



DISCIPLINARY ORDERS AND REGULATORY DECISIONS

Date published: 5 April 2017

Disciplinary orders

Disciplinary Committee tribunal orders

1	Mr Ernest Wayne Pulman [FCA]	2
2	Mr Dhananjay Ramanlal Pandya [FCA]	7
3	Mr Sean Joseph Fox ACA	11
4	Mr Sean Joseph Fox ACA	17

Cessation of Membership

5	List of members who have been cessated from membership	22
---	--	----

Probate Committee

6	Clarke Bell Limited	22
---	---------------------	----

DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mr Ernest Wayne Pulman [FCA]

11 Axis Court, Mallard Way, Swansea Vale, SWANSEA, SA7 0AJ.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 11 January 2017

Type of Member Member

Terms of complaint

On dates between February 2010 and February 2012 Mr Ernest Wayne Pulman FCA;

- a. Conspired with others to make untrue or misleading representations to 'A', namely that fee funding in respect of credit agreement for the provision of services by 'B' Limited related to genuine documents, duly authorised;
- b. Knowingly remained party to the carrying on of the business of 'B' Limited for a fraudulent purpose;
- c. Conspired with others to steal funds held in accounts for the credit of 'C' Limited and 'B' Limited.

Mr Pulman is therefore liable to disciplinary action as follows: Disciplinary Bye-law 4.1.a - "in the course of carrying out his 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 January 2017

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) exclusion
b) costs order of £3,300

Procedural matters and findings

Parties present	The Investigation Committee (IC)
Represented	Mr James Francis 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.
Findings on preliminary matters	The tribunal decided to proceed in the defendant's absence. He had indicated in writing that he was aware of the date of the hearing and did not intend to attend. In all the circumstances, the Tribunal decided to proceed.

Issues of fact and law

1. On 5 December 2014 after a contested Jury trial at Cardiff Crown Court the defendant was found guilty of the following three offences.
 - (a) Conspiracy to commit fraud by false representation contrary to Section 1(1) Criminal Law Act 1977 and Section 1 & 4 Fraud Act 2006;
 - (b) Fraudulent trading contrary to Section 993(1) Companies Act 2006; and
 - (c) Conspiracy to steal contrary to Section 1(1) Criminal Law Act 1997 and Section 1 Theft Act 1984.
2. On 16 January 2015 His Honour Judge Crowther QC sentenced the defendant to three years, six months imprisonment. On sentence the judge summarised the prosecution case and made sentencing remarks.
3. The criminal offences arose from the following facts.
4. 'A' offered a credit facility allowing customers to subscribe to 'B' Limited. This enabled 'B' Limited to receive a full annual fee (paid by 'A') while customers pay monthly direct debits to 'A'.
5. On 26 February 2007 Mr 'D' signed an agreement between 'E' and 'A' forging his wife's signature. The agreement was to the effect that:
 - (a) Customers of 'E' who used 'A' paid a monthly direct debit to 'A';

- (b) On receipt of the first direct debit, 'A' paid the full annual fee to 'B' Limited; and
 - (c) These payments would be directed away from the 'B' Limited to support other entities.
6. The conspirators realised that 'B' Limited could renew the contracts of the customers who used the 'A' credit facility without the customers agreement. This resulted in 'A' paying 'B' Limited the full annual fee while the customer would be asked to pay the initial direct debit. If customers complained 'B' Limited would offer a refund of the initial direct debit to delay discovery.
 7. In August 2009 the defendant was engaged as the external accountant for 'B' Limited. He came to advise his clients (the co-conspirators) to expand and later sell their company. His remuneration was to be a percentage of the sale price of the company. The services provided by the defendant were initially legitimate.
 8. From June 2011 there was a decline in 'B' Limited legitimate business. This resulted in greater reliance on the fraud described above. The Judge estimated that, by this point, the legitimate income of the company was around 10% of its takings. The defendant took a greater role in the company, providing assurance to those customers who complained about the early renewal of their credit agreements. He sat next to a co-defendant while they forged signatures on renewal contracts. He actively attempted to sell the company as a going-concern despite being in full knowledge of the respective worthlessness of the company, even negotiating a greater percentage of the sale price as a reward. Ultimately the sale did not take place and the company entered compulsory liquidation.

