' Group.

Section 5 Acting for 'B' and 'C' after September 2009

Complaint 2 - Walmsley

Contrary to paragraphs 100.4 of the Code of Ethics and his duty to comply with the fundamental principles of objectivity and/or professional competence and due care and/or confidentiality, between September 2009 and June 2010, Kevin Walmsley failed to:

(a) Monitor properly the effectiveness of the safeguards put in place to reduce the threat to compliance with the fundamental principles of objectivity and confidentiality created by 'A' acting for both the 'B' Group and the 'C' Group, including the effectiveness of the information barrier which had been put in place; and / or

(b) Investigate properly suspicions raised by Mr 'H' of 'A' in February 2010 that the 'B' Group was misappropriating money paid by 'C' for the construction of the 'G' development.

21. Mr Matthew Richard Hall

Consent order made on 25 February 2020

With the agreement of Mr Matthew Richard Hall of Egham, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £20,000 and pay costs of £22,500 with respect to complaints that:

Section 4 Failures in relation to the take-on of 'B' Group as a client

Complaint 1 - Hall

Contrary to paragraph 100.4 of the Code, and his duty to comply with the fundamental principles of objectivity and / or professional competence and due care and / or confidentiality, in or around September 2009, in relation to his role in the decision taken by 'A' to accept instructions to act for the 'B' Group, Matthew Hall failed to:

(a) evaluate adequately, or at all, the significance of the threat to compliance with the fundamental principles of objectivity and confidentiality created by 'A's Egham office accepting instructions to act for the 'B' Group at a time when its interests were, or had the potential to be, in conflict with those of 'C' and other 'C' Group companies for whom 'A' was already acting as financial adviser; and / or

(b) consider the threat to compliance with the fundamental principles of confidentiality and objectivity created by Mr 'E' being appointed as the engagement manager for the 'B' Group when he knew that Mr 'E' had been advising 'C' and other 'C' Group companies, and where it was intended that Mr 'E' would continue to advise the 'C' Group as well as the 'B' Group after September 2009; and / or

(c) ensure that informed consent had been obtained from 'C' Group or other companies within the 'C' Group or Mr 'F' to 'A' accepting instructions to act for the 'B' Group; and / or

(d) put in place suitable safeguards to reduce threats to compliance with the fundamental principles of confidentiality and objectivity to an acceptable level, including in relation to information barriers to stop 'C's confidential information being disclosed to the 'B' Group.

Section 5 Acting for 'B' and 'C' after September 2009

Complaint 2 - Hall

Contrary to paragraph 100.4 of the Code of Ethics, and his duty to comply with the fundamental principles of objectivity and / or professional competence and due care and / or confidentiality, between September 2009 and June 2010, Matthew Hall failed to:

(a) Monitor properly the effectiveness of the safeguards put in place to reduce the threat to compliance with the fundamental principles of objectivity and confidentiality created by 'A' acting for both the 'B' Group and the 'C' Group, including the effectiveness of the information barrier which had been put in place; and/or

(b) Investigate properly suspicions raised by Mr 'H' of 'A' in February 2010 that the 'B' Group was misappropriating money paid by 'C' for the construction of the 'G' development.

033293

INVESTIGATION COMMITTEE FIXED PENALTY ORDERS

22. Open Administration Systems Limited

Penalty order made on 11 December 2019

Under Disciplinary Bye-law 14A the Investigation Committee has exercised its powers under delegation to consider this complaint by way of fixed penalty.

With the agreement of Open Administration Systems Limited, the Investigation Committee ordered that Open Administration Systems Limited, of Ampney House, Falcon House, Quedgeley, Gloucester, GL2 4LS be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

> Open Administration Systems Limited following a QAD visit in April 2013, confirmed the following in respect of compliance with the Money Laundering Regulations 2007:
>
> a. having no written procedures in place to ensure compliance with the Money Laundering Regulations 2007:
>
> *"Will review and carry out procedure. 6 monthly."*
>
> and
>
> b. not carrying out client due diligence on all clients:
>
> *"We will carry out the procedure, update and review 6 monthly"*
>
> and
>
> c. not carrying out a periodic review of the firm's compliance with the Money Laundering Regulations 2007:
>
> *"Will review and carry out procedure. 6 monthly"*
>
> but at QAD's subsequent visit on 28 March 2018, it was found that these assurances had not been complied with.

