



## DISCIPLINARY ORDERS AND REGULATORY DECISIONS

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### Disciplinary orders

#### Disciplinary Committee tribunal orders

1	Mr Andrew Nigel Hamilton FCA	3
2	Four Oaks Taxation Limited	8
3	Mr Barry Rodney Sennett [FCA]	18
4	Bharat Shah & Co	29
5	Mr Jamie Atherton	32
6	Mr Robert Franz Keller ACA	35
7	Mr Ian Ryder Marchant Ousey ACA	38

#### Appeal Committee panel orders

8	Mr Sandeep Kundi	43
9	Mr Channon	46

#### Investigation Committee consent orders

10	KPMG Audit PLC	52
11	Mr X	53
12	Mr X	54
13	Mr Andrew Campbell ACA	55
14	Mr John William Atkinson FCA	55
15	K N Shah & Co	56
16	Mr Kanubhai Shah FCA	56

## **Regulatory orders**

### Audit Registration Committee

17	Haines Watts	51
18	The L K Partnership LLP	51
19	Bacha & Bacha (Audit) Ltd	51
20	Gittins Ltd	58

### Insolvency Licensing Committee

21	Stephen Phillip Lancaster	59
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# DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

**1 Mr Andrew Nigel Hamilton FCA** of  
Forbes Lodge, Edinburgh Road, Gifford, Haddington, East Lothian, EH41 4JE

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 13 January 2016**

**Type of Member** Member

## Terms of complaint

On 10 August 2011 and 20 September 2011, Mr Hamilton failed to have adequate safeguards to objectivity in place when he advanced a loan of £60,000 to a client, in breach of section 280.4 of the Code of Ethics.

Mr Hamilton is therefore liable to disciplinary action under Disciplinary Bye-law 4.1 (a) because:-

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

## Hearing date

13 January 2016

## Previous hearing date(s)

None

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

**Complaint found proved** Yes

**All heads of complaint proven** Yes

## Sentencing order

- a) Reprimand
- b) £1000
- c) Costs of £6,000

## Procedural matters and findings

**Parties present** Mr Andrew Hamilton  
The Investigation Committee (IC)

**Represented** Mr Hamilton was represented by William Frayn-Bell of counsel  
The IC was represented by Ms Joester of ICAEW

**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 provided by the defendant

### Issues of fact and law

1. Mr Hamilton was, at the time of this complaint, the senior partner of 'A' & Co. The firm is based in Edinburgh and is registered with the Institute of Chartered Accountants of Scotland (ICAS). He is also a director of 'B' Ltd, a company providing financial services.
2. The firm's client ledger account details for Mr 'C', Mr Andrew Hamilton's son for the period 10 August 2011 to 21 September 2011, the following:
  - £38,901.13 was deposited into the client bank account by Mr 'C' on 10 August 2011.
  - Sums of £28,750 and £8,901.13 were paid from the client money account to the 'D' on 10 and 12 August 2011, respectively.
  - On 21 September 2011 £1,250 was drawn from the client money account to pay fees of 'B' Ltd.
  - On 21 September 2011 £30,000 was deposited in to the client money account by Mr 'C' and paid from the account to the Thompson farm the same day.
3. Mr Hamilton told the ICAEW on 18 October 2012 that:
  - (a) There was no formal loan agreement between him and his son.
  - (b) 'A' & Co provided accountancy, financial and tax advice to Mr and Mrs 'E' and their two businesses, 'F' Ltd and 'G'.
  - (c) His partner Mr 'H' provided the two businesses with accountancy services, and another partner Ms 'I', was responsible for giving tax services to Mr and Mrs 'E' and their businesses.
  - (d) Mr and Mrs 'E' were clients of Mr Hamilton's financial services firm, 'B' Ltd, and asked 'B' Ltd to find loan finance for them. 'B' Ltd were unable to arrange a mortgage, and Mr Hamilton therefore asked if members of his family could help.
  - (e) Mr Hamilton explained that his son Mr 'C' agreed to loan the money, but that he needed to raise the money himself. Mr Hamilton therefore says that he agreed to loan the money to 'Mr 'C', so that in turn Mr 'C' could loan it to Mr and Mrs 'E'.
  - (f) However, Mr Hamilton himself did not have the full amount of money to loan to Mr 'C'. He therefore agreed with his son in law, Mr 'J' that he would borrow £30,000 from him, and that that would form half of the £60,000 he would loan on to Mr 'C'.
  - (g) Mr 'C' also wanted the transfer of the loans to be evidenced as coming from him, but did not have a UK bank account. Mr Hamilton therefore suggested processing it through the 'A' & Co client bank account.
  - (h) Mr Hamilton raised the remainder of the money to be loaned to Mr 'C' through the sale of 'K' units. This sale realised £38,901.13, which is shown as being paid in to the client account on 10 August 2011. The loan from Mr 'J' of £30,000 was deposited into the client account on 19 September 2011.
  - (i) The loan to Mr and Mrs 'E' was then made through two payments out of the client account, of £28,750 and £30,000. The remaining £1,250 of the loan was paid to 'B' Ltd as their 'fee'.

He was unaware that using the client bank account to facilitate the loan transfer was in breach of the Client Money Regulations.

4. Mr Hamilton provided various information confirming that 'A' & Co had completed accounts work for 'L' Ltd (Mr 'C's firm) and the 'M' Limited (Mr 'J's firm).

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

5. The tribunal found the complaint proven on the defendant's own admission.
6. Section 280.4 of the ICAEW Code of Ethics states deals with the fundamental principle of objectivity, and says:-

*'A professional accountant in public practice\* shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level\*. Examples of such safeguards include:*

- *Withdrawing from the engagement team\*.*
- *Supervisory procedures.*
- *Terminating the financial or business relationship giving rise to the threat.*
- *Discussing the issue with higher levels of management within the firm\*.*
- *Discussing the issue with those charged with governance\* of the client.*

*If safeguards cannot eliminate or reduce the threat to an acceptable level\*, the professional accountant\* shall decline or terminate the relevant engagement.'*

7. A threat to Mr Hamilton's objectivity was clearly created by the loan he made to Mr 'C', and that that threat was serious, involving as it did three clients and the use of the firm's client account to process the transaction. The threat was increased by the fact that Mr Hamilton, via 'B' Ltd, brokered the loan arrangement and financially benefitted from the loan being made, by the receipt of a fee paid by Mr and Mrs 'E' to 'B' Ltd in the amount of £1,250. Mr and Mrs 'E' had previously agreed to pay this fee if the firm were able to arrange a loan facility for them, regardless of the identity of the lender.
8. There was a continuing duty to review a threat to objectivity. It was not the case that this needed to be done once only. When the loan was made to Mr 'C', that duty was threatened by the loan. This was not a simple a father/son loan as it involved other clients. In many ways it was a business rather than a personal loan, its purpose being to finance a third party business. It was also a loan in which Mr Hamilton had an interest as the financial advisers company owned by him was paid a fee for arranging the loan.
9. Having identified a threat, the next step would have been to consider safeguards. In fact, Mr Hamilton has admitted that he did not recognise the threat, such that the next step did not arise. However, it was his duty to consider appropriate safeguards and then to apply them. In this scenario under the Code, paragraph 280.4 deals with the safeguards that could have been put in place. This is for Mr Hamilton to demonstrate but could have included seeking advice from regulator or lawyers, waiving a fee or terminating aspects of the loan.
10. The threat to Mr Hamilton's objectivity was not insignificant and no safeguards were capable of reducing the threat to an acceptable level. In making the loan Mr Hamilton breached the Code of Ethics and this gave rise to discredit to himself, the profession and the ICAEW. He is therefore in breach of Disciplinary Bye-law 4(1)(a).

## Matters relevant to sentencing

11. Mr Hamilton did have a prior disciplinary record. There were two previous matters, one of which was wholly dissimilar. The only relevant prior finding was with regard to a failure to verify the identity of a client under money laundering requirements. This led to a severe reprimand and a fine of £2000.
12. Mr Hamilton's representative made the following points in mitigation:
  - a) Paragraph 280.3 of the Code of Ethics stated that one had to look at the particular circumstances of the engagement and the nature of the work performed. Thus, whilst the specific question of objectivity was not recorded in writing, having regard to the surrounding circumstances, the appropriate conclusion is that this was not a matter of severity and any threat to objectivity would not override Mr Hamilton's professional judgement.
  - b) Mr Hamilton had always admitted the matters underlying the complaint (at the earliest stage this was with regard to client money rules, but had included his admitting the relevant facts underlying the objectivity matter).
  - c) There is no allegation of dishonesty. The breach was wholly inadvertent and with no knowledge of this being a breach.
  - d) The other partners in the firm were fully aware of all aspects of the loan. There was nothing disguised or underhand in relation to this transaction.
  - e) No-one suffered any loss.
  - f) There were systems in place to address conflicts of interest where family members were clients. Thus, the tribunal were told that work would in those circumstances be done by junior members of staff who were in turn supervised by a manager.
  - g) The fee had not been dependant on the source of the loan. This was in line with this type of arrangement and there was nothing out of the ordinary in a relatively small amount being paid in these circumstances.
  - h) Mr Hamilton apart from the money laundering matter referred to above (the other matter being wholly dissimilar), was a man of good standing having been a member for many years. He has retired from practise.
13. The tribunal took into account all the mitigation. It noted that Mr Hamilton had been cooperative throughout and there had been no loss to any clients or the public. Mr Hamilton had been trying to assist a friend who was also a client; whilst his financial advisory company had taken a fee, this was clearly not the motivation. There had been some complexity in the transactions, but being a small firm, it was relatively transparent. All partners had been fully appraised of the situation. That said, this being a small firm, threats to objectivity can be more difficult to handle and correspondingly, create a greater risk.
14. The tribunal was of the view that whilst this was a regulatory issue that Mr Hamilton should have been aware of and taken appropriate steps to both record and avoid, this was not at the more serious end of such breaches. In the circumstances, the tribunal decided that it should impose a reprimand and a fine at the lower end of the suggested range in the *Guidance on Sentencing*.

## **Sentencing Order**

15. The tribunal took into account Mr Hamilton's evidence as to means. It imposed the following sanction:

- a) Reprimand
- b) £1000
- c) Costs of £6,000

The tribunal ordered that Mr Hamilton pay the fine and costs over 7 months in equal monthly instalments of £1000, the first payment to be made by 1 March 2016.

## **Decision on publicity**

16. Publicity with names.

<b>Non Accountant Chairman</b>	Mr Richard Farrant
<b>Accountant Member</b>	Mr Mike Ranson FCA
<b>Non Accountant Member</b>	Mr Graham L Humby
<b>Legal Assessor</b>	Ms Melanie Carter

**009760**

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**2 Four Oaks Taxation & Accounting Services Limited of**  
Suite D, Astor House, 282 Lichfield Road, Sutton Coldfield, West Midlands, B74 2UG

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

**Type of Member** Firm

**Terms of complaint**

1. Four Oaks Taxation & Accounting Services Ltd prepared the financial statements for 'A' Ltd for the period ended 31 July 2012 (accountants report issued on 14 November 2012) which stated that the financial statements complied with the Financial Reporting Standard for Smaller Entities (effective 2008) when this was not the case as:
  - a. The financial statements incorrectly included the transactions for the company for August 2012 and the balance sheet assets and liabilities were as at 31 August 2012 rather than 31 July 2012.
  - b. Expenses relating to a legal settlement paid by the company and associated legal fees totalling £403,933 had been included in other debtors rather than as an expense of the company.
  - c. The financial statements included fixed asset investments of £400 relating to shares held in the following companies when the shares were not owned by the company:
    - 'B' Ltd
    - 'C' Ltd
    - 'D' Ltd
  - d. The financial statements did not disclose all material transactions with related parties.
2. Four Oaks Taxation & Accounting Services Ltd prepared amended financial statements for 'A' Ltd for the period ended 31 July 2012 (accountants report issued on 12 June 2013):
  - A. which stated that the financial statements complied with the Financial Reporting Standard for Smaller Entities (effective 2008) when this was not the case as:
    - a. The financial statements show that the company has net liabilities of £438,545 but do not contain any disclosures as to why the financial statements have been prepared on a going concern basis.
    - b. The financial statements did not contain disclosures in respect of an exceptional item concerning a settlement claim and related legal expenses of £403,796.
    - c. The financial statements included fixed asset investments of £400 relating to shares held in the following companies when the shares were not owned by the company:
      - 'B' Ltd
      - 'C' Ltd
      - 'D' Ltd
    - d. The financial statements did not disclose all material transactions with related parties.
  - B. which did not comply with the requirements of paragraph 4 of The Companies (Revision of Defective Accounts and Reports) Regulations 2008.

3. Four Oaks Taxation & Accounting Services Ltd prepared small company unaudited financial statements for 'A' Ltd for the year ended 31 July 2013:
  - a. when the company should have prepared medium group accounts as required by 399(2) of The Companies Act 2006.
  - b. which stated that the company was entitled to claim audit exemption under section 477 of The Companies Act 2006 when this was not the case as the group did not qualify as small and therefore under section 479 of The Companies Act 2006 was not entitled to claim exemption from audit under section 477.
  - c. which stated that the financial statements had been prepared in accordance with the Financial Reporting Standard for Smaller Entities (effective 2008) when the group did not qualify as a small entity so was unable to prepare accounts using this standard.
  