Conclusions and reasons for decision

9. The tribunal found the complaint proven both on the defendant's own admission and further to Disciplinary Bye-law 7.1. This states:

"The fact that a member...has, before a court of competent jurisdiction, pleaded guilty to or been found guilty of an indictable offence... shall for the purposes of these bye-laws be conclusive evidence of the commission by him of such an act or default as is mentioned in bye-law 4.1.(a)"
10. The defendant has been found guilty of three indictable offences. Those findings constitute conclusive evidence of the behaviour underlying the conviction which, by this bye-law, constitutes misconduct pursuant to bye-law 4.1(a).
11. On sentence His Honour Judge Crowther QC said the defendant forgot his principles and succumbed to greed. The judge concluded he assisted his co-conspirators in removing funds from the ailing company in order to secure it for their future use. Total losses were in the region of £400,000 to £750,000.
12. A confiscation order in the sum of £20,455.40 was made against the defendant. In order to make a confiscation order under the Proceeds of Crime Act 2002 a court needs to be satisfied that the defendant has benefitted from criminal conduct.
13. Relying on Disciplinary Bye-law 7.1, the Tribunal found that there was conclusive evidence of the commission by the defendant of an act for the purposes of Disciplinary Bye-law 4(1)(a). The Tribunal found the complaint proven.

Matters relevant to sentencing

14. The defendant did not have a prior disciplinary record.
15. In defendant's Regulation 13 form sent in shortly before the hearing, the defendant wrote:
"I did not set out to commit fraud. I was not involved in the fraud. I was proved to be aware of the fraud. I did not profit to the extent of one party from the fraud. I loaned the company involved £20,000 and it was repaid to me. The judge considered the repayment to be inappropriate and ordered me to repay £20,000 under the Proceeds of Crime legislation".
16. The defendant had also set out matters he said to be relevant to sentencing in his letter of 24 March 2017 but which the tribunal considered were overall neutral in effect (neither aggravating nor mitigating).
17. Mindful of the defendant's letters and the representation above, the tribunal considered the operation of Disciplinary Bye-law 7.4 such that a finding by a criminal court is prima facie evidence of the facts found. As the representations of Mr Pulman which contradicted the findings of the criminal court were assertions and not supported by any evidence, the Tribunal took the view that the effect of Disciplinary Bye-law 7.4 was such that the tribunal was entitled to find those facts as found by the court.
18. In light of the confiscation order, the tribunal decided not to impose a financial penalty.
19. The matters upon which this complaint was founded however were of such seriousness that no lesser penalty than exclusion was warranted. The defendant's conduct fell far below the standards that the public expected of chartered accountants and was incompatible with his continued membership of the Institute.
20. The tribunal decided not to recommend a minimum period of exclusion from membership, but made clear that save in the most exceptional circumstances, Mr Pulman would be unlikely ever to be readmitted.

Sentencing Order

21. The Tribunal took into account the ICAEW *Guidance as to Sentencing* and also the defendant's statement as to his financial circumstances as well as the defendant's representations on penalty and costs.
22. It ordered that the defendant be excluded from membership and pay costs of £3,300. The IC itself had decided to reduce the amount of costs claimed and the Tribunal went on to make a further reduction in the award of costs.

Decision on publicity

23. Publicity with names.

Non Accountant Chairman

Mr Peter Williamson

Accountant Member

Mr Michael Barton FCA

Non Accountant Member

Ms Martha Maher

Legal Assessor

Ms Melanie Carter

025484

2 Mr Dhananjay Ramanlal Pandya [FCA]
Porch House, Little Raveley, HUNTINGDON, PE28 2NQ.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 17 January 2017

Type of Member Member

Terms of complaint

On 18 and 19 July 2015, Mr D R Pandya FCA assaulted Mrs Pandya by beating her.

Mr Dhananjay Ramanlal Pandya is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a in that in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy.

Hearing date

17 January 2017

Previous hearing date(s)

None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order (i) Exclusion.
(ii) Costs in the sum of £3261.50.

Procedural matters and findings It was decided that the hearing should proceed in the absence of the defendant.

Parties present The Investigation Committee ("IC").

Represented The IC was represented by Mr James Francis.

Hearing in public or private The hearing was in public.

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

Documents considered by the tribunal The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle (together with skeleton arguments on behalf of the IC)

Findings on preliminary matters

Mr Pandya did not attend the hearing and had not provided any notification of whether he did or did not intend to attend.

