Disciplinary Orders and Regulatory Decisions

DATE PUBLISHED: 7 APRIL 2021

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. **Mr Nitin Shantilal Amin ACA** of
   London, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 10 November 2020

Type of Member Member

Terms of complaints

1. On 21 December 2009, Mr Nitin Amin ACA signed, on behalf of his firm, an unqualified audit report on the financial statements of 'A' Limited for the period ended 31 March 2009 which stated that the audit had been performed in accordance with International Standards on Auditing (UK and Ireland), when the audit was not conducted in accordance with:

   a) International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner; and/or

   b) International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the auditor failed to prepare, on a timely basis, audit documentation that provides:
      i) a sufficient and appropriate record of the basis for the auditor's report; and
      ii) evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements; and/or

   c) International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion; and/or

   d) International Standard on Auditing (UK and Ireland) 600 'Special Considerations – Audits of Group Financial Statements (including the Work of Component Auditors) in that the auditor failed to communicate with component auditors about the scope and timing of their work on the financial information.

2. On 27 February 2010, Mr Nitin Amin ACA signed, on behalf of his firm, an unqualified audit report on the financial statements of 'B' Limited for the period ended 31 August 2009 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland), 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 respect of:

   a. the appropriateness of the carrying value of stocks; and/or
   b. the existence and recoverability of other debtors; and/or
   c. the existence and valuation of bank balances; and/or
   d. the existence and valuation of loan balances.

3. On 16 September 2011, Mr Nitin Amin ACA signed, on behalf of his firm, an unqualified audit report on the financial statements of 'B' Limited for the period ended 31 August 2010 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland), 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 respect of:

    a. the appropriateness of the carrying value of investment properties; and/or
    b. the existence and recoverability of other debtors; and/or
    c. the existence and valuation of bank balances; and/or
    d. the existence and valuation of loan balances.

4. On 16 September 2011, Mr Nitin Amin ACA signed, on behalf of his firm, an unqualified audit report on the financial statements of 'B' Limited for the period ended 31 August 2010 which stated that the accounts gave a true and fair view in accordance with United Kingdom Generally Accepted Accounting Practice, when the financial statements did not comply with the Financial Reporting Standard for Smaller Entities (effective April 2008) as they failed to account for investment properties at market value.

5. On 12 June 2012, Mr Nitin Amin ACA signed, on behalf of his firm, an unqualified audit report on the financial statements of 'B' Limited for the period ended 31 August 2011 which stated that the audit had been performed in accordance with International Standards on Auditing (UK and Ireland), 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 respect of:

    a. the existence and recoverability of other debtors; and/or
    b. the existence and valuation of bank balances.

6. On 27 February 2010, Mr Nitin Amin ACA signed, on behalf of his firm, an unqualified audit report on the financial statements of 'C' Limited for the period ended 31 August 2009 which stated that the audit had been performed in accordance with International Standards on Auditing (UK and Ireland), 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 respect of:

    a. the appropriateness of the carrying value of stock; and/or
    b. the existence and valuation of investments; and/or
    c. the existence and recoverability of other debtors; and/or
    d. the existence and valuation of bank balances; and/or
    e. the existence and valuation of loan balances.

7. On 16 September 2011, Mr Nitin Amin ACA signed, on behalf of his firm, an unqualified audit report on the financial statements of 'C' Limited for the period ended 31 August 2010 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland), 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 respect of:

    a. the appropriateness of the carrying value of investment properties; and/or
    b. the existence and valuation of investments; and/or
    c. the existence and recoverability of other debtors; and/or
    d. the existence and valuation of loan balances.

8. On 16 September 2011, Mr Nitin Amin ACA signed, on behalf of his firm, an unqualified audit report on the financial statements of 'C' Limited for the period ended 31 August 2010 which stated that the accounts gave a true and fair view in accordance with United Kingdom Generally Accepted Accounting Practice, when the financial statements did not comply with the Financial Reporting Standard for Smaller Entities (effective April 2008) as they failed to account for investment properties at market value.

9. On 30 August 2012, Mr Nitin Amin ACA signed, on behalf of his firm, an unqualified audit report on the financial statements of 'C' Limited for the period ended 31 August 2011 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland), 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 respect of:

    a. the ownership of investment properties; and/or
    b. the existence and valuation of investments; and/or
    c. the existence and recoverability of other debtors; and/or
    d. the existence and valuation of bank balances; and/or
    e. the existence and valuation of loan balances.

10. On 9 September 2011, Mr Nitin Amin ACA signed, on behalf of his firm, an unqualified audit report on the financial statements of 'D' Limited for the period ended 30 June 2010 which state that the audit had been conducted in accordance with International Standards on Auditing, 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 respect of the appropriateness of the carrying value of investment properties (stock) on which to base the audit opinion.

11. Mr Nitin Amin ACA failed to identify and assess the circumstances which could adversely affect the auditor's objectivity, including any perceived loss of independence, and to apply procedures to either eliminate the threat or reduce the threat to an acceptable level in relation to the audit of 'D' Limited for the period ended 30 June 2010 in breach of paragraph 30 of APB Ethical Standard 1 (Revised) 'Integrity, objectivity and independence'.

12. Mr Nitin Amin ACA allowed his firm, to breach audit regulation 3.11 in that he failed to keep the working papers for the audit of 'B' Limited for the year ended 31 August 2012 for a period of six years.

13. Mr Nitin Amin ACA allowed his firm, to breach audit regulation 3.11 in that he failed to keep the working papers for the audit of 'C' Limited for the year ended 31 August 2012 for a period of six years.

Mr Nitin Shantilal Amin is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b

Hearing date

10th November 2020

Previous hearing date(s)

29 September 2020

Pre-hearing review or final hearing

Sanctions Hearing

Complaints found proved

Yes, upon admission

All heads of complaint proven

Yes, upon admission

Sentencing order

A severe reprimand together with a financial penalty of £7,500. On 29th September, upon the Respondent's late application for an adjournment to enable him to be represented, he was ordered to pay the costs thrown away of £860, which was duly paid. The tribunal further ordered him to pay the Investigation Committee's costs in the sum of £15,710, both the penalty and the costs to be paid by 31st January 2021.

Parties present

Mr Amin attended the hearing remotely.

Represented

Ms Sonia Stean appeared on behalf of the Investigation Committee.

Mr Chris Cope appeared on behalf of Mr Amin.

Hearing in public or private

The hearing was conducted remotely, details of the same having been posted on the ICAEW website.

Decision on service

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

Documents considered by the tribunal

The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with further materials provided on behalf of Mr Amin.