4. Four Oaks Taxation & Accounting Services Ltd prepared the financial statements for 'D' Ltd and 'C' Ltd for the period ended 31 July 2012 (accountants report issued on 14 November 2012) which stated that the financial statements complied with the Financial Reporting Standard for Smaller Entities (effective 2008) when this was not the case as:
  - a. The financial statements incorrectly included the transactions for the company for August 2012 and the balance sheet assets and liabilities were as at 31 August 2012 rather than 31 July 2012
  - b. The financial statements stated that 'A' Ltd was the ultimate parent company when this was not the case.
  - c. The financial statements did not disclose all material transactions with related parties.
  
5. Four Oaks Taxation & Accounting Services Ltd prepared amended financial statements for 'D' Ltd and 'C' Ltd for the period ended 31 July 2012 (accountants report issued on 12 June 2013):
  - A. which stated that the financial statements complied with the Financial Reporting Standard for Smaller Entities (effective 2008) when this was not the case as:
    - a. The financial statements stated that 'A' Ltd was the ultimate parent company when this was not the case.
    - b. The financial statements did not disclose all material transactions with related parties.
  - B. which did not comply with the requirements of paragraph 4 of The Companies (Revision of Defective Accounts and Reports) Regulations 2008.
  
6. Four Oaks Taxation & Accounting Services Ltd prepared the financial statements for the following companies for the periods ended 31 July 2013 which stated that the companies were eligible to claim exemption from audit under section 477 of The Companies Act 2006 when the companies were not eligible to claim exemption as they were subsidiary companies of a medium group and under 479 of The Companies Act 2006 were not entitled to claim such an exemption:
  - a. 'C' Ltd – accountants report signed on 29 April 2014
  - b. 'D' Ltd – accountants report signed on 29 April 2014
  - c. 'E' Ltd – accountants report signed on 29 April 2014

7. On 7 November 2012 Four Oaks Taxation & Accounting Services Ltd issued an audit report on the financial statements of 'B' Ltd for the period ended 31 July 2012, when:
- a. The financial statements did not comply with the Financial Reporting Standard for Smaller Entities (effective April 2008) in that the financial statements:
    - incorrectly included the transactions for the company for August 2012 and the balance sheet assets and liabilities were as at 31 August 2012 rather than 31 July 2012
    - stated that 'A' Ltd was the ultimate parent company when this was not the case
    - did not disclose all material transactions with related parties
  - b. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the firm failed to obtain sufficient appropriate audit evidence in order to draw reasonable conclusions in respect of:
    - debtors
    - creditors
    - cash
    - management charges and balances due to/from connected companies
8. On 12 June 2013 Four Oaks Taxation & Accounting Services Ltd issued an audit report on the amended financial statements of 'B' Ltd for the period ended 31 July 2012, when:
- a. the financial statements did not comply with the Financial Reporting Standard for Smaller Entities (effective April 2008) in that the financial statements:
    - stated that 'A' Ltd was the ultimate parent company when this was not the case
    - did not disclose all material transactions with related parties
  - b. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the firm failed to obtain sufficient appropriate audit evidence in order to draw reasonable conclusions in respect of:
    - debtors
    - creditors
    - cash
    - management charges and balances due to/from connected companies
    - going concern
  - c. the financial statements did not comply with the requirements of paragraph 4 and 7 of The Companies (Revision of Defective Accounts and Reports) Regulations 2008.

9. On 14 August 2014 Four Oaks Taxation & Accounting Services Ltd issued an audit report on the financial statements of 'B' Ltd for the year ended 31 July 2013, when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the firm failed to obtain sufficient appropriate audit evidence in order to draw reasonable conclusions in respect of:
- Debtors
  - Creditors
  - Management charges and balances due to/from connected companies

Four Oaks Taxation & Accounting Services Ltd is therefore liable to disciplinary action under Disciplinary Bye-law 5.1b in respect of heads of complaint 1 to 6. Disciplinary Bye-law 5.1b states the following:

- 5.1. *A member-firm shall be liable to disciplinary action under these bye-laws in any of the following cases*
- b. *if it has performed its professional work, or conducted its practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on itself, the Institute or the profession of accountancy.*

*In this paragraph 'regulations' does not include any such regulations as are mentioned in bye-law 6.1(a) or 6.2(a).*

Further, Four Oaks Taxation & Accounting Services Ltd is therefore liable to disciplinary action under Disciplinary Bye-law 6.2a in respect of heads of complaint 7 – 9. Disciplinary Bye-Law 6.2a states the following:

- 6.2. *A registered auditor shall be liable to disciplinary action under these bye-laws in any of the following cases*
- a. *if it has committed a breach of any regulations issued by the Institute in its capacity as a recognised supervisory body under the Companies Act 2006 or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations.*

**Hearing date**

20 January 2016

**Previous hearing date**

None

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

**Complaint found proved** Yes.

**All heads of complaint proven** Yes, on admission.

**Sentencing order** (i) Severe reprimand; (ii) fine of £10,000.

**Procedural matters and findings**

**Parties present** Four Oaks was present by the representation of one of its directors, Michael Rudd.

**Represented** Four Oaks was represented by Faisal Osman of Counsel. The Investigation Committee (IC) was represented by Theresa Thorpe.

**Hearing in public or private** The hearing was in public.

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

**Documents considered by the tribunal** The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with Four Oaks' Regulation 13 answers together with an undated letter from Four Oaks to the tribunal enclosing those answers. The tribunal also considered the financial circumstances of Four Oaks.

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

1. Mr 'G' and Mr 'F' were employed by a company called 'H' Ltd where they were bound by post – termination restrictive covenants in their contracts of employment. They left their employment with 'H' Ltd and incorporated a group of companies called, in shorthand, the 'I' group. They were initially the directors and shareholders of each company in the group. One company in the group was called 'A' Ltd - incorporated 26 January 2012. Other group companies were 'B' Ltd - incorporated 26 January 2012, 'C' Ltd - incorporated 26 January 2012, 'D' Ltd - incorporated 10 February 2012 and 'E' Ltd - incorporated 16 October 2012. 'E' Ltd was at all material times a wholly owned subsidiary of 'A' Ltd.
2. 'A' Ltd provided services to the other companies. The other companies (except 'E' Ltd) provided payroll services and were trading companies in the usual sense. In 2012, the defendant was appointed to provide accountancy services to the 'J' companies.
3. It appears that the 'I' "group" was established to compete with 'H' Ltd for business, and this created a dispute. Litigation ensued which resulted in 'A' Ltd making a payment to 'H' Ltd in settlement of the dispute. As part of that settlement, which was agreed on 12 July 2012, undertakings were given to 'H' Ltd that the directors of the 'I' group and the group would not deal with an agreed list of 'H' Ltd's clients until March 2013. In addition, 'H' Ltd was paid £215,000 in compensation.
4. On 31 July 2013, the shares of the other 'J' companies were transferred to 'A' Ltd, making it the parent company of the group.
5. In October 2013, 'H' Ltd alleged that the undertakings were breached and further proceedings began.

***Head of Complaint One – ‘A’ Ltd - period ended 31 July 2012, signed off in November 2012.***

6. The accounting period for ‘A’ Ltd ended on 31 July 2012. The defendant prepared unaudited accounts which were signed by the defendant and the company’s directors on 14 November 2012 and then filed at Companies House. These were incorrect.
7. These accounts ought to have been prepared by reference to transactions that had occurred between the company’s incorporation (26 January 2012) and 31 July 2012. However, the defendant prepared them by reference to transactions that had occurred up to 31 August 2012. This appears to have been done deliberately.
8. The accounts show legal fees of £426,234 in “Other debtors”. In fact, legal fees in this amount had not been incurred. The amount comprised the settlement sum to ‘H’ Ltd of £215,000 and, on first appearance, legal fees of £211,234. However, of the sum of £211,234, £22,301 related to legal proceedings brought against the directors of the company personally (and so is not a debt of the company); the balance related to the settlement with ‘H’ Ltd.
9. The dispute and settlement with ‘H’ Ltd (including relevant legal fees) actually cost the company £403,933. Rather than described as “other debtors” and “legal fees”, this amount ought to have been charged as an expense in the profit and loss account for the period ended 31 July 2012.
10. The original financial statements show that the company had fixed asset investments of £400 which is represented by the shares it held in the three companies ‘B’ Ltd, ‘D’ Ltd and ‘C’ Ltd. However, in fact the company owned no such shares during the relevant accounting period, when they were owned by Messrs ‘F’ and ‘G’.
11. ‘B’ Ltd, ‘C’ Ltd and ‘D’ Ltd were “related parties” of ‘A’ Ltd for the purposes of Paragraph 15.1 of Financial Reporting Standard for Smaller Entities (April 2008) (“FRSSE”) because they shared directors and shareholders. All transactions between these entities and any year-end debtor or creditor balances ought to have been disclosed as “related party transactions” in the accounts which the defendant prepared, but they were not. For example, ‘A’ Ltd’s only income for the period was £310,200; a charge to ‘B’ Ltd of £282,700 and a charge to ‘C’ Ltd of £27,500 were not disclosed in the accounts but ought to have been. Also, within the stated amount owed by trade creditors of £1,275,475, debts of over £1,000,000 owed to related entities were not disclosed.

***Head of Complaint Two – ‘A’ Ltd - period ended 31 July 2012, amended version signed off in June 2013.***

12. The defendant prepared amended financial statements for ‘A’ Ltd for the period ended 31 July 2012. They were signed by it and by the company’s directors on 12 June 2013. However, these were also incorrect.
13. The amended statements showed a trading loss of £438,645 and a net liability position of £438,545. The accounts were prepared on the basis of the business being a going concern. Paragraph 2.12 of FRSSE provides that where that is so, material uncertainties as to the company’s ability to continue as a going concern ought to be disclosed. In this case, the net liabilities of the company exceeded the stated trading loss and the capacity for the company to trade as a going concern was clearly open to doubt. One of the main reasons for this state of affairs was the substantial settlement the company reached with ‘H’ Ltd and the substantial legal costs which had been incurred. This was not disclosed and ought to have been. The accounts ought to have explained why the company was operating as a going concern but they did not.

14. The amended accounts showed a charge of £403,796 in respect of the 'H' Ltd settlement and its associated costs. This was an amount in excess of the company's turnover and was material to the accounts. It was an exceptional item within the meaning of FRSSE paragraph 3.5 and, as such, ought to have been separately disclosed in such a way as to give a true and fair view. It was not.
15. The error about the fixed asset investments referred to above was not corrected and remained in place.
16. No related party transactions of the kind identified above were still not disclosed, and ought to have been.
17. Regulation 4(2) (a) of the Companies (Revision of Defective Accounts and Reports) Regulations 2008 requires disclosure of certain matters where revised accounts are prepared. None of the requisite disclosures were made by the defendant in the revised accounts.

***Head of Complaint 3 – 'A' Ltd – period ended 31 July 2013, signed off in April 2014***

18. The defendant prepared unaudited accounts for 'A' Ltd for the year ended 31 July 2013, which were approved by the directors and the defendant on 29 April 2014. Also on 31 July 2013, the shares of 'B' Ltd, 'C' Ltd and 'D' Ltd were acquired by 'A' Ltd. 'E' Ltd's shareholding was also acquired in this period, after it was incorporated on 16 October 2012. These unaudited accounts were incorrect in several material ways and the defendant set about its work incorrectly.
19. Because 'A' Ltd was a parent company of a group, the defendant ought to have reviewed the size of the group to ascertain whether it was eligible (i) to claim exemption from audit and (ii) for exemption from the requirement to prepare group accounts and (iii) to prepare accounts under FRSSE. The defendant carried out no such review and failed to ascertain that the group was a medium sized group, not a small one, pursuant to Section 383 of the Companies Act 2006. As a medium sized group, it had to file group accounts pursuant to Section 399 (2) of the Act; in the event, it did not and the defendant did not so advise.
20. The unaudited accounts stated that 'A' Ltd was eligible to claim exemption from audit requirements under Section 477 of the Companies Act 2006. This was incorrect; it enjoyed no such exemption. They also stated that the accounts had been prepared under FRSSE when they ought not to have been so prepared and so stated. This is because the group was a medium sized group and as a parent company of such a group, 'A' Ltd fell outside the scope of FRSSE.

***Head of Complaint 4 – 'C' Ltd and 'D' Ltd – period ended 31 July 2012, signed off in November 2012***

21. The defendant prepared unaudited accounts for these two companies for the period ended 31 July 2012, which were signed by it and the directors of the companies on 14 November 2012. They were incorrect in a number of respects.
22. These accounts ought to have been prepared by reference to transactions that had occurred between incorporation and 31 July 2012. However, the defendant prepared them by reference to transactions that had occurred up to 31 August 2012.
23. The accounts state that 'A' Ltd is the ultimate parent company. It was not; as at 31 July 2012, Mr 'G' and Mr 'F' owned the shares of the companies.
24. The related party transactions stated in the accounts were incomplete.

**Head of Complaint 5 – ‘C’ Ltd and ‘D’ Ltd – period ended 31 July 2012, signed off in June 2013**

25. In June 2013, the defendant signed amended accounts for these companies which it had prepared. They were incorrect as they continued to state that ‘A’ Ltd was the parent company, which it was not. The related party transactions remained inaccurate. The disclosures required by the Companies (Revision of Defective Accounts and Reports) Regulations 2008 were not made.