The tribunal considered the witness statement of Sarah George, her letter to Mr Pandya of the 2 November 2016 and subsequent correspondence. The tribunal was satisfied as to service.

The tribunal considered whether it should exercise its discretion to proceed with the hearing in the absence of Mr Pandya.

Having considered all the circumstances and in particular noting that:-

- No application to postpone had been made;
- That it was unlikely that an adjournment would encourage attendance
- That there is no dispute as to facts which requires resolution;

The tribunal decided that the hearing should proceed in the absence of Mr Pandya.

Issues of fact and law

1. On 20 July 2015 the defendant was convicted of two offences of Common Assault at the Huntingdon Magistrates' Court.
2. The offences related to acts of violence perpetrated by the defendant on his wife, at the marital home, on the 18 and 19 July 2015. The facts are contained within the witness statement of the defendant's wife, the defendant's interview with the police and the contents of a probation report obtained to sentence the defendant.
3. The IC relies on the facts found in the criminal proceedings. The 3 October 2016 Disciplinary Bye-laws (DBL) at DBL 7.4.b state:

A finding of fact...in any civil or criminal proceedings before a court of competent jurisdiction in the United Kingdom...shall for the purposes of these Bye-laws be prima facie evidence of the facts found.

As the defendant pled guilty and the court accepted that plea, the IC submits that the court has found the facts contained in the police witness statements of the defendant and his wife and those facts are therefore prima facie evidence in these proceedings.

4. In her witness statement the defendant's wife says she and the defendant have been married since August 1974. On the 18 July 2015 they had been out shopping and returned home between 1330 and 1430. At home the defendant could not find a receipt for the shopping and began to blame her for putting it away. The defendant eventually found the receipt and came towards her sniggering. He punched her several times to the face and back of the head. He also struck her on her back. While doing so he was calling her a 'fucking cow' and 'a bitch' repeatedly. Mrs Pandya explains it was a sustained assault that continued for around 15 to 20 minutes.
5. The following morning Mrs Pandya reported the matter to the police. She told the defendant she was going to the Hospital. He asked her to go back to bed and when she refused he slapped her on the left hand side of her head.
6. Mrs Pandya's injuries were a bruise on her cheek and a very sore thumb which she believed to be broken but which was subsequently found to be bruised.
7. Mrs Pandya says that the defendant has hit her throughout their married life. The defendant says that he has slapped her on 4 or 5 occasions. The defendant accepted in police interview that he slapped Mrs Pandya four or five times to the face and back of the head. He denied punching her. He also accepted slapping her after she refused to return to bed.
8. The defendant's pre-sentence report states that the defendant was assessed as posing a medium risk of serious harm to his wife.
9. The IC submits that the defendant has committed acts likely to bring discredit on himself, the Institute or the profession of accountancy.
10. The IC accepts that the defendant's conduct as set out above was not 'in the course of carrying out his professional work'. However, it is otherwise conduct which is sufficiently deplorable to be likely to bring discredit.
11. In R (on the application of Remedy UK Ltd) v. General Medical Council [2010] EWCH 1245 (admin) Elias LJ stated:

Misconduct is of two principal kinds. First it may involve sufficiently serious misconduct in the exercise of professional practice...Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur outwith the course of professional practice itself, but which brings disgrace upon the [professional] and thereby prejudices the reputation of the profession.

**

Conduct falls into the second limb if it is dishonourable or disgraceful or attracts some kind of opprobrium; that fact may be sufficient to bring the profession of [accountancy] into disrepute. It matters not whether such conduct is directly related to the exercise of professional skills.

12. The IC submits that these assaults were disgraceful conduct, unbecoming of a professional accountant. Domestic violence is not to be tolerated, even among the general population. It is dishonourable or disgraceful for a professional man to beat his wife. Such conduct is taken seriously by the judicial system. Such seriousness is reflected in the defendant's sentence of imprisonment, albeit that sentence was suspended to allow the defendant to receive rehabilitation in the community.

13. The IC submits that the formal complaint should be found proved.

Conclusions and reasons for decision

14. The tribunal concluded that:-

- (i) The facts in the case are established by the defendant's convictions and by the statements provided;
- (ii) It is apparent that conduct of the nature which occurred in this case is open to a finding of discredit (see in particular R (on the application of Remedy UK Ltd v General Medical Council [2010] EWHC 1245);
- (iii) The tribunal find that the defendant's conduct was shameful or disgraceful, that it was serious, bringing disgrace upon the defendant and thereby sufficient to bring the profession into disrepute. Accordingly, the tribunal finds the defendant to be in breach of Disciplinary Bye-law 4.1.a.