The Investigation Committee's (IC's) case

Summary

1. The report from the IC setting out the background to and details of the complaints is extensive, running to some 40 pages with 907 pages of attachments. What follows is a very brief summary of that background by way of explanation of the evidence considered by the Tribunal, bearing in mind that Mr Amin (the Respondent) made full admission to each of the complaints made against him. All of the complaints related to audit, and they all related to a period between 2009 and 2011. The Respondent is no longer authorised to act as an independent auditor.

2. ICAEW received a complaint on 9 June 2015 from the successor auditor to clients who previously engaged 'X' as their auditor. 'X' is an ICAEW member firm and PCD investigated the complaint that the audit of 'A' Limited for the year ended 31 March 2009 was defective. The complaint arose from the statement of administrator's proposals report on 'A' Limited which raised concerns about stock balances. The company had also gone into administration three months after the audit report had been signed which raised concerns about the audit of going concern.

3. As part of the enquiries ICAEW made, audit files of 'C' Limited and 'B' Limited for the year ended 31 August 2009 were requested from the Respondent, as copy fee notes did not clarify which firm was responsible for actually performing the audit work. This therefore raised concerns that required investigation. ICAEW's review of the 2009 audit file resulted in PCD also requesting the audit files for 2010, 2011 and 2012 due to concerns over the audit work. The Respondent has been unable to locate the audit files for the year ended 31 August 2012 for both entities and this gives rise to a separate complaint.

4. PCD also reviewed the company information at Companies House for 'D' Limited. This showed that a director named Mr 'E' held office from 20 August 2004 until 7 August 2007. He was also a shareholder from 20 August 2005 until 25 Jul 2014. Mr Nitin Amin has confirmed that this is his cousin, Mr 'E'. PCD therefore requested the audit files for 'D' Limited for the years audited by 'X'; these were for the period ended 30 June 2008, 30 June 2009 and 30 June 2010. The Respondent has confirmed that they no longer have the files for 2008 and 2009 but the 2010 file was provided to ICAEW as part of the investigation.

'A' Limited

Complaint 1 - summary

5. The 'A' Limited business was the wholesale of pharmaceutical and medicinal products. The accounts audited by 'X' were consolidated group accounts which comprised the parent company (of which £4.7m of the total profit was attributable to) and a number of subsidiary companies based in England, USA, India and Brazil. The Respondent, on behalf of his firm, issued an unqualified audit opinion on the group accounts on 21 December 2009.

6. A detailed review prepared by the PCD of the audit file was carried out. In summary, the audit file provided by the liquidators was limited in its content. The file appeared to be an accounts preparation file rather than an audit file, which consisted largely of nominal ledger print outs. In particular there was no evidence of any audit planning, audit completion, audit work programmes or the audit approach adopted. There were no consolidation schedules or copies of any of the subsidiary accounts; notably, the audit file had the appearance of a standalone company rather than a group. The audit work undertaken on this entity is seriously deficient. This was a group audit and the consolidated numbers are significant. It is considered that the risks associated with undertaking such an audit should have been documented clearly on the file, yet there is no evidence of any such assessment having taken place.

7. Further, this was a group audit and there is no evidence of any reference to the subsidiaries' financials in the file. It is not evident from review of the file whether the Respondent conducted the audit of the subsidiaries, or whether component auditors were involved. If component auditors were used, there is no documentation of this on file, no evidence of communication with any component auditors, and no assessment of reliance on their work and their competence.

8. There are no work programmes on file and no documented audit tests. It is therefore not possible to understand what approach the auditor was taking, the assurance that was obtained, and the conclusions reached. Concerns were raised in the statement of administrator's proposals regarding the value of stock and a review of the audit file demonstrates that stock valuation was not considered as part of the audit. Further, the fact that the entity went into administration a few months after the audit was signed is concerning. This is particularly so as there is no evidence of any audit procedures conducted on the appropriateness of the going concern status of the company.

‘B’ Limited

Complaints 2-5 – summary

9. ‘B’ Limited is a company holding freehold investment properties. In 2009, the business was that of property development but this changed during the 2010 financial year. The director of the company is Mr ‘F’. Mr ‘F’ and his wife are the shareholders of the company. The Respondent, on behalf of his firm, issued an unqualified audit opinion on the accounts for 2009, 2010 and 2011.

10. This entity (and ‘C’ Limited, see complaints 6-9) held properties as stock in 2009 and reclassified these as investment properties within fixed assets in 2010. The audit work relating to the appropriateness of such change in treatment is limited.

11. These two companies are linked through common ownership (direct and indirect). There are numerous balances between the companies and these balances continue to appear in the accounts of a number of years. Despite this, there is no audit evidence of checks performed to assess the recoverability of the debtor balances. In 2011, it is acknowledged that the work performed did consider the financial position of the debtors to see if they were in a position to be able to repay their debts, however this alone cannot be used as evidence that the debtor balance will be repaid. The audit file contains no evidence that potential provision against these balances was considered.

12. The significant balances on the balance sheets were the investment properties and the mortgage loans taken out to fund those investments. The audit evidence is limited in respect of the mortgage loans and bank letters were not obtained in every year to support the millions of pounds owed by the companies on their balance sheet. When bank letters were obtained, discrepancies were noted in some cases between the bank letters and the nominal ledger. These were resolved through discussion with the director; this is not sufficient and appropriate audit evidence. Any discrepancies should have been addressed directly with the bank itself. It is acknowledged that it may have been difficult to obtain the bank letters, particularly in 2011 when the relationship with the bank had broken down, however it is submitted that in the earlier years the bank letters were obtainable and should have been. In respect of 2011, if every effort had been made to obtain them, then a note should have been placed on the file explaining the circumstances.

13. There are also some noted issues regarding ownership of properties whereby some show the director as the owner at the Land Registry. Again, representations were taken from the director that actually the beneficial owner was the company but no audit evidence was physically obtained to support this assurance.

14. For the 2009 year-end, the properties held by the company were classified as stock in the accounts. This was changed for the 2010 and subsequent year-ends and the properties were instead reclassified as investment properties and disclosed as tangible fixed assets. This resulted in changes to the turnover figure whereby rental income was reclassified from 'other operating income' to 'turnover', and changes to the value of tangible fixed assets whereby a later amendment was made to the carrying value.

15. The audit work conducted in 2009-2011 was focussed on the balance sheet as this was where the material balances were held (as would be expected from an investment property company).

'C' Limited

Complaints 6-9 - summary

16. 'C' Limited is also a company holding freehold investment properties. In 2009, the business was that of property development but this changed during the 2010 financial year. The director of the company is Mr 'F'. Mr 'F' and his wife are the shareholders of the company.