047289

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23. Mr Jake Oliver

Penalty order made on 27 January 2020

Under Disciplinary Bye-law 14A the Investigation Committee has exercised its powers under delegation to consider this complaint by way of fixed penalty.

With the agreement of Mr Jake Oliver, the Investigation Committee ordered that Mr Jake Oliver, of Essex, United Kingdom be reprimanded with respect to a complaint that:

> On 9 October 2019, Mr Jake Oliver drove a motor vehicle after consuming alcohol in excess of the prescribed limit.

053355

AUDIT REGISTRATION COMMITTEE

ORDER – 13 NOVEMBER 2019

24. R P Imray

The registration as company auditor of R P Imray, Cambridge, United Kingdom, was withdrawn on 20 December 2019 under audit regulation 7.03g of the Audit Regulations and Guidance on the basis of its failure to comply with an undertaking previously given to the ICAEW.

038677

ORDER – 11 DECEMBER 2019

25. Abrams Ashton Limited

Abrams Ashton Limited, St Helens, United Kingdom, has agreed to pay a regulatory penalty of £537 which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.16a in that the firm issued audit reports using an unregistered trading name.

052508

ORDER – 11 DECEMBER 2019

26. Anthony Tiscoe & Co

Anthony Tiscoe & Co, London, United Kingdom, has agreed to pay a regulatory penalty of £4,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 3.03 and 6.06 in that the firm:

- failed to obtain an external hot file review where fees from the audit client have been regularly in excess of 10% of the firm's total income prior to signing the audit report; and
- for the incorrect statements made on the firm's 2017 annual return.

025162

ORDER – 11 DECEMBER 2019

27. Collins

Collins, Birmingham, United Kingdom, has admitted a breach of audit regulation 2.03b for failing to ensure that it was eligible to hold audit registration since the partnership was formed in April 2013, in that the majority of the voting rights were not held by individuals holding the Audit Qualification, or registered auditors. The Audit Registration Committee decided that no financial sanction should be offered to the firm.

052015

ORDER – 21 AUGUST 2019

28. Thompsons

The registration as company auditor of Thompsons (C008412996), North Yorkshire, United Kingdom, was withdrawn on 19 September 2019 under audit regulation 7.03h of the Audit Regulations and Guidance for failing to comply with the audit regulations in relation to audit quality, independence and Professional Indemnity Insurance requirements.

052815

ORDER – 11 DECEMBER 2019

29. GMG Roberts

GMG Roberts, London, United Kingdom, has agreed to pay a regulatory penalty of £500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.10 in that the firm issued audit reports for two consecutive years of a dormant Irish Company without carrying out any audit work and the audit reports were incorrectly addressed to the members of a different Irish Company.

051573

ORDER – 11 DECEMBER 2019

30. Knav UK Limited

Knav UK Limited, Edgware, United Kingdom, has agreed to pay a regulatory penalty of £3,000 which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.01, for continuing to act as auditor of a client despite the existence of an insurmountable fee dependency threat.

049171

ORDER – 11 DECEMBER 2019

31. Peak Management Associates (Ashbourne) Ltd

The registration as company auditor of Peak Management Associates (Ashbourne) Ltd, Ashbourne, United Kingdom, was withdrawn on 16 January 2020 under audit regulation 7.03h of the Audit Regulations and Guidance on the basis of its failure to comply with an undertaking previously given to the ICAEW, its failure to respond to ICAEW's correspondence and its failure to accept a Quality Assurance Department visit.

025917

ORDER – 13 NOVEMBER 2019

32. R P Imray

R P Imray, Cambridge, United Kingdom, 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 6.06 for failing to comply with an undertaking to submit the results of an external hot file review and an external cold file review.

038677a

ORDER – 11 DECEMBER 2019

33. White & Company (UK) Limited

The registration as company auditor of White & Company (UK) Limited, Manchester, United Kingdom, was withdrawn on 16 January 2020 under audit regulation 7.03a of the Audit Regulations and Guidance 2017 for failure to comply with the requirements of the audit regulations.

049669

INSOLVENCY LICENSING COMMITTEE

ORDER – 12 DECEMBER 2019

34. **Mr Paul Ronald Brindley** of
Dudley, United Kingdom

to pay a regulatory penalty of £1,500 for failure to comply with the principles of a SIP, the Insolvency Act and rules and regulations by drawing fees on a time cost basis, without first giving creditors a fee estimate.

052189

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