Matters relevant to sentencing

- 15. The tribunal considered the *Guidance on Sanctions*. The starting point in respect of an offence of this nature is exclusion.
- 16. The tribunal view the physical assaults by the defendant on his wife as very serious conduct and note that the incidents which were the subject of these convictions were not isolated acts even on the defendant's own evidence. Furthermore the nature of the offences is such that right thinking people would view such conduct as shameful.
- 17. The tribunal have noted the defendant's clean prior record, his submissions and his co-operation with the relevant authorities. However, it is the decision of the tribunal that the defendant's behaviour has been discreditable to such a degree that he shall be excluded from membership.

Sentencing Order

- (i) Exclusion;
- (ii) Costs in the sum of £3261.50.

Decision on publicity

There should be publication of this decision.

Chairman

Ms Mary Kelly

Accountant Member

Mr Philip Coleman FCA

Non Accountant Member

Mrs Jane Rees

Legal Assessor

Mr John Trotter

031839

3 Mr Sean Joseph Fox ACA of
Flat 3 Pear Tree Court, Turners Place, Holmer Green, High Wycombe, HP15 6RL.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 18 January 2017

Type of Member Member

Terms of complaint

1. Mr S J Fox ACA advised his client on 2 December 2013, 12 December 2013 and 16 January 2014 that he had submitted the accounts for 'A' LLP for the year ended 31 March 2013 to Companies House when he knew that this was incorrect
2. Mr S J Fox ACA advised his client on 18 July 2014 and 6 August 2014 that he had submitted the accounts for 'A' LLP for the year ended 31 March 2014 to Companies House when he knew this was incorrect
3. Mr S J Fox ACA failed to prepare and submit to HMRC partnership and self-assessment tax returns as follows:
 - a. For 'A' LLP for the tax year 2013/14 due by 31 January 2015;
 - b. For Mr 'B' for the tax year 2013/14 due by 31 January 2015
 - c. For Mrs 'B' for the tax year 2013/14 due by 31 January 2015.

Mr Sean Joseph Fox is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.a for heads of complaint 1 and 2 and Disciplinary Bye-law 4.1.b for head of complaint 3

4.1.a..."in 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"

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

Hearing date

18 January 2017

Previous hearing date(s)	None
Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes
All heads of complaint proven	Yes
Sentencing order	(i) Severe reprimand; (ii) fine of £4,000

Procedural matters and findings

Parties present Mr Sean Fox was not present.

Represented	Mr Fox was not represented. The Investigation Committee (IC) was represented by Mr James Francis.
Hearing in public or private	The hearing was in public.
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service. The tribunal exercised its discretion to proceed in the absence of the defendant.
Documents considered by the tribunal	The tribunal considered the documents contained in the IC's bundle together with a skeleton argument prepared by Mr Francis.
Preliminary procedural matter	Pursuant to Disciplinary Committee Regulation 31, the tribunal exercised its discretion to hear this complaint at the same hearing as the complaint against Mr Fox with number 029649 ("49"). The two hearings were therefore concurrent.

The Investigation Committee's (IC's) case

1. The defendant is the sole director and shareholder of a company called Fox Reynard Limited which provides accounting services to the public. As the sole director and shareholder of Fox Reynard, and for current purposes, the defendant and his company are in effect one and the same. One of its clients was a company called 'A' LLP which is owned by Mr 'B' and his wife. 'A' LLP has a financial year end of 31 March.
2. Since February 2011, the defendant was responsible for filing 'A' LLP's partnership accounts and tax returns and Mr and Mrs 'B's tax returns.

First head of complaint

3. 'A' LLP's accounts for the financial year ended 31 March 2013 had to be filed on or by 31 December 2013. The defendant was responsible for doing this on 'A' LLP's behalf.
4. On 2 December 2013, Mr 'B' was told by the defendant that the accounts had been filed. It appeared they had not been, however.
5. On 12 December 2013, the defendant told Mr 'B' in an email that he would send a further copy of the accounts to Companies House. Mr 'B' queried what had happened to the original set of accounts (which he thought had been filed) and was told by the defendant that he was investigating and would find out.
6. The Companies House deadline of 31 December 2013 to file 'A' LLP's accounts passed but no accounts were filed.
7. On 16 January 2014, Mr 'B' told the defendant that no accounts had been filed. The defendant replied in an email on the same day that they had been filed on 13 December [2013] and said that he would file a further copy on 17 January 2014.