17. The Respondent, on behalf of his firm, issued an unqualified audit opinion on the accounts for 2009, 2010 and 2011.

18. Similar issues arose in respect of the audit work for 'C' Limited as they did for 'B' Limited. For the 2009 year-end, the properties held by the company were classified as stock in the accounts. This was changed for the 2010 and subsequent year-ends and the properties were instead reclassified as investment properties and disclosed in tangible fixed assets. This resulted in changes to the turnover figure whereby rental income was reclassified from 'other operating income' to 'turnover', and changes to the value of tangible fixed assets whereby a later amendment was made to the carrying value. There were other shortcomings in the audit work carried out by the Respondent, as is evident from the terms of the admitted complaints.

'D' Limited

Complaints 10-11 - summary

19. 'D' Limited is also a company developing, selling and renting properties. In 2009, the business was that of property development but this changed during the 2010 financial year. The directors of the company are Mrs 'F' and Mr 'G'. At the time that the 2010 audit was conducted, the shareholders were Mrs 'F', Mr 'E', and 'H' Ltd. An unqualified audit opinion was issued on the 2010 accounts and an emphasis of matter paragraph was included in the audit report in respect of the going concern status of the company.

20. The concerns regarding the audit work conducted in 2010 was that it was focussed on the material areas of the balance sheet as this was where the value of the company was recognised; there was very little activity in the profit and loss account. The complaints relate to the carrying value of the investment properties.

Complaint 11 - Independence of the Respondent and his firm (APB Ethical Standard 1 and APB Ethical Standard 2)

21. At the time that the 2010 audit of 'D' Limited was conducted, Mr 'E' (a cousin of the Respondent) was a shareholder of the company. ES2 would consider the relationship between Mr 'E' and the Respondent to be a close family relationship (as cousins), not an immediate family relationship. Nevertheless, ES2 identifies this as a potential threat to the auditor's independence that should be considered by the engagement partner. This is particularly so as Mr 'E' was not an employee of 'D' Limited, instead he was a shareholder and therefore held a financial interest, albeit modest, in the entity (further identified as a risk by ES2).

22. In these circumstances, there was a threat to the independence of the Respondent. The threat, as defined by ES1, was to his objectivity as auditor and whether he would address the audit with the same independent approach as that he would on another unconnected audit. ES1 required the Respondent, as audit engagement partner, to consider the potential threat to his independence as auditor and to identify any applicable safeguards to address the potential threat. There is no evidence on the audit file that these threats were considered at the time of audit acceptance, or during the audit. The Respondent has set out some valid points as to why he did not consider these to be threats to the audit, however none of this is present on the audit, and there is no evidence that it was considered at the time.

'B' Limited and 'C' Limited

Complaints 12-13

23. PCD requested the 2012 audit working papers from the Respondent in respect of 'B' Limited and 'C' Limited on 13 October 2016 so that it could review the audit work that was undertaken. While the Respondent was able to provide the earlier years of audit, he was unable to locate the 2012 audit files. This request for the files was made within six years of both companies' financial year-end. Accordingly, PCD was unable to perform a review of the 2012 audit files for the two clients.

24. A Registered Auditor is required to retain audit working papers for a period of at least six years. The Respondent was therefore required to keep the audit files of both companies for the year ended 31 August 2012 until at least 31 August 2018. Apparently the files should have been scanned, but due to human error the scanning did not occur, and the files were destroyed.

25. It follows that the Respondent has been unable to provide evidence of any of the audit work conducted in 2012 for ‘B’ Limited and ‘C’ Limited and has therefore caused his firm to be in breach of Audit Regulation 3.11. The Respondent should have taken better steps to ensure that the 2012 audit files of ‘B’ Limited and ‘C’ Limited were kept for the six years required. Failure to do so has resulted in PCD being unable to assess the audit work undertaken in that year.

Conclusions and reasons for decision

26. The Respondent had made full and unequivocal admissions to each of the complaints, and in those circumstances the tribunal was satisfied that each of the complaints had been proven.

Matters relevant to sentencing

27. The Respondent had two previous findings of misconduct. Both related to audit failings, both were historic, one in June 2009 and one in September 2012. These failings occurred during the same period when the subject matter of the complaints arose. The tribunal considered the *Guidance on Sanctions*. We remind ourselves that the key principles are protection of the public, maintaining the reputation of the profession, upholding proper standards of conduct within the profession, and the correction and deterrence of misconduct. We consider the audit work complained of, as summarised above, was of a seriously defective nature. We considered that Paragraph 5 b i of the Guidance applied. The starting point was accordingly exclusion and a category C financial penalty.

28. The common aggravating factors were the repeated failures and the previous sanctions relating to audit. The common mitigating factors were the hot file reviews which gave the Respondent some comfort, and the absence of any complaint in the last 8 years. The complaint specific aggravating features were the multiple periods of accounts audited, the issue of incorrect audit opinions, numerous clients were affected, and systemic weakness was indicated. We accepted that there was no intent to mislead.

29. The tribunal had regard to the extensive submissions made on behalf of the Respondent, and took full account of them. In particular they took into account the following factors: the complaints were historic, relating to the period 2009-2012; a satisfactory QAD was carried out in July 2012; there were delays in producing the report, which would have had an impact upon the Respondent; there was no evidence of any losses; the Respondent is no longer authorised to carry out audit work, and all of the complaints were audit related; the Respondent expressed remorse, and indicated that at the time he felt out of his depth.

Sentencing Order

30. After reflecting upon the factors set out above, the tribunal considered that a fair and proportionate sanction was a severe reprimand, and a financial penalty of £7,500. On 29th September, upon the Respondent's late application for an adjournment to enable him to be represented, we ordered him to pay the costs thrown away of £860, which he duly paid. In addition, the Respondent is to pay the IC's costs of £15,710 which we assessed to be reasonable and proportionate. Both the penalty and the costs are to be paid by 31st January 2021.

Decision on publicity

31. Publicity with name.

Chair	Mr Richard Jones QC	
Accountant Member	Mr Martin Ward FCA	
Non Accountant Member	Miss Jane Rees	**028492**

2. **Mr Gary Joseph Jackson [FCA]** of
Bishop Auckland, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 10 November 2020

Type of Member Member

Terms of complaint

1. Mr Gary Joseph Jackson FCA, on behalf of his firm, failed to comply with a restriction imposed upon it by the Audit Registration Committee, which came into effect on 22 July 2013, in that he failed to obtain the Audit Registration Committee's prior approval before accepting appointment as auditor for 'A' Limited for the year ended 31 March 2017.
2. Mr Gary Joseph Jackson FCA, on behalf of his firm, failed to comply with a condition imposed upon it by the Audit Registration Committee, which came into effect on 22 July 2013, in that he failed to obtain external hot file reviews in respect of the following audits prior to him signing the audit reports and to submit the results of those reviews within one month of their completion:

    a) 'B' Limited, year ended 31 March 2017, audit report signed 19 December 2017; and/or

    b) 'A' Limited, year ended 31 March 2017, audit report signed 19 December 2017; and/or

    c) 'B' Limited, year ended 31 March 2018, audit report signed 18 May 2018; and/or

    d) 'A' Limited, year ended 31 March 2018, audit report signed 18 May 2018.