**Head of Complaint 6 – ‘C’ Ltd, ‘D’ Ltd and ‘E’ Ltd – period ended 31 July 2013**

26. The defendant prepared unaudited accounts for these three companies for the period ended 31 July 2013. They were incorrect.
27. Exemption from audit was incorrectly asserted pursuant to Section 477 of the Companies Act 2006. It was incorrect because the companies were part of a group which was medium, not small, and so could not have been exempt from audit.
28. There were inadequate disclosures regarding related party transactions.

**Head of Complaint 7 – ‘B’ Ltd – period ended 31 July 2012, signed off in November 2012**

29. The defendant prepared audited accounts for this company for this period. They were incorrect in a number of respects.
30. These accounts ought to have been prepared by reference to transactions that had occurred between incorporation and 31 July 2012. However, the defendant prepared them by reference to transactions that had occurred up to 31 August 2012.
31. The accounts state that ‘A’ Ltd is the ultimate parent company. It was not; as at 31 July 2012, Mr ‘G’ and Mr ‘F’ owned the shares of the companies.
32. The related party transactions stated in the accounts were incomplete.
33. The defendant failed to obtain and document sufficient audit evidence with respect to debtors, cash, creditors and net assets.
34. For all these reasons, the accounts did not comply with FRSSE and the International Standard on Auditing (UK and Ireland) 500 “ Audit evidence”

**Head of Complaint 8 – ‘B’ Ltd – period ended 31 July 2012, signed off in June 2013**

35. In June 2013, the defendant signed amended accounts for this company which it had formerly prepared. They were incorrect as they continued to state that ‘A’ Ltd was the parent company, which it was not. The related party transactions remained inaccurate. This meant that the accounts failed to comply with the Financial Reporting Standard for Smaller Entities (effective April 2008).
36. The accounting of debtors, creditors, cash, management charges and balances to and from connected companies, and the fact that the company was a going concern were inaccurate and inadequate. The reason for these failures was the failure to obtain sufficient audit evidence and draw reasonable conclusions from it. As such, the defendant failed to conduct the audit in accordance with the International Standard on Auditing (UK and Ireland) 500 “Audit Evidence”.
37. Furthermore, the accounts did not comply with the requirements of paragraphs 4 and 7 of The Companies (Revision of Defective Accounts and Reports) Regulations 2008.

### ***Head of Complaint 9 – ‘B’ Ltd – period ended 31 July 2013***

38. The defendant prepared and, on 14 August 2014, signed the audit report for this company for the year ended 31 July 2013.
39. The accounting of debtors, creditors, management charges and balances to and from connected companies were inaccurate and inadequate. The reason for these failures was the failure to obtain sufficient audit evidence and draw reasonable conclusions from it. As such, the defendant failed to conduct the audit in accordance with the International Standard on Auditing (UK and Ireland) 500 “Audit Evidence”.

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

40. The complaint was admitted and so no issues of fact or law fell to be determined. The defendant admitted that there was a breach of Disciplinary Bye-law (DBL) 5.1(b) but considered that it did not act incompetently (as stated therein).
41. The tribunal found the complaint proved on the defendant’s admission.

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

42. In 2012, the defendant agreed to take on a new client whose complex accounting requirements clearly exceeded the defendant’s skills and experience. This fundamental problem was aggravated by two factors: (i) the fact that the new client and its directors were immersed in a serious legal dispute and (ii) the defendant’s apparent inability to learn from its own mistakes.
43. There is no doubt that the work carried out by the defendant fell significantly below the standards expected of it by ICAEW and this is the responsibility of the defendant. It was very poor work. The tribunal notes, however, that no allegation of dishonesty has been made against the defendant and nor was there any allegation that somehow the defendant was complicit in its client’s affairs or connived in any way to do wrong to any others.
44. The extent of the inadequacy of the defendant’s work was serious, and because the work it carried out was intended to be relied upon by members of the public (because the accounts were to be put on the public record), the seriousness of the matter must be reflected in the sentence which must follow from this breach of the Disciplinary Bye-law.

## **Matters relevant to sentencing**

45. The tribunal considered the *Guidance on Sentencing* and saw no reason to depart from that; it was also satisfied that no lesser penalty than the one imposed was appropriate.
46. Mitigating factors are: (i) the defendant's clean disciplinary record; (ii) the absence of any dishonesty; (iii) the defendant's co-operation with the IC and its early acceptance of the complaint; (iv) the remedial steps that the defendant has put in place to reduce the risk of the same problems recurring.
47. The mitigating factor of "acceptance of the complaint" is not as forceful as it could have been, as the defendant did not accept that it had acted incompetently, only inefficiently.
48. An aggravating factor is the risk to others that the defendant's conduct has caused, in that the accounts were filed at Companies House. There was a real risk that the inaccurate accounts (including the inaccurate amended accounts) would mislead those seeking to rely on them. There was no intention to mislead, however.

## **Sentencing Order**

1. Severe reprimand
2. Fine of £10,000
3. Costs in the sum of £10,799

The total amount of £20,799 is payable in twelve equal monthly instalments of £1,733.25, payable on the first day of each month, commencing on 1 March 2016.

## **Decision on publicity**

Publication with name.

<b>Non Accountant Chairman</b>	Mr Peter Williamson
<b>Accountant Member</b>	Mr Michael Barton
<b>Non Accountant Member</b>	Mr Ron Whitfield
<b>Legal Assessor</b>	Mr Dominic Spenser Underhill

**021221**

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**3 Mr Barry Rodney Sennett [FCA]**  
310A Woodstock Road, OXFORD, OX2 7NR

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 11 September 2015.

Type of Member                      Member

**Terms of Complaint**

1. Between 28 May 2009 and 31 December 2010 Mr B Sennett FCA in borrowing £95,800 from his then client, 'A' Ltd, failed to have regard to paragraph 280.3 of the Code of Ethics (then in force) which provides that a '... firm or principal in the firm should not receive from or make a loan to a client...'
2. Between 1 January 2011 and 4 January 2013 Mr B Sennett FCA in borrowing a further net £5,900 (total balance £101,700) from his then client, 'A' Ltd, failed to have sufficient regard to paragraph 280 of the Code of Ethics (effective from 1 January 2011) which required him to evaluate the significance of any threat to his objectivity and to apply safeguards to eliminate or reduce that threat to an acceptable level.
3. At a board meeting of the company on 25 May 2010 and on 26 May 2010, at an Annual General Meeting, Mr B Sennett FCA informed the directors of his then client, 'A' Ltd, that 'C' have outsourced £61k at the date of the balance sheet' when he knew this statement was misleading as he had personally borrowed that money.
4. Between 13 June 2011 and 4 July 2013 Mr B Sennett FCA failed to arrange for a legal charge to be put in place to secure loans made to him by the company as requested by the directors of his then client, 'A' Ltd, and agreed by him at a board meeting on 13 June 2011.
5. On 11 July 2012, at a board meeting, Mr B Sennett FCA informed the directors of his then client, 'A' Ltd, in respect of certain loans made to him by the company that these had been secured on a property he owned in Buckingham when he knew no such security existed.
6. Between 28 May 2009 and 29 December 2012 Mr B Sennett FCA wrongfully signed cheques to the value of £103,700 for the benefit of himself or 'C' when he had agreed not to sign cheques for his benefit or 'C' at a board meeting held on 26 June 2006.

If proven, the member may be liable to disciplinary action under Disciplinary Bye-law 4.1a '...in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy'

**Hearing Date**

11 September 2015

**Previous Hearing date(s)**

None

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

<b>Complaint found proved</b>	Yes
<b>All heads of complaint proven</b>	Heads 1-4 and 6 found proved; head 5 not proven
<b>Sentencing order</b>	a) Exclusion b) Costs of £14,000
<b>Procedural matters and findings</b>	
<b>Parties present</b>	Mr B Sennett Investigation Committee
<b>Represented</b>	The IC was represented by Ms Dix of ICAEW
<b>Hearing in public or private</b>	The hearing was in public. In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service.
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the Investigation Committee's bundle together with documents from Mr Sennett.
<b>Findings on preliminary matters</b>	The IC made an application for head 7 to be withdrawn. The tribunal accepted this such that the complaint to be just heads 1-6.

## Issues of fact and law

### Background

1. Mr Sennett was a founding partner in a firm of accountants called 'C'. There were four partners in the partnership. Whilst he was a principal in that firm, he was the engagement partner for the client 'A' Ltd. 'A' Ltd had been a longstanding client of 'C'. 'A' Ltd was set up by Mr 'B' and his brother and originally provided optician services via a number of shops in Oxfordshire and the surrounding area. Both brothers retired and the only remaining activity of the company was property rental. Mr Smith emigrated to Canada with his family in 1986 and 'C' took over 'A' Ltd's administration and book-keeping. Mr 'B' would attend the AGM in England until his death in 2008. Mr Sennett was then requested to travel to Canada in order to attend the AGM and Board meetings.
2. Mrs 'B' and Ms 'D' were the directors of 'A' Ltd at the material time of the actions which are the subject of this complaint. Mrs 'B' is the widow of Mr 'B' and is currently 93 years old. Mr Sennett would attend the AGM and Directors meeting at Mrs 'B's home address in Canada where both she and Ms 'D' were present. He would take the minutes for each meeting.
3. Mr Sennett was excluded from the partnership of 'C' on 4 January 2013. The partnership then converted into an LLP and now trades as 'C' LLP. Mr Sennett disputes that he was excluded but states that he resigned. The partners underwent mediation in July 2014 and a settlement was reached.
4. The partners excluded Mr Sennett for a number of reasons which were set out in a letter dated 19 December 2012. The main allegations were:
  - He had paid cheques for his own benefit from the 'A' Ltd bank account which he was not entitled to do.

- He had received an unsecured loan from 'A' Ltd and failed to account for this and not acted in the best interest of the client.
  - He had made a claim on his 2011 personal tax return for loan interest relief for the loan from 'A' Ltd which he was not entitled to claim as it was a personal loan.
5. 'C' had become aware that Mr Sennett had received an unsecured loan totalling £101,700 from 'A' Ltd. The receiving of such a loan prior to 1 January 2011 was a breach of paragraph 280.3 of the Code of Ethics. Section 280 of the Code of Ethics was revised with effect from 1 January 2011 enabling principals to receive a loan from a client providing that appropriate safeguards were in place.

### The Loan

6. Following the death of Mr 'B', Mr Sennett was requested to attend the AGM and directors meeting due to Mrs 'B's ill health. Ms 'D' states that it was in 2008 when she first recalls the suggestion by Mr Sennett of an alternative way of earning interest other than with the bank. She states that he suggested the money held by 'A' Ltd should be outsourced and would obtain a better return of 4-5% than the banks were offering. She states that the word "loan" was never used. She was of the belief that 'C' were outsourcing the money.
7. Mr Sennett prepared the financial statements for 'A' Ltd for the year ended 30 November 2009 and travelled to Canada in May 2010 to discuss these with Mrs 'B' and Ms 'D'. A board meeting was held on 25 May 2010 and the AGM was held on 26 May 2010.
8. Mr Sennett has provided a summary of amounts he withdrew from the bank account of 'A' Ltd, the first being on 25 May 2009. During the year ended 30 November 2009 Mr Sennett withdrew £61,000.

9. At the AGM on 26 May 2010 the above amount is referred to in paragraph 8. Mr Sennett drafted these minutes for Mrs 'B' and Ms 'D' and recorded that:

*'Deposit interest has reduced from £14,171 to £1,361 in the year ended 30 November 2009. This is mainly due to the fact that £200k of special dividends were approved in 2008 and 2009 reducing the cash position drastically after the sale of the Buckingham Street, Aylesbury property in 2008.*

*A further major factor is that since the credit squeeze starting in September 2008 the banks are offering very low interest rates. Barclays were offering only 0.1% on treasury deposits. Fixed term rates were up to 2.5%. Consequently 'C' have outsourced £61k at the date of the balance sheet at 4% variable (upwards) to obtain a better return.'*

10. The minutes of neither the board meeting nor the AGM confirm that Mrs 'B' and Ms 'D' were aware that such funds had been loaned to Mr Sennett. Ms 'D' in her statement states that at no point did Mr Sennett state that it was a personal loan or a loan to 'C'. He only used the term "outsourcing". The tribunal were clear that Mrs 'B' and Ms 'D' were under the impression at that point, that the amounts were being outsourced by 'C' and did not have knowledge that this represented a personal loan to Mr Sennett.
11. No interest on the loans made to Mr Sennett of £61,000 was accrued for in the financial statements and no payments for interest were made by Mr Sennett in this period. According to the schedules prepared by Mr Sennett (to dispute the amount of interest due to 'A' Ltd and for the purpose of the investigation), interest of £686.66 (£506.38 and £180.28) was due for this period. Mr Sennett's schedules

calculate interest at a simple rate of 4% for each withdrawal.