8. On 17 January 2014, Mr 'B' told the defendant that he had been in touch with Companies House and was told that no accounts had been filed on 13 December [2013], contrary to what the defendant had said.
9. Mr 'B' requested an update on 27 January 2014, informing the defendant that Companies House would have provided him with a reference number. No reply was received and Mr 'B' chased on 30 January 2014; he expressed his disappointment and asked the defendant to pay the late filing fee himself.
10. On 30 January 2014, the defendant responded with an apology, an explanation that he had been "ridiculously busy" and an agreement to pay the late filing fee; he told Mr 'B' that a paper copy of the accounts was being sent to Companies House "today". He had been confused, he explained, as Companies House did not accept the electronic filing of LLP accounts whereas HMRC did.
11. Eventually, Companies House received 'A' LLP's accounts on 31 January 2014, a month late.

The second and third heads of complaint

12. After the episode described above which comprises the first head of complaint, a second episode arose from it which forms the basis of the second and third heads of complaint.
13. Between 5 February and 5 April 2014, a litigious dispute arose between Mr 'B' and the defendant arising out of and in connection with the late filing of 'A' LLP's accounts. The parties tried to settle that dispute amicably. Eventually, on 5 April 2014, a settlement was reached. In short, (i) the defendant agreed to reimburse Mr 'B's court fee and the late filing fee; (ii) the defendant was permitted to try to recover the late filing fee from Companies House; (iii) the defendant would prepare and file without charge (a) 'A' LLP's accounts for the year ended 31 March 2014, (b) 'A' LLP's tax return for the year ended 31 March 2014 and (c) Mr and Mrs 'B's income tax returns for the tax year 2013/2014. A term of this compromise was that if the defendant honoured his obligations, Mr 'B' would forbear continuing with his court action.
14. The defendant prepared 'A' LLP's accounts for the year ended 31 March 2014 and on 4 July 2014 Mr and Mrs 'B' signed them. On 17 July 2014 Mr 'B' requested that these accounts be filed.
15. On 18 July 2014, the defendant told Mr 'B' that 'A' LLP's accounts had been sent to Companies House and the tax returns would be sent to Mr and Mrs 'B' "next week".
16. By 5 August 2014 (some 2 ½ weeks later), however, Companies House still had not received 'A' LLP's accounts (in spite of the defendant telling Mr 'B' on 18 July 2014 that they had been filed) and Mr and Mrs 'B' had not received their tax returns (in spite of the defendant telling them that they would be sent in the following week). Mr 'B' wrote to the defendant telling him this.
17. On 6 August 2014, the defendant replied to Mr 'B', confirming that Companies House had not received 'A' LLP's accounts (they "*must be cursed*" he suggested), saying that a second set would be printed off and sent to Companies House by recorded delivery, and informing Mr and Mrs 'B' that the tax returns needed "an hour or so [to]

review” on that day. As to the recoded delivery, the defendant said he would give Mr ‘B’ a tracking number so he could *“track the delivery”*.

18. On 18 August 2014, Mr ‘B’ had still not been given a tracking number. He chased for one but did not receive it.
19. Between 22 and 28 August 2014, Mr ‘B’ continued to chase the defendant for a response. He was told *“everything will be finalised and sent out tomorrow.”* Still nothing happened and Mr ‘B’ chased on 8 September. He received a communication on 9 September from the defendant who told him that *“getting your returns out is my number 1 priority when I get back [from London] later.”*
20. By 12 September 2014, the defendant had still not produced the documents and Mr ‘B’ complained to ICAEW.
21. Mr ‘B’ continued to chase the defendant and on 23 September 2014 the defendant replied, saying *“everything was finalised late-last night, I wanted one last run through with a fresh look. I’ll be back in the office by 6pm and you’ll have returns on email by 7pm.”*
22. In fact, Mr ‘B’ received nothing from the defendant; he filed ‘A’ LLP’s accounts at Companies House himself on 24 November 2014. As to his and his wife’s tax returns, new accountants prepared those.
23. Moreover, when ICAEW wrote to the defendant on several occasions about Mr ‘B’s’ complaint, it received no response.