    Mr Gary Joseph Jackson is therefore liable to disciplinary action under Disciplinary Bye-Law 4.1a.

Hearing date

10 November 2020

Previous hearing date(s)

Case Management hearing on 5 October 2020.

Pre-hearing review or final hearing

Final Hearing

Complaints found proved

Yes

All heads of complaints proven

Yes

Sentencing order

Exclusion, a financial penalty of £10,000, and an order to pay costs of £7,500

Procedural matters and findings

Mr Jackson was held as a member of ICAEW notwithstanding his purported resignation by letter dated 28th February 2020

Parties present

Mr Jackson did not appear and was not represented

Represented

Ms Sonia Stean appeared on behalf of the Investigation Committee (IC)

Hearing in public or private

The hearing was conducted remotely, notice of the same having been posted on the ICAEW website

An application was made during the hearing (and granted) for part of the hearing relating to sensitive material to be made in private

Decision on service

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

Documents considered by the tribunal

The tribunal considered the documents contained in the IC's bundle together with an email dated 9th November 2020 from Mr Jackson

The Investigation Committee's (IC's) case

Summary

1. Mr Jackson was sole responsible individual ("RI") of G J Jackson Accountants Limited, a corporate practice based in Bishop Auckland providing accountancy services and previously audit services. On 28 February 2013 and 1 March 2013, the Quality Assurance Department ("QAD") carried out a routine visit to the firm.
2. The QAD findings were presented to the Audit Registration Committee ("ARC") on 3 July 2013. The ARC considered the firm's audit registration based upon the QAD's findings. The ARC notified the firm on 3 July 2013 that it had decided to continue the firm's audit registration subject to the following conditions and restrictions:
    - External hot file reviews (EHFR) of all audits until advised otherwise and to submit the results of the review within one month of the signing of the audit report;

- Provisional follow-up visit from QAD;
- Not to accept any new audit appointments without the ARC's prior approval;
- Not to sign any audit reports without first having an EHFR carried out; and
- Not to conduct any audit compliance reviews, or file reviews, on behalf of other firms.

3. Under Audit Regulation 7.10, the decision came into effect on 22 July 2013 and the firm subsequently provided a list of its audit clients that would be subject to external hot file review on 31 July 2013. These comprised three audit clients: 'C' Limited, 'B' Limited and 'D Ltd'.
4. Between July 2013 and September 2017 the regulatory case manager regularly wrote to Mr Jackson to remind him to submit copies of the hot file reviews and to request timescales of when such reviews would be submitted. The regulatory case manager also carried out regular FAME searches (a search which identifies any audit reports signed by a firm which have been filed at Companies House) between May 2015 and September 2017. 'D' Ltd is not required to file financial statements with Companies House as it is FCA registered. Therefore the FAME searches did not identify any audit reports that had been signed by Mr Jackson.
5. On 9 October 2017, the regulatory case manager carried out a review of the information submitted by the firm on its 2014-2017 annual returns, which indicated that at least 7 audit reports had been signed by the firm since the conditions and restrictions were imposed on 3 July 2013. The firm did not submit the results of any external hot file reviews.

6. A search by the regulatory case manager of the records filed with the Financial Conduct Authority (FCA) identified that in September 2016, filed audited accounts of 'D' Ltd for both 2014 and 2015 were submitted to the FCA. The ARC was extremely concerned by the failure to comply with the conditions and restrictions imposed requiring the firm to submit the requests of external hot file reviews, and by the failure of Mr Jackson/his firm to respond to requests made by the regulatory case manager. The ARC therefore decided to withdraw his firm's registration as a result of the firm's failure to comply with the requirements of the Audit Regulations. The ARC also decided to withdraw Mr Jackson's RI status.

7. The ARC took into account the health issues raised by Mr Jackson in his letter dated 24 November 2017 which stated that [private]. The ARC decided that it would not publicise its decision. The ARC also noted that under normal circumstances action should be taken against the firm for its failure to comply with the hot file review condition and restriction regarding 'D' Ltd and its failure to respond to requests made under delegated powers. However having taken account of the health issues detailed in Mr Jackson's letter dated 24 November 2017, the ARC decided to take no further action against the firm for the failure to submit external hot files reviews in respect of 'D' Ltd. Therefore these audit reports are not included in complaint 2.

8. On 8 January 2018, Mr Jackson, on behalf of himself and his firm, applied for a review of the ARC's decision and therefore the withdrawal did not come into effect at that point. On receipt of the request for review, the audit regulation case manager carried out a Companies House search, which highlighted that Mr Jackson had signed two audit reports, both dated 19 December 2017. One of the audit reports was for an existing audit client, which had filed unaudited accounts for the prior few years, 'B' Limited, for the year ended 31 March 2017. The other audit report was for a new audit client, 'A' Limited, also for the year ended 31 March 2017.

9. The firm was in breach of the restriction not to accept any new audit appointments without the ARC's prior approval for 'A' Limited. The firm did not contact ICAEW to request this appointment. The firm was also in breach of the requirement to submit copies of external hot files reviews to show that he had complied with the condition to have external hot file reviews on all audits and the restriction from signing those audit reports until the review had been completed. The firm has not submitted the results of the external hot file reviews for any audits since the conditions and restrictions came into force on 22 July 2013.

10. Mr Jackson was contacted on 17 January 2018 to confirm the date of appointment as auditor of 'A' Limited and was asked to provide an explanation as to why the firm had not requested the ARC's permission prior to the acceptance of appointment. He was also requested to submit the hot file reviews for both audit files. No reply was received in respect of these enquiries.

11. The ARC once again decided to withdraw the firm's audit registration, this time with publicity, under AR 7.03g of the Audit Regulations and Guidance. In accordance with AR 4.08e, the committee once again also decided to withdraw Mr Jackson's RI status. On 29 March 2018, he wrote to the ARC Committee Secretary and asked for a review of the decision. A Review Committee panel was scheduled for 13 June 2018. However on 21 May 2018, Mr Jackson withdrew his application to have the decision of the Audit Registration Committee reviewed. Following this, the Committee Administrator wrote to Mr Jackson on 25 May 2018 confirming that following the withdrawal of his application for review, the original decision of the ARC came into effect immediately.