## Year ended 30 November 2010

12. Mr Sennett prepared the financial statements for the year ended 30 November 2010. It was brought to Mr 'E's (the managing and finance partner at 'C') attention by an anonymous employee that the minutes of the 2010 AGM referred to the loan being outsourced by 'C'. Mr 'E' discussed this with Mr Sennett who stated he would repay the loan from funds from the sale of his property, pension lump sum or one of his projects.
13. In a partners meeting on 10 June 2011 Mr Sennett was asked about the authenticity of the loan. Specifically he was asked to confirm that it was a personal loan and not a liability of the partnership which he did. Mr Sennett stated that he proposed to pay it back by selling his share in a Buckingham property. He stated that all of the directors and shareholders were fully aware that it was a personal loan. He was asked to obtain written authority for the loan at the next AGM (2 days later in Canada).
14. Mr Sennett travelled to Canada and attended the board meeting on 13 June 2011 and the AGM was on 15 June 2011.
15. During the year ended 30 November 2010 Mr Sennett withdrew a further £33,000 from 'A' Ltd's bank account.
16. The capital balance of the loan at 30 November 2010 was £94,000. In the financial statements, interest of £3,556 was accrued for. As such the balance of the loan in the accounts was £97,556. According to the schedules prepared by Mr Sennett, the correct amount of interest accrued to 30 November 2010 was £4,190.67. No capital or interest payments were made to 'A' Ltd in this period.
17. At the board meeting on 11 June 2011 the following was recorded:  
  
*'Income has risen because of the interest receivable as reported last year 'C' outsourced the loans at an interest rate of 4% as compared to 0.1% rate offered by Barclays. Fixed term rates up to 2.5% could be achievable. BRS [Mr Sennett] asked the directors if they were satisfied with this arrangement. If not the money would be repaid and invested in treasury deposits as was the previous practise. This would result in a drop of income of over £3,500. BRS said that if the loans of £94,000 were to be continued he would take over the loans personally and give 'A' Ltd security by means of a legal charge. If 'A' Ltd decided at anytime that they wanted repayment this would be put into operation. If bank interest rates are increased then that percentage will be added to the loans.*  
  
.....  
  
*The directors sanctioned the loans subject to a legal charge being put in place'*  
[emphasis supplied]
18. Between the date of the board meeting and the repayment of the loan on 4 July 2013 no legal charge was put in place by Mr Sennett. Ms 'D' states that Mr Sennett did make reference to a security being put in place and this involved a property in Buckingham. She was of the view that this was a security being provided by the outsourcers. She was not aware that the security was a property belonging to Mr Sennett. She accepts that she never saw any legal documentation with regards to this security.
19. Whilst between 13 June 2011 and 21 May 2013, Mr Sennett undertook steps to have his Buckinghamshire property valued and to attempt to sell his share, at no point was the security put in place. Mr Sennett's share in the property was sold on 21 May 2013.

## Year ended 30 November 2011

20. Mr Sennett prepared the financial statements for the year ended 30 November 2011 and travelled to Canada in July 2012. The board meeting and the AGM were held on 11 July 2012.
21. During the year ended 30 November 2011 Mr Sennett withdrew a further £9,600 from 'A' Ltd's bank account.
22. Mr Sennett also records a repayment of £2,000 on 3 April 2011. We understand that this was an offset against the fees due to 'C' rather than a cash repayment. Mr 'E' confirms that he was not authorised to do this. Therefore the capital balance due to 'A' Ltd at 30 November 2011 was £101,600. A further amount of £2,660 was accrued for interest. It isn't clear how this interest was calculated. The balance of the loan included within the financial statements (including interest) was £107,816. Mr Sennett recorded in the minutes of the board meeting and AGM that after the year end, 'C's fees of circa £9k had been offset against the loan as part repayment. Mr 'E' has stated this was also not authorised.
23. The minutes of the board meeting record the following:

*'..The loan is the responsibility of B R Sennett and is being secured on a rented our [sic] property at Buckingham'.*

The tribunal noted that the present tense was used. At the time of the meeting no security was in place for the loan and no steps had been taken to put it in place so this was in the tribunal's view misleading.

## Mr Sennett's Expulsion from Partnership

24. Mr Sennett requested a drawdown on 7 December 2012 of £2,000 to pay his credit card. Mr 'E' refused the request as cashflow was tight. He asked whether 'A' Ltd could settle some of the arrears of fees. Mr 'E' was suspicious that Mr Sennett would take the money from 'A' Ltd. The bank confirmed that Mr Sennett withdrew £2,000 on 7 December 2012 from the 'A' Ltd account by making a cheque out to 'cash'. Neither the directors nor the shareholders of 'A' Ltd gave authority for him to do so.
25. As a result of this the other partners of 'C' made a decision to expel him from the partnership. A letter was sent on 19 December 2012 informing him of their intention to call for a resolution at the partners meeting on 21 December 2012. As they had not provided enough notice the resolution was adjourned until 4 January 2013 when Mr Sennett was expelled from the partnership.
26. In that meeting Mr Sennett admitted to taking the £2,000 from 'A' Ltd he stated he "*had the right to administer it.*" He stated that the money was not drawdowns for fees but for "*expenses claimed but not paid.*" When asked whether he usually obtained permission from 'A' Ltd to draw cheques he stated he did but that on this occasion there was not time. When asked about the minutes referring to it being a 'C' loan he said "*those minutes are badly worded.*" He also stated that 'A' Ltd had sanctioned him to sign cheques to himself or 'C'.
27. Mr Sennett had been granted permission by 'A' Ltd to sign cheques for himself, in order to claim his expenses which were retrospectively agreed at each yearly AGM by the attendees.

## Year ended 30 November 2012

28. As Mr Sennett left the 'C' partnership in January 2013, Mr 'E' was appointed as the engagement partner and he was responsible for the preparation of the 2012 financial statements.
29. Mr Sennett's schedule records that the only amount he withdrew from 'A' Ltd's bank account during this year was £100 on 29 December 2012. This is after receiving the letter from 'C' informing them of their intention to expel him due to his conduct with 'A' Ltd. He considers that the final balance due to 'A' Ltd is £104,405.14. The balance is made up as follows:

Capital balance of loan	£101,700
Offset against 'C' fees	(£9,383.75)
Balance assumed to be interest	£12,088.89
TOTAL	£104,405.14

30. The AGM was held on 9 May 2013 in the UK and Mr 'E' attended. Mrs 'B' was too ill to travel from Canada but Ms 'D' attended. The two shareholders Mrs 'F' and Mr 'H' attended for the first time. Mr Sennett met with Ms 'D' prior to the AGM. Mrs 'F' was appointed a director at this meeting.
31. The minutes of the AGM record that the issue of the loan made to Mr Sennett was discussed at the AGM. Ms 'D' informed the other attendees that Mr Sennett had outsourced the company's cash deposits in 2009 to get a better rate of interest. Mrs 'F' asked whether it was a private loan and Ms 'D' confirmed it was. She said there were no terms of the loan and that Mr Sennett was meant to be organising some security on a property in Buckingham. She stated she had asked for a legal document each year but it had not been forthcoming. She was not aware that it was a personal loan or that it had not been secured against property.
32. Mr 'E' informed the attendees of the meeting that Mr Sennett had left 'C'. He explained that Mr Sennett had been offsetting 'C' fees against the loan which he was not authorised to do. Ms 'D' showed the attendees a note handwritten by Mr Sennett stating that the 2011 fee of £13,000 had two part payments made against namely: £2,000 and £3,198. Mr 'E' explained the cheques were not payable to 'C' and showed the copies of the cheques. The cheques for £2,000 being banked into Mr Sennett's bank account and the £3198 paid to Mr Sennett's solicitors. Ms 'D' stated she had believed he had invested the money in order to get a better rate and had not realised he had spent it privately.
33. Mr 'E' spoke with Ms 'D' after the AGM. She confirmed that Mr Sennett had never asked for permission to take money out of the account and never provided details of where the money was being invested.

## Correspondence with 'A Ltd' leading to loan repayment

34. On 29 May 2013 Mrs 'F' wrote to Mr Sennett in her capacity as a director of 'A' Ltd. She stated that she believed that the loan to Mr Sennett was unauthorised, not documented and unsecured. As such she demanded full repayment.

35. Mr Sennett responded on 10 June 2013 and confirmed that he would repay the loan by 30 June 2013. He anticipated that the balance due (including interest) at that date would be £103,973.04. The repayment was not made by 30 June 2013 and therefore Mrs 'F' chased payment on 2 July 2013. Mr Sennett paid 'A' Ltd £104,405.14 on 4 July 2013.
36. In a further letter dated 3 October 2013 Mrs 'F' raised queries regarding the amount repaid and the travel expenses claimed by Mr Sennett. Mr Sennett responded rejecting the points raised. No further amounts have been repaid by Mr Sennett.
37. The amounts within the complaint are taken from Mr Sennett's schedules. There is no complaint regarding the travel expenses as the AGM and board meeting minutes show that these had previously been approved by Mrs 'B' and Ms 'D'.

## Conclusions and reasons for decision

### First head of complaint

38. Prior to 1 January 2011 section 280.3 of the Code of Ethics prohibited principals from receiving loans from their clients. The first drawdown of the "loan" to Mr Sennett was on 28 May 2009. Mr Sennett has stated in his initial response to the complaint that he "*was not specifically aware of Rule 280.3 either in the pre-1 January 2011 or post- January formats, although I accept that ignorance of the law is no excuse.*"
39. Mr Sennett accepts that the loan was a personal loan. In his letter dated 18 July 2013 he states that the loans were "*in the commercial interest of both 'A' Ltd and myself.*" He is therefore in breach of section 280.3 by taking this loan during the period of 28 May 2009 and 31 December 2010. The total value of the amount borrowed during this period being £95,800.
40. Mr Sennett has admitted the particulars to this head of complaint.

### Second head of complaint

41. With effect from 1 January 2011 principals are permitted to receive a loan from a client providing that appropriate safeguards are in place.
42. In his letter dated 18 July 2013 he accepted he was not aware he had to provide appropriate safeguards but retrospectively identified the following safeguards:
  - The loan was to be his personal debt.
  - He had discussed the loan with his fellow partners on 10 June 2011.
  - It was not appropriate for him to withdraw from the engagement as he was a personal contact.
  - There was the opportunity of calling in the loan and investing in treasury deposits (meeting note 13 June 2011)
43. There is no evidence that Mr Sennett undertook to consider appropriate safeguards whilst he was in receipt of the loan or that on any objective basis there were appropriate safeguards in place. The fact that Mr Sennett was the engagement partner, had a longstanding relationship with the family and was the signatory on the bank account the risk to objectivity could be deemed as high. He therefore should have considered whether he should have continued as engagement partner or put appropriate safeguards in place.

44. Mr Sennett in his letter dated 7 January 2014 submitted that him not continuing as engagement partner “*would have been totally unacceptable to the directors.*” He stated the other safeguards would have been administratively cumbersome, raised unnecessary concern to the company and racked up extra unwanted costs. He stated that as he had paid the loan back when asked for repayment this evidenced that there were adequate safeguards in place.

### **Third head of complaint**

45. At a board meeting on 25 May 2010 and the AGM on 26 May 2010 Mr Sennett informed the Directors the money had been outsourced. It was noted in the minutes which he prepared “*‘C’ have outsourced £61k at the date of the balance sheet*”. Ms ‘D’ has confirmed that at no point did Mr Sennett state that it was a personal loan.
46. Mr ‘E’ has confirmed that the loan was not taken by ‘C’ and had refused the suggestion by Mr Sennett that ‘A’ Ltd were a credit option.
47. In his initial response to the complaint Mr Sennett stated:
- “I appreciate that the minutes for ‘A’ Ltd of 25 May 2010 and 13 June 2011 suggest that the loan was the partnerships responsibility whilst in reality it was mine. I am not aware why this discrepancy has arose but this is corrected to some extent in the note of 13 June 2011, which states “if the loans of £94,000 were to be continued he would take over the loans personally and give ‘A’ Ltd security by means of legal charge.”*
48. Mr Sennett attended a meeting on 30 April 2014 with the caseworker and legal advisor. When asked about the minutes stating that he had outsourced the loan to ‘C’ according to the caseworkers notes he stated that he could not recall whether he had informed the directors that ‘C’ had outsourced the funds to him personally.
49. According to Mr Sennett’s minutes of the meeting he “*rejected that he had misled the directors over the £61000 loans as he explained the reasons for the loans being made and that the terms were clearly beneficial to the company.*”
50. In a further letter dated 23 June 2014 Mr Sennett stated “*It was, in fact, ‘C’ who had authorised the loans and if after request the repayment had not been forthcoming then ‘C’ would have been liable to do so.*”

### **Fourth head of complaint**

51. The suggestion of a legal charge was first raised at the AGM on 11 June 2011. The minutes record “*BRS [Mr Sennett] said that if the loans of £94,000 were to be continued he would take over the loans personally and give ‘A’ Ltd security by means of a legal charge.*” No legal charge was put in place.
52. Mr Sennett accepted in his letter dated 7 January 2014 that he should have informed the Directors that there was no security in place; “*with the benefit of hindsight, I can see that this is what I should have done.*” In the meeting with the case manager Mrs ‘B’ on 30 April 2014 he provided evidence to show he had been in negotiations to sell his share in a property, which share would have been the subject of a charge. He stated that it was pointless putting a legal charge on the share in the property until the value had been agreed.