IC’s Submissions

The first and second heads of complaint

24. The defendant was responsible for preparing and filing ‘A’ LLP’s accounts on time. The defendant told his client that the accounts had been filed, but they had not been. He said that he would send additional copies of the accounts to Companies House, but he did not. The defendant knew the accounts had not been filed at the time he told his client that they had been. Moreover, he knew that he had not sent further copies to Companies House when he told his client that he had sent them.
25. The IC does not specifically allege dishonesty by the defendant. However, because of the facts and for the reasons cited above, it alleges that the defendant has breached ICAEW’s Fundamental Principle of integrity (which appears in the Code of Ethics at section 110) which provides that a member of ICAEW should be straightforward and honest in his business and professional relationships. It is clear from the evidence that the defendant has not been straightforward and honest in his dealings with Mr ‘B’.
26. This breach of this Fundamental Principle means that the defendant is in breach of Disciplinary Bye-law (DBL) 4.1(a).

The third head of complaint

27. The defendant agreed to prepare and file the tax returns which are set out in this head of complaint. He gave his client assurances that he had prepared the tax returns but there is no evidence that he had done so.
28. The failure without any explanation to prepare and submit the tax returns in the circumstances of this case amounts to work which has been so poor to such an extent and/or which has been repeated that it has brought discredit on the defendant, ICAEW and the profession of accountancy. Moreover, the defendant's unexplained breach of his own agreement which was reached with Mr 'B' (to prevent litigation moving forward) is further evidence of that. For that reason, it breaches Disciplinary Bye-Law 4.1(b).

Issues of fact and law

29. In the absence of the defendant the IC was put to proof of the matters complained of.
30. The standard of proof is the balance of probabilities.
31. The tribunal found the complaint proved.

Conclusions and reasons for decision

The first and second heads of complaint

32. The IC has not alleged that the defendant has acted dishonestly and the tribunal makes no finding of dishonesty. Rather, the allegation is that the defendant has acted with a lack of integrity in his dealings with his client, and the tribunal has found accordingly.
33. The defendant had an underlying duty to file accounts at Companies House. He has been found to have advised his client that this had been done when he knew he had not discharged that duty. This is a serious matter for two reasons: first, the defendant breached his professional duty to fulfil obligations to his client and secondly, the defendant displayed a lack of integrity about telling his client the truth about the true state of affairs. This is unacceptable conduct from a member of ICAEW.

The third head of complaint

34. The defendant had agreed with his client, to prevent litigation against him proceeding further, to prepare and submit three tax returns. In fact, in breach of this agreement, he did none of those things. Rather, he gave his client the impression he was doing so, but actually did nothing. In the end, others did it.
35. This is a serious matter for two reasons. First, the defendant had a duty to his clients to do as he said he would; they trusted him to do that, and he must have known they trusted him to do that. Secondly, this occurred on three occasions. The defendant let his clients down, while allowing them to believe over a long period of time that he was attending to their affairs. This is not acceptable professional conduct, which falls far below the standards expected by ICAEW of its members.

Matters relevant to sentencing

36. The tribunal considered the *Guidance on Sanctions* and saw no reason to depart from that. The tribunal was satisfied that no lesser sanction than the one made was appropriate.
37. A mitigating factor would have been the defendant's clean disciplinary record, although this factor has been discounted in the light of the tribunal's decision in case number "49". No statement of the defendant's means has been received and so they have not been considered. There are no other mitigating factors to consider.
38. Aggravating factors are (i) the effect of the defendant's actions on the clients; (ii) the absence of any explanation from the defendant whatsoever about his conduct; (iii) the absence of any insight into the defendant's misconduct or any remorse, contrition or apology; (iv) the fact that Mr and Mrs 'B' had to go to the trouble, expense and inconvenience of having their tax returns completed by another accountant when the defendant had agreed to carry out the work for free; (v) the repeated steps the defendant went to, over a sustained period of time, to give the impression that he had done work when he had not.
39. The tribunal recommends that a Practice Assurance regulatory visit be undertaken of the defendant and his practice, including, for the avoidance of doubt, of Fox Reynard Limited. This visit should take place, it is suggested, as soon as possible on such terms as the ICAEW sees fit.