12. On 15 January 2019, the audit regulation case manager carried out a FAME search and identified that Mr Jackson had signed two further audit reports, dated 18 May 2018, prior to the withdrawal of Mr Jackson's firm's audit registration on 30 May 2018. The accounts for 'A' Limited had been filed at Companies House in December 2018 and the accounts for 'B' Limited had been filed at Companies House in January 2019.

13. There were extensive communications between ICAEW and Mr Jackson requesting the timeframe for hot and cold file reviews to be submitted. Despite numerous attempts by ICAEW, Mr Jackson has failed to respond to the requests made under delegated powers since September 2016.

14. In terms of Complaint 1, Mr Jackson breached a restriction placed on him and his firm on 3 July 2013 by the ARC, by accepting the appointment as independent auditor of 'A' Limited without notifying the committee and obtaining their prior approval.

15. In terms of Complaint 2, Mr Jackson breached a condition and restrictions placed on him and his firm on 3 July 2013 by the ARC, by failing to have external hot file reviews carried out on any audits, and failing to submit the results of the reviews to the committee, within one month of their completion.

16. The audit report for 'B' Limited for the year ending 31st March 2017 was signed on 19th December 2017, and the audit report for the year ending 31st March 2018 was signed on 18th May 2018. In respect of 'A' Limited, for the year ending 31st March 2017 the audit report was signed on 19th December 2017, and for the year ending 31st March 2018 the audit report was signed on 18th May 2018. In breach of the conditions imposed, no hot file reviews were carried out in respect of any of these audits.

17. PCD wrote to Mr Jackson on 21 May 2018 to inform him that PCD would be investigating the matters referred by the ARC, including the complaint that the firm has failed to comply with the restrictions imposed upon it by the ARC in respect of the submission of hot file reviews. PCD asked Mr Jackson to supply evidence and information relating to this complaint. He responded on 4 June 2018 to acknowledge PCD's letter but saying [PRIVATE], he would not be able to supply the required information until 22 June 2018. Despite further emails Mr Jackson has not engaged with the ICAEW and has not responded to any requests for information or evidence.

Mr Jackson's case

18. PCD wrote to Mr Jackson on 17 February 2020 to provide him with a copy of the draft report and to invite his final representations. On 28 February 2020 Mr Jackson sent two letters, the first one was titled 'GJ Jackson Accountants Limited - Resignation of Firm Membership' and the second one 'Gary Joseph Jackson - Resignation of Membership'. The wording of the first letter refers to the practice resigning as a member firm, and the wording of the second includes, 'I am resigning as a member firm'.

19. PCD replied on 4 March 2020 to inform him that he would be held in membership and that as he had not responded to PCD's letter enclosing the draft Investigation Committee report, the report would be finalised without his representations.

20. Mr Jackson on 6 March 2020 replied saying that he does not accept the fact that he is to be held in membership and considers himself and his firm as no longer being members of the Institute. He says that the disciplinary matters have arisen from his time as a registered auditor and this status ended in May 2018.

21. Mr Jackson also refers to a number of personal issues, and says that since May 2018 he has had more than enough in his personal life to deal with, which is more important than anything else.

Issues of fact and law

22. The tribunal had to decide, on the basis of the evidence before it, and in the absence of Mr Jackson who had decided not to attend or to participate in the hearing of the complaints, whether it was satisfied that the complaints had been proven.

Conclusions and reasons for decision

23. After considering the IC's case presented to it summarised above, and the relevant documents produced in evidence, the tribunal was satisfied that both complaints had been proven. The conditions imposed by the ARC were clearly set out in their letter of 3 July 2013, and had been breached by Mr Jackson. No prior approval was sought to accept the appointment of Mr Jackson as auditor of 'A' Limited. No external hot file reviews were carried out on any audits in respect of 'A' Limited or 'B' Limited.

Matters relevant to sentencing

24. Mr Jackson had no previous findings of misconduct. The tribunal considered the *Guidance on Sanctions*. We remind ourselves that the key principles are protection of the public, maintaining the reputation of the profession, upholding proper standards of conduct within the profession, and the correction and deterrence of misconduct. We consider the complaint fell under the general heading, Other Regulatory and Compliance Issues, para k i. There had been a complete failure to comply with a condition or restriction imposed by the ARC. The starting point was accordingly exclusion and a category B financial penalty (£15,000).

25. The aggravating features were that there were clear breaches and the failures were serious and repeated. There was no engagement in the disciplinary process and no submissions made by Mr Jackson by way of mitigation or explanation, although he was aware of the hearing. The contents of his letter dated 6th March 2020 were noted. No financial information was produced to the tribunal. The tribunal rejected Mr Jackson's contention that he was no longer a member of ICAEW, his only argument.

Sentencing Order

26. The tribunal considered that the fair and proportionate sanction was exclusion together with a financial penalty of £10,000. Mr Jackson is to pay the IC's costs in the sum of £7,500 which we assessed to be fair and reasonable.

Decision on publicity

27. Publicity with name.

Chairman	Richard Jones QC	
Accountant Member	Martin Ward FCA	
Non Accountant Member	Jane Rees	**043647**

3. **Mr Steven Greenwood FCA** of
Barrowford, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 14 October 2020

Type of Member Member

Terms of complaint

Mr Steven Greenwood FCA, signed the following audit reports on behalf of 'A' Limited (now known as 'B' Limited), trading as 'C', when he was not eligible for appointment as senior statutory auditor, contrary to section 1212 of the Companies Act 2006:

a. 'D' Limited; year ended 31 December 2017; audit opinion signed 17 April 2018; and / or

b. 'E' Limited; year ended 31 March 2018; audit opinion signed 6 July 2018.

Mr Steven Greenwood is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b [October 2017 bye-laws]

Hearing date

14 October 2020

Previous hearing date(s)

Case Management hearing on 29 July 2020

Pre-hearing review or final hearing	Sanctions Hearing
Complaint found proved	Yes (at CMH on 29 July 2020)
All heads of complaint proven	Yes
Sentencing order	**Reprimand** **Financial Penalty - £1,500** **Costs- £5,210**
Parties present	Mr Greenwood (representing himself).
Represented	Ms Sutherland-Mack on behalf of the IC.
Hearing in public or private	The hearing was in public.
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service.

Documents considered by the tribunal The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle and a document setting out Mr Greenwood's financial circumstances.

The relevant facts

1. The facts behind the complaint can be set out in short order.

2. Mr Greenwood was a Responsible Individual ("RI") at 'F' LLP, which was acquired by 'G' Ltd on 15 December 2017. Mr Greenwood was transferred as an employee only, with no RI status from that date.