## Fifth head of complaint

53. The minutes of the 2012 AGM state “..*The loan is the responsibility of B R Sennett and **is being secured** on a rented our [sic] property at Buckingham*’. There was no legal charge at the time of the AGM.
54. In Mr Sennett’s minutes of the meeting on 30 April 2014 he denied that the minutes of the 2012 AGM suggested that a legal charge had been put in place but that he was to do so when he returned to UK. He explained he did not put one in place on his return as he had to sell his share in the property. He stated to “*infer otherwise is just an attempt to put a spin on the wording.*”
55. Mr Sennett has stated that he intended to put a security in place and has provided evidence to show that he had made enquiries with regards to his share in a property in Buckingham. It is clear from the minutes of the Directors Meeting on 13 June 2011 that the Directors only sanctioned the loan “*subject to a legal charge being put into place*”. Mr Sennett should have informed the Directors that a charge had not been put in place and obtained their authority to continue with the loan being unsecured. It was submitted by the Investigation Committee that he had clearly misled the directors at the board meeting on 11 July 2012 which stated “*The loan is the responsibility of B R Sennett and **is being secured** on a rented our [sic] property at Buckingham*”. Mr Sennett was the author of the minutes for this meeting.
56. The tribunal was of the view however that this particular head of complaint was not made out. Whilst a charge was not in the process of being secured, he had not, as the complaint asserted informed the directors that it had been secured. Thus, the exact wording of this particular head was not proven. That said, the tribunal was still of the view that the minutes did not accurately reflect the reality (ie: that the charge was not in the process of being secured) and that this formed part of the pattern of obfuscation and lack of frankness that characterised Mr Sennett’s relationship with his client.

## Sixth head of complaint

57. The minutes of the board meeting from 26 June 2006 state: “*any one signature is sufficient to sign a cheque. B.R. Sennett is not authorised to sign cheques to either ‘C’ or himself personally but can sign other cheques.*” Mr Sennett drew the £103,700 by writing cheques addressed to ‘cash’ which he then banked into his own account.
58. Mr Sennett confirmed in his letter dated 7 January 2014 that there was no written document post Mr ‘B’s death authorising him to write cheques to himself. He stated in the meeting on 30 April 2014 that it became impractical following Mr ‘B’s death. He stated that in hindsight it would have been better to have recorded that the 2006 minute was no longer appropriate or applicable.
59. In his letter dated 23 June 2014 Mr Sennett stated “*it was Mr ‘B’s death in my opinion nullified the minutes of 2006 on cheque signing and I already had the authority to sign all other ‘A’ Ltd Cheques.*”
60. The tribunal noted that contrary to Mr Sennett’s view, both Mrs ‘F’ and Mrs ‘D’ (Director and Secretary in 2014) were unaware of any change to the mandate of 2006 or any document evidencing it.

## Conclusions on overall complaint

61. In relation to head 1 Mr Sennett has accepted that he is in breach of the Code of Ethics. It is clear that in relation to head 2 that Mr Sennett did not evaluate the threat to his objectivity or apply appropriate safeguards. He was the engagement partner for the client

and signatory on the bank account. The threat to his objectivity was high. There were a number of appropriate safeguards that could have been put in place such as a second partner review of the accounts, the allocation of a second partner as signatory on the bank account, a loan agreement, informed consent from the Directors as to the initial loan and then each drawn down. In addition, what was required were a clear bank mandate and evidenced signing authority beyond those of 2006.

62. Mr Sennett should have ensured that any loans, the parties to those loans and their terms were in writing and formally approved by the 'A' Ltd Board of Directors.
63. Mr Sennett should either have put security in place or provided an explanation of how the loans could be repaid. On the basis that the deceased director had been cautious and only wanted cash investment, it is unlikely that an unsecured loan would have been acceptable to him. The property interest proposed as security would never have been adequate security as Mr Sennett only had a third share and it was a depreciating asset. The value of the property share was in fact worth less than the sums borrowed by Mr Sennett.
64. The fact that as stated, Mr Sennett intended to repay the loan and had potential resources was not in any shape or form a safeguard. Mr Sennett had in effect treated the client's funds as if client money, but without any of the industry standard checks and balances and regulatory controls placed upon client money.
65. Given the amounts involved and the length of time this spanned, this could not have been an inadvertent set of events. He was too close to the individuals in the client company and exercised too much control. He appeared to have no real understanding of the duties placed upon chartered accountants in these circumstances. He did not have a frank relationship with the client and indeed the Tribunal did not find his evidence on his perception of the risks to his objectivity and his communications with the client to be credible.
66. Mr Sennett's actions were very likely to have brought discredit on himself, the profession of chartered accountancy and the Institute. He was accordingly in breach of Disciplinary Bye-law 4(1)(a).

### **Matters relevant to sentencing**

67. Mr Sennett did not have a prior disciplinary record. He put forward points in mitigation as follows:
  - a) There had been no complaints from 'A' Ltd until Mr Sennett's firm had intervened
  - b) He had thought the restrictions on personal loans only applied in relation to an audit client.

The tribunal did not consider these proper points of mitigation and gave them no weight. It was incumbent on Mr Sennett to be aware of the professional requirements placed upon him. The 'A' Ltd directors and shareholders were clearly displeased with the situation when made aware of the true facts.

68. The tribunal was of the view that the aggravating features in relation to this matter were:
  - a) These were deliberate acts for the purposes of personal advantage.
  - b) Whilst 'A' Ltd were arguably profiting from the preferential interest rate (although an unsecured loan could have expected to earn more in the market), there had

been negatives for the client in that they had to pay a penalty on the late corporation tax and also the charges paid for the cash cheques.

- c) That the systematic long term abuse of the relationship with the client was over a very extended period of time and included misleading statements to the AGMs and Directors.
- d) The amounts involved were very considerable
- e) This was a breach of trust
- f) There was no effort to repay the monies due until he was actually found out and here remain issues as to the calculation of interest paid.
- g) Lack of insight into the seriousness and implications of the breaches.

69. Given the seriousness of these matters, the tribunal was of the view that no lesser penalty than exclusion was warranted. The tribunal reduced the costs award against him on the basis that head 5 was not proven and head 7 had been withdrawn.

### **Sentencing Order**

70. The tribunal took into account its *Guidance on Sentencing* and imposed the following sanction:

- a) Exclusion
- b) Costs award of £14,000.

### **Decision on publicity**

71. Publicity with names.

**Chairman** Mr David Wilton FCA

**Accountant Member** Mr Martin Ward FCA

**Non Accountant Member** Mr Nigel Dodds

**Legal Assessor** Ms Melanie Carter

**013088**

**4**      **Bharat Shah & Co** of  
786 London Road, Thornton Heath, Surrey, CR7 6JB

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 9 February 2016**

**Type of Member**                      Firm

**Terms of complaint**

That Bharat Shah & Co failed to submit to ICAEW the results of external cold file reviews of two audits, including 'A' LLP (year end 30 April 2012), by 30 November 2013 in breach of conditions imposed by the Audit Registration Committee, as confirmed by a letter dated 13 September 2013.

1.      Bharat Shah & Co is therefore liable to disciplinary action under Disciplinary Bye-law 5.1b.

**Hearing date**

09 February 2016

**Previous hearing date**

None

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

**Complaint found proved**    Yes, by admission.

**All heads of complaint proven**    Yes.

**Sentencing order**    (i) Reprimand; (ii) Fine of £3,000

**Procedural matters and findings**

**Parties present**    Mr Bharat Shah was present.

**Represented**    Mr Bharat Shah represented his firm, Bharat Shah & Co. The Investigation Committee (IC) was represented by Theresa Thorp.

**Hearing in public or private**    The hearing was in public.

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

**Documents considered by the tribunal** The tribunal considered the documents contained in the IC's bundle, and written representations made by Mr Bharat Shah.

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

1. The defendant is a firm whose sole principal is Mr Bharat Shah. The firm is licensed by, and registered to conduct audit work with ICAEW. One of the defendant's audit clients was 'A' LLP, which was a distributor of Iranian petroleum and fuel products which apparently has a turnover of approximately £31 million.
2. The defendant had given an undertaking in 2011 to the Audit Registration Committee (ARC) pursuant to audit regulation 2.08 *"to continue to have cold file reviews done by another firm for the foreseeable future"*.
3. The defendant failed to comply with this undertaking by conducting audit work without having external cold file reviews undertaken in respect of it.
4. On 15 February 2013, ICAEW's Quality Assurance Department (QAD) conducted a "desk top review" of the defendant and discovered that the defendant had conducted audit work without any external cold file review.
5. On 7 August 2013, the ARC imposed a condition on the defendant's audit registration that it could continue provided that it submitted, by 31 October 2013, the results of the next two cold file reviews, to include at least two audits. One of those audits had to be of 'A' LLP for the year ended 30 April 2012. That condition was confirmed in writing in a letter dated 13 September 2013.
6. The defendant was granted an extension of time from 31 October 2013 to 30 November 2013 to submit these results but he failed to submit them. Eventually, the defendant submitted the results of one cold file review on 27 June 2014, but not the second. As at the date of preferring the complaint on 16 October 2015, the results of the second review had not been supplied.

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

7. There were no issues of fact or law to determine because the complaint was admitted.
8. The tribunal found the complaint proved on admission.

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

9. The defendant has admitted to breaching a condition imposed on its audit registration, namely, failing to supply the results of two cold file reviews of two audits by the time specified by ICAEW. This is not merely clerical maladministration. The reason why the condition was imposed arose out of concern about the defendant's audit work; this is the origin of the undertaking referred to in paragraph 2 of this decision. The purpose of that undertaking, and the purpose of the subsequent obligation to submit of files for cold file review, was to enable ICAEW to monitor the standard of audit work which the defendant was producing. The defendant's failure to allow ICAEW to do this meant that the standards of audit work could not be monitored by the defendant's regulator. This is a serious matter and is not acceptable conduct.

## **Matters relevant to sentencing**

10. The tribunal has had regard to the *Guidance on Sentencing* and saw no reason to depart from that. It was satisfied that no lesser penalty than the one imposed was appropriate.
11. The defendant has a previous disciplinary record. The first item on that record was the breach of audit regulation 2.08 which is referred to in this decision. The defendant agreed to pay a fine of £3,000. The tribunal has disregarded this item, as it comprises part of the current complaint and it would not be fair to do so. The second item on the record was a consent order dated 7 October 2014 in which the defendant was severely reprimanded and fined £7,125. It was also ordered to pay costs in the amount of £2,717. The reason for the consent order was a breach of Audit Regulation 3.10, as an audit the defendant had carried out had not been conducted in accordance with International Standards on Auditing (UK & Ireland) 500. The tribunal has taken this item into account, but given it marginal weight as matters complained of in the current complaint took place before the consent order was made. The tribunal has noted, however, that concerns about the defendant's audit work characterise that matter, as they do this one.
12. A mitigating factor was the defendant's apology and admission of the complaint. Aggravating factors are the length of time beyond 30 November 2013 to supply the results of one cold file review and the continued failure to produce the results of the other.

## **Sentencing Order**

2. Reprimand
3. Fine of £3,000
4. Costs of £2,750

The total sum of £5,750 is payable in twelve monthly instalments. The first instalment, due on 1 April 2016, is in the amount of £525.00. The remaining eleven instalments of £475.00 are due on the first day of each subsequent month.

## **Decision on publicity**

Publication with name.

<b>Non Accountant Chairman</b>	Mr Peter Williamson
<b>Accountant Member</b>	Mr Martin Ward FCA
<b>Non Accountant Member</b>	Mr Nigel Dodds
<b>Legal Assessor</b>	Mr Dominic Spenser Underhill

**024562**

**5 Mr Jamie Atherton of**  
4 Kimberlands, Northlew, Okehampton, EX20 3NQ.

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 February 2016**

**Type of Member** Provisional Member

**Terms of complaint**

1. On 28 September 2007 Mr Jamie Atherton used threatening, abusive or insulting words or behaviour against Mr A with the intent to cause Mr A to believe that violence would be used against him.
2. On 29 March 2009 Mr Jamie Atherton assaulted Mr B.
3. On 9 July 2010 Mr Jamie Atherton assaulted:
  - a) Mr C; and
  - b) Mr D

Mr Atherton is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(a).

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

**Hearing date**

16 February 2016

**Previous hearing date(s)**

None

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

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** No sanction

**Procedural matters and findings**

**Parties present** Jamie Atherton

**Represented** The IC was represented by Ms Joester of ICAEW

<b>Hearing in public or private</b>	The hearing was in public
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the IC's bundle together with documents from the defendant

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

17. Mr Atherton is a provisional member who disclosed criminal convictions upon his application to become a provisional member (December 2014).
18. The convictions disclosed relate to incidents which occurred before Mr Atherton was admitted as a provisional member, and consist of one conviction for the use of threatening words/behaviour, and three convictions for assault occasioning actual bodily harm.

### **First head of complaint**

19. Mr Atherton has declared that he has been convicted of an offence contrary to section 4 of the Public Order Act 1986. The Investigation Committee has received confirmation of this conviction, which is contained in the Memorandum from the Magistrates Court. Case four in that memorandum refers to this conviction.
20. Because of the age of the offence there is limited information available from the Court regarding the circumstances. However, the Memorandum shows that the conviction was for an offence which took place on 28 September 2007, and involved the use of threatening, abusive or insulting words or behaviour towards another, with intent to cause him to believe immediate unlawful violence would be used against him.

### **Second head of complaint**

21. The second head of complaint relates to an incident which occurred on 29 March 2009, and for which Mr Atherton was convicted of assault occasioning actual bodily harm.
22. Again, because of the age of the offence there is limited information available regarding the circumstances, but the conviction is confirmed in the Memorandum received from the Magistrates Court, and appears at Case one.