Sentencing Order

- (i) Severe reprimand
- (ii) Fine in the sum of £4,000
- (iii) Costs in the sum of £3,300

Decision on publicity

Publication with name.

Non Accountant Chairman	Mr Peter Williamson
Accountant Member	Mr Michael Barton FCA
Non Accountant Member	Mr Nigel Dodds
Legal Assessor	Mr Dominic Spenser Underhill

024185

4 Mr Sean Joseph Fox ACA of
Flat 3 Pear Tree Court, Turners Place, Holmer Green, High Wycombe, HP15 6RL.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 18 January 2017

Type of Member Member

Terms of complaint

1. Mr Sean Fox ACA failed to submit to Companies House the accounts of 'C' Limited for the year ended 30 June 2014 when he had been instructed to do so.
2. Mr Sean Fox ACA failed to prepare and submit to HMRC the corporation tax return for 'C' Limited for the year ended 30 June 2014 which was due by 30 June 2015, and which he had been instructed to file.
3. Mr Sean Joseph Fox ACA failed to respond to Mr 'D's requests dated:
 - 17 June 2015
 - 26 June 2015
 - 9 July 2015
 - 10 July 2015
 - 13 July 2015
 - 27 July 2015
 - 5 August 2015

for him to return the books and records of 'C' Limited.

Mr Sean Joseph Fox is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.b.

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

Hearing date

18 January 2017

Previous hearing date(s) None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order (i) Severe reprimand; (ii) fine of £2,600

Procedural matters and findings

Parties present	Mr Sean Fox was not present.
Represented	Mr Fox was not represented. The Investigation Committee (IC) was represented by Mr James Francis.
Hearing in public or private	The hearing was in public.
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service. The tribunal exercised its discretion to proceed in the absence of the defendant.
Documents considered by the tribunal	The tribunal considered the documents contained in the IC's bundle together with a skeleton argument prepared by Mr Francis.
Preliminary procedural matter	Pursuant to Disciplinary Committee Regulation 31, the tribunal exercised its discretion to hear this complaint at the same hearing as the complaint against Mr Fox with number 024185 ("85"). The two hearings were therefore concurrent.

The IC's Case

1. The defendant is the sole director and shareholder of a company called Fox Reynard Limited which provides accounting services to the public. As the sole director and shareholder of Fox Reynard, and for current purposes, the defendant and his company are in effect one and the same. One of its clients was a company called 'C' Limited which is owned and run by a person called Mr 'D'. 'C' Limited has a financial year end of 30 June.
2. In about 2010 Mr 'D' engaged the services of the defendant to complete all of his personal tax affairs as well as those of 'C' Limited. There is no letter of retainer although the nature of the retainer can be clearly inferred from the conduct of the parties over a period of several years. Part of that service was to file 'C' Limited's accounts at Companies House. This professional relationship continued without incident for a number of years with the defendant carrying out his work and charging for it year on year.

First head of complaint

3. On 5 February 2014 and 16 July 2014, Mr 'D' provided the defendant with the information necessary to complete 'C' Limited's accounts for the year ended 30 June 2014. These had to be filed at Companies House by 31 March 2015. On 31 August 2014, the defendant issued an invoice for this work which was described as an "interim fee".
4. In fact, the defendant did not file the accounts at Companies House on or before 31 March 2015. On 25 May 2015, the defendant sent 'C' Limited's accounts to Mr 'D' with no explanation for the delay but with a request to approve and sign the accounts and "return to me for filing".

Second head of complaint

5. The 2014 corporation tax return for 'C' Limited should have been filed by 30 June 2015. As he had done for previous years, the defendant ought to have completed this task for 'C' Limited but did not.

Third head of complaint

6. In 2015, Mr 'D' wanted to have 'C' Limited's books and records returned to him. On 17 June 2015, Mr 'D' wrote to the defendant and asked for "all paperwork back". He chased on 26 June 2015, having received no response. Still with no response, Mr 'D' chased again on 9 July, and again on 10 July 2015.
7. On 11 July, the defendant contacted Mr 'D' stating that he would call him on 12 July 2015. In fact, he did not. On 13 July 2015, Mr 'D' threatened legal action unless he received the response promised by the defendant.
8. By 27 July 2015, there still had not been a satisfactory response from the defendant (although it appears that there may have been further contact on 22 July 2015 when the defendant gave further assurances). Thus, on that day 'D' wrote to the defendant repeating his request for the return of 'C' Limited's book and records, failure of which would result in legal action.
9. By 5 August 2015, the defendant had not responded and Mr 'D' wrote to him yet again. No response was received. As at 8 March 2016, the defendant had still failed to return the books and records to his client.