3. Following the acquisition of 'F' LLP by 'G' Ltd, ICAEW wrote to Mr Greenwood on 20 February 2018 informing him that ICAEW had:

   > "…..updated 'F' business advisers LLP's record to show that you are no longer a responsible individual (RI) within the firm. This means that you can no longer take responsibility for any audit work or sign audit reports. If you join another firm and want to become an RI again, you will need to complete and submit a fresh RI application."

4. Mr Greenwood stated, and the Tribunal accepted, that he had received this letter but had filed it without considering the contents.

5. Mr Greenwood signed the audit report on the financial statements of two companies who were his clients – 'D' Limited for the year ended 31 December 2017 and 'E' Limited for the year ended 31 March 2018 on 17 April 2018 and 6 July 2018 respectively, on behalf of 'G' Ltd when he did not have RI status. He was therefore not entitled to sign the audit reports.

6. On 14 June 2019 upon discovery of the error, Mr Greenwood self-reported to the Professional Conduct Department (PCD) that he had breached the Audit Regulations. Mr Greenwood explained that he had signed two audit reports when he was not a RI. He accepted the complaint at the first opportunity at a CMH on 29 July 2020.

Matters relevant to sentencing

7. Having considered the *Guidance on Sanctions*, effective from 1 July 2019, the Tribunal considered that the misconduct fell into category 5(d) – Audit report signed by a non-RI, and assessed Mr Greenwood's conduct as falling into the "less serious" category, given that it had occurred as a result of an oversight on his behalf and poor communication on the part

of the entities that employed him. As such the starting point was a reprimand and a financial penalty in category E - £3,000.

8. The Tribunal concluded that there were no aggravating factors.

9. Having heard from Mr Greenwood the Tribunal concluded that there were a number of mitigating factors:-
    a. He had self-reported and had accepted the complaint at the first opportunity;
    b. The error occurred as a result of an oversight and was not done with any knowledge – at the time he signed the audit reports he genuinely believed that he held RI status;
    c. He was genuinely remorseful for his actions and the trouble he had caused;
    d. He has a long and previously unblemished record as Member.

10. Taking into account the mitigating factors the Tribunal concluded that the appropriate sanction was a Reprimand and a financial penalty of £1,500 (reduced from the starting point of £3,000 to take into account the mitigating factors and a further 30% reduction to reflect the early admissions). Mr Greenwood will also pay the costs of £5,210.

Sentencing Order

11. The Tribunal ordered the following sanctions:
    a. Reprimand
    b. Financial Penalty - £1,500
    c. Costs- £5,210

Decision on publicity

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

Chair	Mr Jonathan Kinnear QC	
Accountant Member	Mr Jon Newell FCA	
Non Accountant Member	Mr Geoff Baines	**050276**

4. **Mr Alan George Kent FCA** of
Horsham, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 7 October 2020

Type of Member Member

Terms of complaint

1a. On or around 29 May 2013, Mr Alan Kent FCA, on behalf of 'B', knowingly prepared for Companies House incorrect abbreviated accounts of [Company A Ltd] for the period ended 31 January 2013.

and/or:

1b. On or around 29 May 2013, Mr Alan Kent FCA, on behalf of 'B', prepared the abbreviated accounts for Companies House of [Company A Ltd] for the period ended 31 January 2013, when he should have known that they were incorrect.

2. On or around 31 January 2014, Mr Alan Kent FCA, on behalf of 'B', improperly allowed to be submitted a set of full accounts for [Company A Ltd] for the period ended 31 January 2013 to HMRC, in that they did not agree to the abbreviated accounts filed on or around May 2013 at Companies House.

3. Mr Alan Kent FCA, on behalf of 'B', prepared the abbreviated financial statements of [Company A Ltd] for the year ended 31 January 2014 when those accounts did not comply with The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 as they did not contain a note explaining the non comparability of corresponding amounts for the preceding financial year with the financial statements that had been filed for that former period.

Mr Alan George Kent is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a for complaints 1a, and 2 and Disciplinary Bye-law 4.1b for complaints 1b and 3.

The relevant Disciplinary Bye-Laws for complaints 1a and 1b are those from 29th September 2011 to 23rd of July 2013.

The relevant Disciplinary Bye-Laws for complaints 2 and 3 are those from 24th July 2013 to 31st December 2015.

The Disciplinary Bye-laws from 29th September 2011 to 23rd of July 2013 state:

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

a. if 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;

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

The Disciplinary Bye-laws 24th July 2013 to 31st December 2015 state:

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

a. if 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;

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

Hearing date	7 October 2020
Previous hearing dates	Case Management Hearings on 5 May 2020 and 12 August 2020
Case Management, Sanctions or Final Hearing	Final hearing
Heads of complaint found proved	Complaint 3
Heads of complaint found not proved	Complaints 1(a), 1(b) and 2
Sentencing order	Severe reprimand Fine £5,000 Costs £8,500

Procedural matters and findings

Parties and representation	The Investigation Committee was represented by Ms Jessica Sutherland-Mack The Respondent was present and represented himself

Hearing in public or private	The hearing was in public and pursuant to the direction made at the Case Management Hearing on 12 August 2020 was held remotely by video conference.
Decision on service	The Tribunal was satisfied that service was in accordance with regulations 3 and 26 of the Disciplinary Committee Regulations
Documents considered by the Tribunal	The Tribunal considered the documents contained in the Investigation Committee's bundle

Preliminary matters

1. At the start of the hearing Ms Sutherland-Mack, on behalf of the Investigation Committee ('IC') made an application to amend Complaints 1(a), 1(b) and 2. She sought to add the words shown below underlined and delete the words shown struck through.

    1a. On or around 29 May 2013, Mr Alan Kent FCA, on behalf of 'B', knowingly prepared ~~and submitted to~~ <u>for</u> Companies House incorrect abbreviated accounts of [Company A Ltd] for the period ended 31 January 2013.

    1b. On or around 29 May 2013, Mr Alan Kent FCA, on behalf of 'B', prepared ~~and submitted~~ the abbreviated accounts ~~to~~ <u>for</u> Companies House of [Company A Ltd] for the period ended 31 January 2013, when he should have known that they were incorrect.

    2. On or around 31 January 2014, Mr Alan Kent FCA, on behalf of 'B', improperly <u>allowed to be</u> submitted a set of full accounts for [Company A Ltd] for the period ended 31 January 2013 to HMRC, in that they did not agree to the abbreviated accounts filed on or around May 2013 at Companies House.

2. Ms Sutherland-Mack submitted that the proposed amendments would more accurately reflect the evidence without fundamentally changing the basis of the IC's case or causing any prejudice to the Respondent.