### **Third head of complaint**

23. The final head of complaint relates to an incident which occurred on 9 July 2010, and for which Mr Atherton was convicted of two counts of assault occasioning actual bodily harm.

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

24. The tribunal found the complaint proven on the defendant's own admission.
25. Mr Atherton has been convicted of three offences of assault occasioning actual bodily harm. The convictions are conclusive evidence under Disciplinary Bye-law 7.1 of the commission by him of the acts complained of in the second and third heads of complaint. Mr Atherton's conviction under section 4 of the Public Order Act is not conclusive evidence under Disciplinary Bye-law 7 because the offence is not indictable. It is however prima facie evidence of the facts found, under Disciplinary Bye-law 7.3(b). Given the defendant's admission in relation to this complaint, the tribunal found the complaint proven.

26. By reason of his above mentioned behaviour Mr Atherton has committed acts likely to bring discredit upon himself, ICAEW and/or the profession of accountancy, and is therefore in breach of Disciplinary Bye-law 4(1)(a).

### **Matters relevant to sentencing**

27. Mr Atherton did not have a prior disciplinary record. He addressed the tribunal in mitigation and made the following points:

- a) The offences happened prior to his attempts to better himself and all when he had been a much younger man. He had left school at 16 years old, had had a difficult childhood and had fallen in with the 'wrong crowd'.
- b) He has been to prison, completed his probation period and now is looking to go down a career that is worth pursuing.
- c) He presented two testimonial letters: one from his probation officer and one from a local police officer. Both attested to his having turned his life around.
- d) He had admitted convictions to AAT; they looked into and eventually accepted his application. His employer who is also aware of the convictions has put him through the qualifications so far and he is continuing with his training and studying.
- e) He now has a stable family background.

28. The tribunal took into account its *Guidance on Sentencing*.

29. The tribunal was told that an application had been made for provisional student membership in December 2014. At that stage, the applicant was required to declare any previous convictions. The normal procedure then is that any such convictions are then referred to the Investigation Committee and thereby if appropriate to the tribunal. The tribunal was concerned about how long this matter had been hanging over his head. He had declared the convictions at the appropriate time and was clearly building a career for himself and attempting to put his past behind him. On this basis it decided that there should be no sanction and no order as to costs.

### **Decision on publicity**

30. Publicity with names.

<b>Non Accountant Chairman</b>	Mr Peter Williamson
<b>Non Accountant Member</b>	Mr Nigel Dodds
<b>Accountant Member</b>	Mr Ian Walker FCA
<b>Legal Assessor</b>	Ms Melanie Carter

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**027315**

**6 Mr Robert Franz Keller ACA of**  
367b Church Road, Frampton Cotterell, Bristol, BS23 2AQ

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 February 2016**

**Type of Member** Member

**Terms of complaint**

Mr R F Keller ACA failed to provide by 10 September 2015 the information, explanations and documents requested in a letter dated 26 August 2015 issued under Disciplinary Bye-law 13

Mr Robert Franz Keller is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(c).

**Hearing date**

16 February 2016

**Previous hearing date(s)**

None

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

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** a) Severe reprimand;  
b) Fine of £2,700;  
c) Costs of £1,574

**Procedural matters and findings**

**Parties present** Mr Keller  
The Investigation Committee (IC)

**Represented** The IC was represented by Ms Dix of ICAEW

**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 bundle together with documents from the defendant

## Issues of fact and law

31. Mr Keller has one complaint being investigated against him arising from a referral by the Practise Assurance Committee on 22 October 2014. Mr Keller was corresponding with the Case Manager initially until May 2015 when he failed to respond to letters or requests for information. Mr Keller failed to respond to a DBL 13 notice sent on 26 August 2015 requesting information by 10 September 2015.
32. The heads of complaint being investigated are:
- (a) Between 28 February 2014 and [to date] Mr Robert Keller ACA failed to provide a response in writing to issues notified to him on 7 February 2014 following a QAD visit as required by Practice Assurance Regulation 15.
  - (b) Between 29 July 2014 and [to date] Mr Robert Keller ACA failed to provide a full response to a letter from the secretary to the Practice Assurance Committee contrary to Practice Assurance Regulation 8.
  - (c) Mr Robert Keller ACA failed to notify ICAEW of the appointment a director of Keller Accountancy Services within 10 business days.
  - (d) Mr Robert Keller ACA incorrectly allowed his firm, Keller Accountancy Services Ltd to use the description 'chartered accountants' when it was not entitled to do.
  - (e) Mr Robert Keller ACA failed to accurately complete 7 annual returns of his firm, Keller Accountancy Services Ltd.
  - (f) Mr Robert Keller ACA failed to comply with a written assurance that he would carry out an annual Clients' Money compliance review.
33. Mr Keller provided answers to most of the questions on 8 January 2016. One matter remains outstanding but these relate to cheques which need to be clarified with his bank (and these go back to 2008).
34. Disciplinary Bye-Law 13 provides:

*'(1) The Investigation Committee shall have the power by notice served on any member...to call for any such information, such explanations and such books, records and documents as the Committee considers necessary to enable it or the head of staff to perform its of his functions under these bye-laws.*

*(2) It shall be the duty of any person or body on whom a notice is served under paragraph (1) to comply with it within a period of fourteen days beginning with the date of service or such longer period as the Investigation Committee may allow'*

## Conclusions and reasons for decision

35. The tribunal found the complaint proven on the defendant's own admission.
36. Mr Keller has failed to respond to requests for information following a referral by the Practice Assurance Committee. QAD had undertaken a visit and identified several areas of concern. Mr Keller initially provided information but then failed to respond from May 2015 to date. He did not respond to the DBL 13 notice and therefore is in breach of disciplinary bye-law 13. This means in turn that he is in breach of Disciplinary Bye-law 4(1)(c).

### **Matters relevant to sentencing**

37. Mr Keller did not have a prior disciplinary record. He addressed the tribunal in mitigation and made the following points:
- a) There had been a series of personal events involving friends and family and also professional matters at work which he had elaborated upon at the hearing which cumulatively meant that he did not deal with things as he should.
  - b) He has since dealt with all the matters outstanding and there is clearance from all Departments in ICAEW (other than in relation to the cheques) that all requests are up to date.
38. The tribunal took into account the above mitigation. It was important that members cooperated with investigations into disciplinary matters. ICAEW's role in maintaining standards within the profession relied upon this and this was a core requirement of membership.

### **Sentencing Order**

39. The tribunal took into account its *Guidance on Sentencing* and decided to impose the following sanction:
- a) Severe reprimand;
  - b) Fine of £2,700;
  - c) Costs of £1,574.

### **Decision on publicity**

40. Publicity with names.

<b>Non Accountant Chairman</b>	Mr Peter Williamson
<b>Non Accountant Member</b>	Mr Nigel Dodds
<b>Accountant Member</b>	Mr Ian Walker FCA
<b>Legal Assessor</b>	Ms Melanie Carter

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**030116**

**7 Mr Ian Ryder Marchant Ousey** of  
Bridge House, Petersfinger Road, Salisbury, Wiltshire, SP5 3BY

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 February 2016**

**Type of Member** Member

**Terms of complaint**

Between 30 October 2008 and 30 November 2012, Mr I R M Ousey ACA, whilst Company Finance Officer of 'A' Ltd, dishonestly raised 11 false invoices to make a personal gain of £224,754.

Mr Ian Ryder Marchant Ousey ACA is therefore liable to disciplinary action under Disciplinary By-law 4.1a

**Hearing date**

16 February 2016

**Previous hearing date(s)**

None

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

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** Exclusion from membership

**Procedural matters and findings**

**Parties present** Mr Ousey  
The Investigation Committee (IC)

**Represented** Ms Dix of ICAEW represented the IC

**Hearing in public or private** The hearing was in public

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

**Documents considered by the tribunal** The tribunal considered the documents contained in the IC's bundle together with documents from the defendant

## Issues of fact and law

41. On 6 October 2014 Mr Ousey pleaded guilty and was convicted of fraud by abuse of position, contrary to sections 1 and 4 of the Fraud Act 2006. On 14 November 2014 Mr Ousey was sentenced to 40 months imprisonment. This was reduced on appeal to 32 months on 8 May 2015.
42. The particulars of the offence are that whilst employed as the Chief Financial Officer at 'A' Ltd between 30 October 2008 and 30 November 2012 Mr Ousey dishonestly raised 11 false invoices making a personal gain of £224,754. Mr Ousey has admitted the facts of the complaint in a signed witness statement served upon ICAEW by his solicitors.
43. The Investigation Committee rely upon his conviction for fraud as conclusive evidence that he dishonestly obtained a personal gain of £224,754.

## First head of complaint

44. Mr Ousey was employed as the Chief Financial Officer of the entire 'A' Ltd group of companies worldwide. He was the most senior officer with responsibility for the management of the group's financial affairs. Mr Ousey had risen to this position through 23 years of service to 'A' Ltd. Prior to the discovery of the fraud Mr Ousey entered into a Compromise Agreement following redundancy on 18 January 2013, agreeing to cease his duties on 27 March 2013 and then be placed on garden leave for 12 months.
45. This matter was first reported to ICAEW in July 2013 by 'C' LLP acting on behalf of 'A' Group Ltd. The report stated that a total of £715,045 had been misappropriated. They stated that this included false invoices, unauthorised credit card expenses and unauthorised employee benefits. His employers confirmed that they had commenced civil proceedings to recover the proceeds of his fraudulent conduct and a freezing order was granted on 9 May 2013. By way of a settlement agreement Mr Ousey repaid £1,247,475 from his pension entitlement and a further £164,586. This included his employer's legal costs and interest.
46. Mr Ousey self-reported the matter on 29 November 2013 via his solicitors. He served a witness statement admitting the offence he was charged with and also admitting making unauthorised credit card expenses and unauthorised employee benefits. Due to the seriousness of this conviction the Investigation Committee has not sought to bring further heads of complaints dealing with his admissions regarding his expense claims.
47. In April 2013 Mr Ousey was requested to attend a meeting with HR with regard to a French credit card which his employer was not aware of. He attended a meeting on 11 April 2013 with the HR Director. In this meeting he accepted the unauthorised use of the credit card. In his witness statement he accepted using this card between 1996-2013. Mr Ousey was served with court proceedings on 10 May 2013 in relation to his fraudulent conduct. His employment contract was terminated on 17 May 2013 for gross misconduct.

48. His employer had instructed 'B' and 'C' LLP to investigate his conduct. Their investigation obtained evidence to suggest that Mr Ousey had fraudulently submitted 11 invoices between 30 October 2008 and 30 November 2012 to 'A' Ltd from a non-existent entity which purported to be a consultancy firm. The evidence suggested that he approved these false invoices and used the funds to acquire/construct/run a property in Portugal for his own personal use, the total value of these invoices being €284,391 purportedly from 'D' with an address in Portugal. An investigation into Mr Ousey's computer showed that he had created the false invoices on his drive. His employer was of the opinion that he had used the name 'D' as it was similar to a genuine contractor 'E' Limited to give his invoices authenticity.
49. This misconduct forms the basis of his conviction and the sole head of the complaint. Mr Ousey in his witness statement accepts that he prepared a false contract which purported to be between a Portuguese consultant and his employer. He accepts that he created false invoices under that contract on his work computer. The bank account details on these invoices were for a developer in Portugal as he was in the process of purchasing a villa.
50. Mr Ousey states that his "*dishonest behaviour did start in a small way and escalated as I became used to the extra income and benefits.*" In 2008 Mr Ousey was awarded a bonus totalling £400,000 after tax. He used this bonus towards the mortgage of his family home and to purchase a holiday home in Portugal. In his statement he details the problems he encountered in purchasing this holiday home which resulted in him creating the false invoices. He has accepted in a further letter that his actions fell below the standards expected and he deeply regrets his actions.
51. His employers referred the matter to the police and Mr Ousey was subsequently charged with the offence of fraud by abuse of position in relation to the 11 invoices. He pleaded guilty at the earliest opportunity and was sentenced initially to 40 months imprisonment. Mr Ousey appealed the sentence and it was reduced to 32 months on 8 May 2015.

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

52. The tribunal found the complaint proven on the defendant's own admission.
53. The conviction for fraud by abuse of position is conclusive evidence of an act or default likely to bring discredit on Mr Ousey, the Institute or the profession of accountancy for the purposes of Disciplinary Bye-law 4.1a.

### **Matters relevant to sentencing**

54. The defendant did not have a prior disciplinary record. Mr Ousey made the following points in mitigation:
  - a) He greatly regretted his actions. The reason for his actions were that he had got into financial difficulty whilst having a holiday home developed. It had not been premeditated or thought through and was a response to financial pressures.
  - b) He had intended to repay at an earlier stage, but he was then made redundant. He had since repaid in full the amounts taken.
  - c) He had fully cooperated with this employers, the police and the Institute.
  - d) He had only just been released from prison and has a further period of this sentence to run.
  - e) He informed the tribunal as to his financial circumstances.

55. The tribunal took into account aspects of his mitigation (restitution, remorse and cooperation), but were of the view that this was outweighed by the aggravating features. These were the other matters admitted by Mr Ousey concerning expenses which involved over £400,000, the reputational damage to his employer, his direct involvement in the fraud which was for a very large amount of money and, finally, that it was for his own personal gain.
56. The tribunal considered these matters to be at the most serious end of misconduct. Mr Ousey's dishonest conduct called into question his fitness to remain a member of ICAEW. He was employed in the most senior position of responsibility in his company and his actions were a serious breach of trust. The public are entitled to have complete confidence in the integrity and honesty of those within the profession – his conduct greatly undermines that confidence. His continued membership was incompatible with the standing of the profession and nothing short of exclusion from membership was therefore warranted.