IC's Submissions

10. The defendant was responsible for preparing and filing 'C' Limited's accounts on time, filing its corporation tax return on time and, when requested by the client's representative, returning its books and papers to him in a reasonably prompt manner. He did none of those things without any explanation either to the client or to ICAEW why this was so.
11. In the circumstances of this case, this amounts to work which has been so poor to such an extent and/or which has been repeated that it has brought discredit on the defendant, ICAEW and the profession of accountancy. For that reason, it breaches Disciplinary Bye-Law 4.1(b).

Issues of fact and law

12. In the absence of the defendant the IC was put to proof of the matters complained of.
13. The relevant standard of proof is the balance of probabilities.
14. The tribunal found the complaint proved.

Conclusions and reasons for decision

15. The defendant, through his company, was responsible to his clients 'C' Limited and Mr 'D' to do what he knew they expected him to do in a reasonably competent fashion. He had to prepare and file 'C' Limited's accounts for 2014 competently and on time; he had to file 'C' Limited's tax return on time; and he had to return to his client the books and records of 'C' Limited when they were asked for. He did none of those things.
16. A distinguishing feature of this case is the absence of any explanation whatsoever from the defendant, given either to Mr 'D' or ICAEW, why he behaved in this way. No lawful reason or excuse has been given why the defendant did not do what he was obliged to do and the tribunal can see none. There has been, from the start, almost complete silence.
17. The reasons why this is a serious case are (i) the failure to file accounts and a tax return is a failure to comply with, and to assist the client to comply with, wider public duties of accountability both to the general public who are entitled to consult the public record, and to HMRC; (ii) the failure to respond to repeated requests from a client for the return of his papers (for the most part, at all) is profoundly irresponsible and put the client at risk. Furthermore, as a member of the public, Mr 'D' was entitled to a reasonably competent level of service from the defendant and should not have been met, for the most part, with complete silence over many weeks.

Matters relevant to sentencing

18. The tribunal considered the *Guidance on Sanctions* and saw no reason to depart from that. The tribunal was satisfied that no lesser sanction than the one made was appropriate.
19. A mitigating factor is the defendant's clean disciplinary record, although this factor is not very strong as the defendant had been practising for only about 7½ years at the time of the beginning of the matters complained of, having qualified in June 2007. No statement of the defendant's means has been received and so they have not been considered.
20. Aggravating factors are (i) the effect of the defendant's actions on others, including the client, HMRC (which is entitled to rely on the defendant's work) and Companies House (which maintains the public record); (ii) the absence of any explanation from the defendant whatsoever; (iii) the absence of any insight into the defendant's misconduct or any remorse, contrition or apology.
21. The tribunal recommends that a Practice Assurance regulatory visit be undertaken of the defendant and his practice, including, for the avoidance of doubt, of Fox Reynard Limited. This visit should take place, it is suggested, as soon as possible on such terms as ICAEW sees fit.

Sentencing Order

- (i) Severe reprimand
- (ii) Fine in the sum of £2,600
- (iii) Costs in the sum of £5,500

Decision on publicity

Publication with name.

Non Accountant Chairman

Mr Peter Williamson

Accountant Member

Mr Michael Barton FCA

Non Accountant Member

Mr Nigel Dodds

Legal Assessor

Mr Dominic Spenser Underhill

029649

CESSATION OF MEMBERSHIP

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

Mr Sean Fox of Holmer Green, High Wycombe

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

PROBATE COMMITTEE

6 REGULATORY PENALTY - 10 FEBRUARY 2017

Publicity statement

In view of the firm's admitted breach of Probate Regulation 2.2a, Clarke Bell Limited, 3rd Floor, The Pinnacle, 73 King Street, Manchester, M2 4NG, has agreed to pay a regulatory charge (determined by the Probate Committee) of £1,590 for admitted breach of the eligibility requirements (regulation 2.2) in accordance with regulation 12.7 of the Probate Regulations.

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