3. The Respondent did not oppose the application.

4. Ms Sutherland-Mack conceded that the amendments should have been submitted at the Directions Hearing and apologised for the oversight. Mr Kent raised no objection to the amendments. The Tribunal was satisfied it was in the interests of justice to allow the amendments and granted the application.

The Investigation Committee's case

5. The Respondent has been a member of the ICAEW since 1979. From 24 March 2011 until it was dissolved on 15 July 2014, the Respondent was director of 'B', the trading name of 'C' Ltd, a chartered accountancy firm.

6. The complaints arise out of 'B's work as accountant for Company A Ltd in 2013 and 2014. The IC alleged that the Respondent prepared a set of abbreviated accounts for submission to Companies House in 2013 which did not match the accounts subsequently submitted to

HMRC for the same period. The IC further alleged that, in the subsequent year's abbreviated accounts, the Respondent failed to include the required note reconciling the changes to the previous year's comparative figures.

7. At the relevant dates, a member of the Institute was liable to disciplinary action under Disciplinary Bye-law 4.1 in the following cases:

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

Complaint 1

8. Minutes of a meeting of Company A's board on 29 January 2013, two days before the end of the financial year, show the company resolved to pay up to £120,000 into an Employer Financed Retirement Benefit Scheme ('EFRBS'). The minutes show that Mr Kent was present at that meeting, and the IC's case was that he had introduced the scheme to Company A as a means of tax planning, to the effect of reducing the amount of tax payable.

9. 'B' was appointed to act as accountant to Company A on 4 April 2013.

10. Full accounts for the year in question, namely the year ended 31 January 2013, were signed by Company A's Managing Director on 29 May 2013. They included an accountant's report from 'B' which was also dated 29 May 2013. Abbreviated accounts for the year in question were filed at Companies House by 'B' on 5 June 2013 ('the Companies House accounts'). The balance sheet in the abbreviated accounts was identical to that in the full accounts. These accounts did not show any payment being made into the EFRBS.

11. Accounts for the year 2013 were filed with HMRC dated 31st January 2014. These differed from the Companies House accounts. The Companies House accounts showed a profit and loss reserve at year end of £109,463. However, the HMRC accounts showed a negative profit and loss reserve of minus £36,394.

12. The main reason for the difference was that a payment of £105,000 to the EFRBS was included in the accounts filed with the Revenue, whereas it had not been included in the Companies House accounts. There were other differences arising from accounting adjustments to stock and intangible fixed assets.

13. The IC's case was that the Respondent knowingly prepared erroneous abbreviated accounts for submission to Companies House. As accounts filed at Companies House are a public record of assets and liabilities of a company, they need to be accurate and reliable. The IC's case was that the filing of these accounts resulted in a public record that did not accurately reflect the situation of Company A.

14. This, the IC submitted, rendered the Respondent liable to disciplinary action under DBL 4.1a, as applicable at the relevant time, on the basis he had committed an act or default likely to bring discredit on himself, the Institute or the profession (Complaint 1(a)).

15. In the alternative, the IC alleged that the Respondent prepared the accounts for submission to Companies House when he should have known that they were incorrect. The IC's case was that this rendered him liable to disciplinary action under DBL 4.1b on the grounds he

had performed his professional work inefficiently or incompetently to such an extent as to bring discredit on himself, the institute or the profession (Complaint 1(b)).

Complaint 2

16. Complaint 2 related to differences between the abbreviated accounts for the year ending 31 January 2013 which were filed at Companies House, and the version of the same year's accounts which were submitted to HMRC in January 2014. The principal difference was that the £105,000 EFRBS contribution was included in the accounts submitted to HMRC but not in the Companies House accounts.

17. The IC's case was that to prepare full accounts for submission to HMRC as the correct and final accounts, when these did not accord with the abbreviated accounts held at Companies House for the same year, was improper. In the circumstances, the IC contended that the Respondent should have refused to prepare them, at least until the outstanding issues with the Companies House accounts had been resolved.

18. This, the IC alleged, amounted to an act or default likely to bring discredit on the Respondent, the Institute or the profession.

Complaint 3

19. Complaint 3 related to the subsequent year's accounts, namely year ended 31 January 2014, which the Respondent prepared for Company A. It is a statutory requirement that the current year's accounts (in this case the 2014 accounts) include the comparative figures for the previous period (in this case, the 2013 figures).

20. However, in the 2014 abbreviated accounts filed at Companies House, the balance sheet comparatives for the preceding year differed from those in the 2013 Companies House accounts. This, again, was mainly due to the EFRBS payment.

21. That being so, the IC's case was that the Respondent should have included a note in the 2014 abbreviated accounts explaining the reason for the difference, as required by the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008.

22. By not doing this, and without any amendment having been made to the abbreviated accounts filed for 2013, there were two sets of accounts on the public record that did not correspond with each other and for which no explanation for the difference was given.

The Respondent's case

23. The Respondent gave evidence.

24. He said that though he had not personally prepared the accounts in question, he had been involved reviewing them in conjunction with his manager. He accepted that he had taken the 2013 full accounts to Company A's Managing Director in Portsmouth on 29 May 2013 for him to sign them. He agreed that on or about that date the abbreviated accounts had been filed at Companies House.

25. The Respondent did not accept the abbreviated accounts were incorrect at the date they were filed. He said that, at that stage, the Managing Director, who was also the sole shareholder in the company, had not yet decided whether to make a contribution to the EFRBS. That decision was not finally made until he signed a Deed dated 15 July 2013 which settled funds into the Scheme. Up to that point it was possible that the Managing Director might have decided not to go ahead with it. Therefore, the Respondent asserted, the abbreviated accounts had been correct when they were initially filed.

26. The Respondent accepted that, after the Managing Director had committed the company to the EFRBS, there had been a requirement to file amended accounts at Companies House. However, his evidence was that this obligation did not arise until before accounts for the following period, namely the year ended 31 January 2014, were filed. As these were not filed until 31 October 2014, he was not in breach of any obligation at the time the tax accounts were submitted to HMRC in January 2014.

27. The Respondent told the Tribunal that he had assumed his manager had filed the amended 2013 abbreviated accounts. That is why he did not include a note in the 2014 accounts regarding the change in comparatives. Because he had assumed the revised accounts had been filed with Companies House, he said he had not thought there was any need for a note as there would in fact be no change in the comparatives.

28. The Respondent accepted that no revised abbreviated accounts for 2013 had ever been filed at Companies House. He told the Tribunal he had been staggered when he found out that they had not been submitted. He put this down to human error.

29. In cross-examination the Respondent accepted that Company A's financial controller, Mr C, had instructed him not to file revised abbreviated accounts. Mr C was concerned that the revised accounts would show a negative position which might cause concern to the company's (debt) factors. The Respondent maintained that he had told Mr C that this was not his problem and that revised abbreviated accounts for 2013 must be filed.