### **Sentencing Order**

57. The tribunal took into account its *Guidance on Sentencing* and excluded him from membership. Although not formally part of the sentencing order, the tribunal recommended that no application for re-admission be entertained for a period of at least ten years from the date of this order. No order was made for costs.

### **Decision on publicity**

58. Publicity with names.

<b>Non Accountant Chairman</b>	Mr Peter Williamson
<b>Non Accountant Member</b>	Mr Nigel Dodds
<b>Accountant Member</b>	Mr Ian Walker FCA
<b>Legal Assessor</b>	Ms Melanie Carter

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015848

## APPEAL COMMITTEE PANEL ORDERS

8 **Mr Sandeep Kundi** of  
11 Navigation House, Whiting Way, LONDON, SE16 7EG.

**A panel of the Appeal Committee made the decision recorded below having heard an appeal on 10 February 2016**

**Type of Member** Provisional Member

**Date of Disciplinary Tribunal Hearing** 21 October 2016

**Date of Appeal Panel Hearing** 10 February 2016

### **Terms of complaint found proven before the Disciplinary Tribunal**

1. Mr S Kundi failed to act in accordance with paragraph 150.1 of Part A of the Code of Ethics in that he used inappropriate language and/or language likely to cause offence in an email sent to his colleagues Mr 'A' and Ms 'B' dated 26 April 2013 by writing the following:

*'Literally doing my right bolluck in!....total CUNT! Even the poor junior is about to cry and getting fed up! I've already said to her - its fine, wait till 4.30pm then answer review and go home!'*

2. On 26 April 2013 Mr S Kundi acted dishonestly in that he told his colleague Ms B that he had not sent his email to Mr 'A' and Ms 'B' dated 26 April 2013 to anyone else when he knew this was incorrect.

3. On 7 May 2013 Mr S Kundi acted dishonestly in that he told his colleague Ms 'C' that he had not sent his email to Mr 'A' and Ms 'B' dated 26 April 2013 to anyone else when he knew this was incorrect.

4. On 7 May 2013 Mr S Kundi acted dishonestly in that he told his colleague Ms 'C' that he thought his laptop had been taken on 26 April 2013 when he knew this was incorrect.

Mr Sandeep Kundi is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(a)

### **Sentencing Order**

Mr Kundi was declared unfit to become a member and was ordered to pay costs of £4,574.

**Appeal against finding?** Yes

**Appeal against Sentencing order?** Yes

**Appeal against Costs**

Yes

**Decision of Appeal Panel**

The appeal against the finding was dismissed. The appeal against the sentencing order was allowed in part and the appeal against costs dismissed. No order for costs in relation to the appeal

The sentencing order was varied to substitute a severe reprimand for the declaration of unfitness to be a member

**Procedural matters and findings**

- 1 The Appellant attended in person: Ms Dix represented the Investigation Committee
- 2 The hearing was in public
- 3 There was no relevant preliminary application

**Grounds of appeal**

- 4 Mr Kundi appealed against the findings of dishonesty on the ground that he considered that it was disproportionate to treat the lies he had undoubtedly told to his employers in the same light as dishonesty involving financial fraud
- 5 Mr Kundi appealed against sentence on the ground that declaring him unfit for membership was disproportionate to the gravity of the offence.

**Decision**

- 6 The appeal against the findings and the appeal against costs were dismissed.
- 7 The appeal against sentence was allowed in part by substituting a severe reprimand for the order declaring the Appellant unfit to be a member of the Institute.
8. As the appeal had been partly successful no order was made as to the costs of the appeal.

**Reasons for decision**

- 9 On the first complaint, the appellant admitted sending the offensive email to his superior. The Appeal panel, like the Disciplinary Committee did not accept that the offensive comments related to some girlfriend with whom he had had a disagreement. While making every allowance for the fact that the Appellant felt himself stressed at the time, exacerbated by being required to do further work on the audit he was engaged on, and for the fact that a group of young junior or trainee staff may readily use language which would appear inappropriate to their seniors, nevertheless the tone and content of the email went well beyond what is acceptable in a trainee aspiring to membership of the Institute. Consequently the appeal against the finding on the first complaint was rejected.

- 10 With regard to the appellant's frequent lies told to colleagues and superiors which form the subject-matter of the second, third and fourth complaints, the appellant readily admitted both that he did tell these lies and that lying is not conduct to be expected of a trainee accountant. Again, the panel made every allowance for the fact that, having got himself into trouble with the offensive email, the appellant to some extent panicked and tried to lie himself out of his difficulties while in fact digging himself in deeper. The panel also takes the point that lies in these circumstances do not constitute dishonesty in the same category as fraudulent conduct designed for gain. That said, though not at the most serious end of dishonesty, lies of this kind cannot be overlooked: the findings against the appellant by the Disciplinary Committee in relation to these three complaints were neither disproportionate and nor unjustified. Accordingly the appeal against the findings in respect of complaints two, three and four was also dismissed.
- 11 With regard to the costs below, there was no doubt that those costs had been increased by the fact that the Appellant had not communicated with the Institute for several months prior to the Disciplinary Committee hearing and did not attend the hearing itself. The Investigation Committee had thus to assemble and prove its case. In the circumstances the costs awarded did not appear disproportionate to the amount of work involved. This appeal, which was not pressed by the appellant, was also dismissed.
- 12 With regard to sentence, the panel took the view that the Disciplinary Committee had been too harsh in considering the appellant unfit for membership. The incident appears to have been an isolated incident, occurring at a time of stress where the appellant had 'blown his top' and committed an act which he later regretted. Realising the seriousness his employers placed on the incident, he panicked and tried to lie his way out of it. The incident seems to have been out of character and it was severely punished at the time. The appellant's employers undoubtedly over-reacted to the incident and used the opportunity to dismiss him summarily. The Appellant was able to find new employment and expressed his strong desire to finalise his training and be admitted as an accountant. Bearing in mind the Appellant's relative youth and his obvious regret, the Panel felt that the case could properly be dealt with by a severe reprimand.
- 13 As the appeal had been partially successful, the Panel felt it right to make no order as to the costs of the appeal itself.

<b>Chairman</b>	Mr Richard Mawrey QC	
<b>Accountant Member</b>	Mr Jon Dennis	
<b>Accountant Member</b>	Mr Dave Hales	
<b>Non Accountant Member</b>	Professor Susan Bassnett	
<b>Non Accountant Member</b>	Mr Geoff Baines	<b>018035</b>

**9 Mr Rodney Owen Channon BSc ACA of**  
The Mill, Balls Corner, Kingsteignton Road NEWTON ABBOT, DEVON, TQ12 2QA.

**A panel of the Appeal Committee made the decision recorded below having heard an appeal on 23 February 2016**

**Type of Member** Member

**Date of Disciplinary Tribunal Hearing** 14 & 15 October 2014

**Date of Appeal Panel Hearing** 23 February 2016

**Terms of complaint found proven before the Disciplinary Tribunal**

**The first complaint**

The first complaint is that Mr Rodney Owen Channon is liable to disciplinary action under Disciplinary Bye-law 4.1a:

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

because:

Mr R O Channon ACA when sole principal of Channon and Co and director of ‘A’ Ltd, improperly prepared statutory accounts for that company for the years ended 31 December 2005 that were materially misleading in that:

- a) The accounts filed at Companies House failed to disclose related party transactions and;
- b) The accounts filed at Companies House failed to disclose loans to directors.

**The second complaint**

The second complaint is that Mr Rodney Owen Channon is liable to disciplinary action under Disciplinary Bye-law 4.1a:

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

because:

Mr R O Channon ACA when sole principal of Channon and Co and director of ‘A’ Ltd, improperly prepared statutory accounts for that company for the years ended 31 December 2006 that were materially misleading in that:

- a) The accounts filed at Companies House failed to disclose related party transactions and;
- b) The accounts filed at Companies House failed to disclose loans to directors.

### **The third complaint**

The third complaint is that Mr Rodney Owen Channon is liable to disciplinary action under Disciplinary Bye-law 4.1a:

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

because:

Mr R O Channon ACA when sole principal of Channon and Co and director of ‘A’ Ltd, improperly prepared statutory accounts for that company for the years ended 31 December 2007 that were materially misleading in that:

- a) The accounts failed to disclose related party transactions and;
- b) The accounts failed to disclose loans to directors.

### **The fourth complaint**

The fourth complaint is that Mr Rodney Owen Channon is liable to disciplinary action under Disciplinary Bye-law 4.1a:

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

because:

Mr R O Channon ACA when sole principal of Channon and Co and director of ‘A’ Ltd, improperly prepared statutory accounts for that company for the years ended 31 December 2008 that were materially misleading in that:

- a) The accounts failed to disclose related party transactions and;
- b) The accounts failed to disclose loans to directors.
- c) The accounts failed to disclose an investment in a subsidiary company, ‘B’ Ltd.

### **The fifth complaint**

The fifth complaint is that Mr Rodney Owen Channon is liable to disciplinary action under Disciplinary Bye-law 4.1a:

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

because:

Mr R O Channon ACA when sole principal of Channon and Co and director of ‘A’ Ltd, improperly prepared statutory accounts for that company for the years ended 31 December 2009 that were materially misleading in that:

- a) The accounts failed to disclose related party transactions and;

- b) The accounts failed to disclose loans to directors.
- c) The accounts failed to disclose an investment in a subsidiary company, 'B' Ltd.

### **The seventh complaint**

The seventh complaint is that Mr Rodney Owen Channon is liable to disciplinary action under Disciplinary Bye-Law 4.1a

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

because:

Mr Rodney Owen Channon wrongly filed statutory accounts for the 'A' Ltd for the years 2008 and 2009 which had not been the subject of an audit as required by Companies Act 1985 and 2006.

### **The eighth complaint**

The eighth complaint is that Mr Rodney Owen Channon is liable to disciplinary action under Disciplinary Bye-Law 4.1a

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

because:

Mr R O Channon ACA improperly provided draft accounts for the years 2005, 2006 and 2007 for the 'A' Ltd to potential investors which materially overstated the financial position of the company.

### **The ninth complaint**

The ninth complaint is that Mr Rodney Owen Channon is liable to disciplinary action under Disciplinary Bye-law 4.1a:

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

because:

Mr R O Channon ACA, contrary to section 280.3b of the Code of Ethics, loaned monies to clients of his firm, the dates, amounts and clients concerned being:

- a) on 18 November 2006, £40,000; on or about 28 February 2007, £44,000; on or about 18 April 2007, £30,000 to 'C';
- b) on 8 March 2010 £20,000 to Mr and Mrs 'D' of 'F' Ltd;
- c) on or about 8 April 2010 £20,000; on or about 19 April 2010 £10,000 to 'E' Ltd.

### **Sentencing Order of the DC**

Heads 1-5 and 7-9 found proved

Severely reprimanded, fined £20,000 and ordered to pay costs of £20,000

<b>Appeal against finding?</b>	Yes
<b>Appeal against Sentencing order?</b>	No
<b>Appeal against Costs</b>	Yes
<b>Decision of Appeal Panel</b>	Both appeals dismissed with costs

### **Procedural matters and findings**

- 1 The Appellant did not attend: Ms Joester represented the Investigation Committee
- 2 The hearing was in public
- 3 No relevant preliminary application was made

### **Grounds of appeal**

- 4 The appellant appealed against the finding of the Disciplinary Committee on the eighth complaint alone. He alleged that the finding that the documents concerned were draft accounts and the finding that they were misleading were contrary to the evidence.
- 5 The appellant appealed against the order for costs made against him by the Disciplinary Committee on the ground that it was unfair to make him pay costs when the proceedings against him had been very protracted and he should have been awarded his own costs.
- 6 As far as could be ascertained from the letter standing as the appellant's grounds of appeal, the Appellant appeared to appeal against the entire proceedings against him on the ground that he was the victim of a witch-hunt/conspiracy by ICAEW in general and in particular by Mr 'G' (an accountant authorised to sit on the Disciplinary Committee but otherwise completely unconnected with the proceedings).
- 7 The panel was satisfied that the letter giving notice and grounds of appeal did not challenge either the findings of the Disciplinary Committee that the remaining seven complaints had been proved nor did it challenge the imposition of a severe reprimand and a fine. Thus the Panel accepted in the Appellant's favour that he had not put sentence in issue in the appeal.

### **Decision**

- 8 The appeal against the finding on the eighth complaint was dismissed
- 9 The appeal against the order for costs made by the Disciplinary Committee was dismissed
- 10 The Appellant is ordered to pay the Investigation Committee's costs of the appeal assessed at £3,107 and the costs of providing a written transcript of the Panel's oral decision at the hearing.
- 11 Copies of the transcript are to be sent to the Appellant and to Mr and Mrs 'H' who are to be at liberty to communicate its contents as they consider appropriate.

## Reasons for decision

- 12 The appeal against the findings in relation to the eighth complaint was entirely devoid of merit when lodged. The evidence before the Disciplinary Committee was overwhelming that the documents to which the complaint related were, quite obviously and on their face, draft professional accounts for 'A' Ltd, a company of which the appellant was also a director, a substantial shareholder and, apparently the company secretary. Those documents had clearly been presented to potential investors as draft accounts whose credibility was obviously enhanced by the fact that they had been prepared by a member of the Institute.
- 13 The panel considered the finding that those draft accounts had been seriously misleading for the investors was unanswerable. By stating potential assets as if they were actual assets, the documents mis-stated the true financial position of the company.
- 14 Thus, if the appellant had submitted no documents in relation to the appeal, the Panel would have concluded that the decision of the Disciplinary Committee was indubitably correct and that the appeal was without merit.
- 15 As it was, the appellant saw fit to put in a number of documents which included the consent order made in the High Court action brought by Mr and Mrs 'H' and seven other claimants, of which the Disciplinary Committee had had only the pleadings. This order showed that, far from the proceedings having been amicably settled on the basis of a misunderstanding having been cleared up, which was how the appellant had presented it to the Committee, the fact was that the appellant had submitted to a judgment on liability in the action and for damages to be assessed. Those damages were substantial and payments on account were to stretch over several years. In short the appellant had agreed to a judgment being signed against him on the basis that he had been professionally negligent and guilty of misrepresentation in respect of (*inter alia*) the very accounts which were the subject of the eighth complaint. The fact that Mr and Mrs 'H' had withdrawn their complaint to ICAEW (which the appellant had argued meant that the Institute's proceedings against him should also have been withdrawn) was explained by the fact that this had been a term of the order, rather than a spontaneous change of heart by Mr and Mrs 'H'.
- 16 The panel took a grave view of the state of affairs disclosed by these further documents. They showed that the appellant had grossly misled the Disciplinary Committee in a manner which verged on the dishonest. It also showed that the appellant's protestations of innocence made before the Committee and the Panel cannot have been made in good faith as the appellant knew (which the Committee did not) not only that the substance of the eighth complaint had been admitted by the appellant in the High Court action but he that had voluntarily submitted to judgment on the basis that the complaint was well founded. Furthermore the appellant's conduct throughout the lengthy investigation had been (at the lowest) disingenuous and had materially contributed to the length of the proceedings at which he had complained in the costs appeal.
- 17 The suggestion that the appellant was the victim of a witch-hunt and/or conspiracy by the Institute or Mr 'G', the panel treated as being (to be kind) delusionary. No such witch-hunt or conspiracy existed. The appellant is unequivocally the author of his own misfortunes.
- 18 In the circumstances the panel had no hesitation in characterising the appeals as not simply hopeless but actually impertinent. The appeals were dismissed.

- 19 In the light of the appellant's behaviour and, in particular his behaviour before the Disciplinary Committee, the panel was greatly exercised as to whether the sentence should stand or whether the matter should be remitted to the Committee to consider the question of exclusion of the appellant. In the event and with much reluctance, the panel decided that, as the appellant had wisely not put sentence in issue in the appeal, was not present at the hearing and had not been notified of any potential reconsideration of and increase to his sentence, coupled with the length of time that both the original proceedings and the appeal had taken to be heard, it would not be fair to the appellant to take this course but the appellant may consider himself fortunate. The panel considered that it would be appropriate for him to pay for a transcript and for such a transcript to be made available to the investors he had (on his own admission) misled.
- 20 The panel considered that an order for payment of the Investigation Committee's costs of the appeal was inevitable and it was also appropriate for the Appellant to pay the cost of the transcript.

<b>Chairman</b>	Mr Richard Mawrey QC	
<b>Accountant Member</b>	Mr Jon Dennis FCA	
<b>Accountant Member</b>	Mr Richard Lea FCA	
<b>Non Accountant Member</b>	Ms Ruth Todd	
<b>Non Accountant Member</b>	Professor Susan Bassnett	<b>006679</b>

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## INVESTIGATION COMMITTEE CONSENT ORDERS

### 10 KPMG Audit plc

Consent order made on 3 March 2016

With the agreement of KPMG Audit plc of 15 Canada Square, London, E14 5GL. UK, the Investigation Committee made an order that the firm be reprimanded, fined £2,000 and pay costs of £7,005 with respect to a complaint that:

1. That KPMG Audit plc issued the following audit reports to the Financial Services Authority in respect of X Limited's compliance with the Client Asset Sourcebook (CASS):

Period ended	Date of firm's audit report
14 January 2006	30 April 2006
14 January 2007	1 August 2007
30 April 2007	1 August 2007
30 April 2008	29 August 2008
31 December 2008	29 April 2009
31 December 2009	30 April 2010

when the audits had not been conducted with regard to the applicable version of APB's Practice Note 21, *The audit of investment business in the United Kingdom* in that the firm failed to properly document the nature, timing and extent of procedures performed to support:

- a. The decision not to qualify its audit opinions in respect of X Limited's breach of CASS 5.5.63 and CASS 5.5.65 concerning a £854,000 difference on the client account; and
  - b. The decision not to qualify its audit opinions in respect of X Limited's failure to comply with CASS 5.5.69 by reference to individual clients.
2. That on 1 August 2007, KPMG Audit plc issued an audit report to the Financial Services Authority in respect of X Limited's compliance with the Client Asset Sourcebook (CASS) for the year ended 14 January 2007 when insufficient testing had been carried out to enable the firm to be satisfied that X Limited was in compliance with the rules in CASS 5 (except CASS 5.2 and CASS 5.6) as at 14 January 2007 as KPMG Audit Plc did not test the internal client money reconciliation that immediately preceded 14 January 2007.

005974

## 11 Mr X

Consent order made on 4 March 2016

With the agreement of a member, the Investigation Committee made an order that the member be reprimanded, fined £2,300 and pay costs of £1,355 following the finding of a prima facie case with respect to a complaint that:

1. Mr X in an email sent on 22 August 2008 to ICAEW following a QAD visit provided an assurance that he was taking steps to ensure his firm was complying with the Money Laundering Regulations (the regulations) in stating that action was being taken, that he had started a review of all existing clients to ensure compliance with the regulations and he expected to complete this before 31 December 2008 but at a QAD visit on 18 December 2012 he was unable to provide any evidence of compliance with the regulations.
2. From 18 December 2012 to 20 May 2013, Mr X failed to register his firm as a data controller in accordance with the requirements of Section 18 of the Data Protection Act 1998.
4. From 12 January 2013 to 17 June 2013, Mr X failed to respond to the Quality Assurance Department's Closing Record of Findings in accordance with regulation 15 of the Practice Assurance Regulations.

The Committee directed that the member should not be identified by name or location when the order is publicised.

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015484

## 12 Mr X

Consent order made on 4 March 2016

With the agreement of a member, the Investigation Committee made an order that the member be reprimanded, fined £1,500 and pay costs of £1,272 following the finding of a prima facie case with respect to a complaint that:

1. Mr X failed to comply with Practice Assurance Regulation 15 by failing to provide a response in writing, within 15 business days of receipt, to the following requests for information and documentation:
  - a. an email request dated 3 January 2014 and chasing email dated 16 January 2014 from the QAD reviewer for further information about the company structure of Y Ltd;
  - b. an email request dated 16 January 2014 from the QAD reviewer for the attachments Mr X referred to in his email dated 13 January 2014 but failed to attach; and
  - c. a letter dated 17 March 2014 from the Practice Assurance Committee secretary enclosing the QAD report and requesting comments on the issues raised in it:  
regarding issues raised following a QAD visit.
2. Between 1 July 2008 and 17 December 2013 Mr X used the description 'Chartered Accountants' to describe his firm, Y Ltd, when he was not entitled to do so as Ms Z did not hold affiliate status as required by regulation 6 of the Regulations governing the use of the description 'chartered accountants'; and general affiliates of ICAEW.

The Committee directed that the member should not be identified by name or location when the order is publicised.

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021826

### **13 Mr Andrew Stewart Campbell ACA**

Consent order made 14 March 2016

With the agreement of Mr Andrew Stewart Campbell of 3 Kings Acre, Bowdon, Altrincham, Cheshire, WA14 3SE, the Investigation Committee made an order that he be severely reprimanded, fined £10,000 and pay costs of £1,943 with respect to a complaint that:

1. Mr A S Campbell ACA was a member of X LLP, a firm in public practice which entered into administration on 30 December 2010.
2. Mr A S Campbell ACA while a member of X LLP demonstrated by his behaviour that he was unfit to be a director of a company. Full particulars of the matters alleged to have rendered him unfit are set out in the 'matters of unfitness' on the schedule to the undertaking given by Mr Campbell under the Company Directors Disqualification Act 1986 and signed by him on 19 May 2014.

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**006533**

### **14 Mr John William Atkinson FCA**

Consent order made on 14 March 2016

With the agreement of Mr John William Atkinson of First Floor, Gloucester House, Clarence Court Rushmore Hill, Orpington, Kent, BR6 7LZ, the Investigation Committee made an order that he be reprimanded, fined £1,150 and pay costs of £1,505 with respect to a complaint that:

1. Between 1 April 2008 and 30 July 2014 Mr J W Atkinson FCA failed to notify clients, in writing, of the basis on which fees will be rendered as required by paragraph 240.2b of The Code of Ethics.
2. Between 1 April 2008 and 30 July 2014 Mr J W Atkinson FCA failed to ensure that all new clients are informed in writing of the name of the principal to be contacted if they wish to make a complaint and the client's right to complain to ICAEW contrary to Disciplinary Bye-law 11.1.
3. Between 4 May 2011 and 30 July 2014 Mr John Atkinson FCA, on behalf of his firm, failed to obtain a letter from the bank confirming the trust status of his firm's client bank account in breach of Clients' Money Regulation 9b.

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**025572**

## **15 K N Shah & Co**

Consent order made on 21 March 2016

With the agreement of K.N. Shah & Co of 60 Bell Lane, Hendon, London, NW4 2AE, the Investigation Committee made an order that the firm be severely reprimanded and pay costs of £1,143 with respect to a complaint that:

In 2009, 2010, 2012, 2013 and 2014 K N Shah & Co failed to carry out cold file reviews contrary to Audit Regulation 3.20 which requires a firm to monitor, at least annually, how effectively it is complying with the Audit Regulations.

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**027714**

## **16 Mr Kanubhai Shah FCA**

Consent order made on 21 March 2016

With the agreement of Mr Kanubhai Nagindas Shah of 60 Bell Lane, Hendon, London, NW4 2AE, the Investigation Committee made an order that he be severely reprimanded, fined £4,000 and pay costs of £1,143 with respect to a complaint that:

1. Mr Kanubhai Shah FCA inaccurately completed the 2009, 2010 and 2012 annual returns for his firm, X & Co, as he stated that the firm had completed cold file reviews during the period covered by the return when this was not the case.
2. Mr Kanubhai Shah FCA inaccurately completed the 2013 and 2014 annual returns for his firm, X & Co, as he stated that the firm had completed an Annual Compliance Review (ACR) during the period covered by the return when this was not the case.

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**027604**

## REGULATORY DECISIONS

### AUDIT REGISTRATION COMMITTEE

#### ORDER – 20 JANUARY 2016

##### 17 Publicity statement

Haines Watts, Bridge House, Ashley Road, Hale, Altrincham, Cheshire, WA14 2UT, has agreed to pay a regulatory penalty of £6,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breaches of 3.10 and 6.06 for:

- completing a listed-audit engagement without first ensuring the Engagement Quality Control Reviewer (EQCR) had confirmed and documented that the review-points had been cleared and that there were no unresolved matters; and
- failing to comply with a previous written undertaking given to the Audit Registration Committee that it would not complete any listed-audit engagements without first obtaining confirmation from an EQCR that all review points had been cleared.

030835

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#### ORDER – 20 JANUARY 2016

##### 18 Publicity statement

The LK Partnership LLP, Rowan House, Hill End Lane, St Albans, Hertfordshire, AL4 0RA, has agreed to pay a regulatory penalty of £1,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Audit Regulations 2.03a, 2.11d and 6.06 in that the firm failed to ensure a corporate member, appointed in 2014, had audit affiliate status; and for the inaccurate completion of its 2014 annual return.

029325

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#### ORDER – 2 MARCH 2016

##### 19 Publicity statement

Bacha & Bacha (Audit) Limited, Stirling House, 107 Stirling Road, London, N22 5BN, has agreed to pay a regulatory penalty of £1,000 which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Audit Regulation 3.01 in that an entity, ultimately owned by one of the firm's principals, acted as company secretary to one of the firm's audit clients for two years.

030574

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## ORDER – 2 MARCH 2016

### 20 Publicity statement

Gittins Limited, 28 Salop Road, Oswestry, Shropshire, SY11 2NZ, has agreed to pay a regulatory penalty of £2,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Audit Regulations 3.16c and 6.06 in that the firm issued audit reports using an unregistered trading name and for the inaccurate completion of its 2010-2015 annual returns.

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**031614**

# INSOLVENCY LICENSING COMMITTEE

## ORDER – 28 JANUARY 2016

### 21 Publicity statement

On 28 January 2016, the Insolvency Licensing Committee ordered:

Mr Stephen Phillip Lancaster

Formerly of

Howlan Debt Solutions  
The Old Post Office  
1 Southbank Street  
Leek  
Staffordshire  
ST13 5LS

insolvency licence be withdrawn with effect from 23 February 2016 under Regulation 5.12(d) of the *Insolvency Licensing Regulations and Guidance Notes*.

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**032657**

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