Conclusions and reasons for decision

Decision on complaints

Complaint 1

30. The Tribunal was satisfied that the Respondent was involved in the preparation of the 2013 abbreviated accounts. The key issue for the Tribunal to consider, in respect of both Complaint 1(a) and 1(b), was whether these accounts were incorrect when they were filed at Companies House, which was on or about 29 May 2013.

31. The minutes of the meeting of Company A's board on 29 January 2013 showed that the board had resolved that a sum of 'up to £120,000 in total be set aside' and that this sum should be 'made available as soon as possible after the year end'. Although the minutes record authority to go ahead with the scheme, there was no evidence that it had actually been implemented prior to 29 May 2013 when the accounts were filed.

32. The Tribunal considered that the Deed dated 15 July 2013 between the company, the Managing Director and the investment provider was an important document. It recorded the commitment of the company to invest in the EFRBS. The Respondent's evidence, which was

not challenged on this point, was that until this Deed was executed no final decision had been made to actually go ahead with the scheme.

33. In view of this, the Tribunal concluded that, as at the end of May 2013, it could not be said with certainty that funds were going to be contributed to the scheme. That only became certain when the Deed was executed, which was about one-and-a-half months' later. Therefore, it could not be said that the abbreviated accounts were incorrect because they did not recognise the EFRBS contribution as, when they were drawn up, no firm commitment had been made. Indeed, the IC did not advance a positive case asserting that the abbreviated accounts were incorrect on this basis.

34. The IC did point out that there were a number of other differences between the Companies House accounts and those submitted to HMRC. The respective balance sheets showed a significant difference in respect of stock and a small difference in respect of stock and intangible fixed assets, neither of which could be accounted for by the EFBRS contribution and the accounts submitted to HMRC contained reference in the Accounting Policies to the EFRBS.

35. However, the evidence before the Tribunal was that this further information relating to these adjustments had been provided by Company A, through Mr C, to the Respondent's firm between the filing of the Companies House accounts and the completion of the accounts with HMRC. On that basis, it was understandable that some amendments would be needed before submission to the Revenue.

36. There was no evidence on which the Tribunal could conclude that the Respondent knew the figures in the abbreviated accounts were not correct at the time they were prepared and filed. The Tribunal was satisfied that his firm had prepared those accounts on the basis of the best information that was available to it at the time.

37. Accordingly, the IC had not proved that the abbreviated accounts were incorrect on or about 29 May 2013. It followed therefore that neither Complaint 1(a) nor 1(b) was capable of proof.

Complaint 2

38. The IC accepted that the 2013 accounts submitted to HMRC at the end of January 2014 were correct, in that the accurately reflected the company's position. By this time the EFRBS contribution had been made, and this was included in the tax accounts. The Respondent's firm had also been made aware of the need for other adjustments, and these had been made.

39. The IC's case was that this, however, meant that the abbreviated accounts that had been filed at Companies House were not correct and should have been replaced by a revised set. Indeed, the Respondent accepted that there had been an obligation on his firm to do just that.

40. The allegation in Complaint 2 was not, however, that the Respondent had breached a duty to ensure revised abbreviated accounts were submitted to Companies House. The allegation was that he had improperly allowed accounts for Company A to be submitted to HMRC on or about 31 January 2014. The impropriety alleged was that the accounts submitted to the Revenue did not match those which were at Companies House.

41. The Tribunal was not satisfied that this was a justifiable complaint. 'B' could have submitted the correct version of the accounts to HMRC, which it did; or it could have submitted the previously prepared version which matched the abbreviated accounts, but which would by then have been incorrect. The fact that the Respondent had allowed the correct accounts to be submitted to HMRC rather than the incorrect accounts could not, in the Tribunal's view, be a proper basis for a complaint.

42. The Tribunal was concerned that no effort appeared to have been made by the Respondent or his firm to alert HMRC to the fact that the accounts it was receiving differed from the statutory accounts. However, the allegation against the Respondent in Complaint 2 was that he had acted 'improperly' by allowing the accounts in question to be submitted. Given that it was accepted that, at the time of submission, they were correct, the Tribunal could not see how allowing accurate accounts to be sent to the Revenue could be improper.

43. The Tribunal therefore found Complaint 2 not proved.

Complaint 3

44. It was not in dispute that, pursuant to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008, a note must be included in accounts to explain why the previous year's comparatives have been changed. Nor was it in dispute that there was no such note in Company A's 2014 abbreviated accounts, even though the comparatives did not match the 2013 abbreviated accounts.

45. The Respondent's evidence was that he was not aware of the need for such a note because he had assumed the amended 2013 abbreviated accounts had been filed.

46. The Tribunal did not find this account believable.

47. The Respondent accepted that he was aware of the need for revised accounts to be filed at Companies House. However, he took no steps to either ensure that was done or check that it had been done. The Tribunal did not consider his assertion that he had assumed his manager had done it to be credible. Given the sustained amount of time this issue had gone on, and the pressure that had been put on the Respondent not to file a revised statement, the Tribunal did not doubt that he would have been fully aware as to whether or not revised abbreviated accounts had been filed.

48. It was clear from the evidence, and indeed it was not disputed by the Respondent, that Company A's financial controller had instructed him not to file the revised accounts. This was due to the perceived effect it would have on the company if the balance sheet showed a negative reserve. It was quite clear that the intention had been to avoid disclosing the negative position.

49. Of significance, the Respondent stated as follows in his letter dated 29 January 2016, which was in reply to the Professional Conduct Department's DBL 13 request for information:

> 'Accounts were completed on 31 January 2014, but we were specifically instructed not to file amended Accounts by [Mr C], on [the Managing Director's] instructions, apparently due to certain concerns that the factoring company would have, because the Balance Sheet showed a negative NAV.
>
> Subsequently when the 2014 Accounts were prepared, which had to show the correct comparatives i.e. reflecting a negative Balance Sheet for 2013, we were again instructed by [Mr C], on [the Managing Director's] authority, not to file them until the last possible minute, which we did, on 31 October 2014, whilst also being instructed not to file amending Accounts for 2013!'

50. The Tribunal was in no doubt that the Respondent had been complicit with these requests from his client and that this was the reason the amended abbreviated accounts remained unfiled.

51. The Tribunal found Complaint 3 proved. It was satisfied that the Respondent was fully aware of the need to include a note in the 2014 abbreviated accounts about the different

comparatives because he knew that amended 2013 accounts had not been filed. Further it was satisfied that this was discreditable conduct and rendered the Respondent liable to disciplinary action under DBL 4.1b.

Matters relevant to sentencing

52. There were two previous disciplinary matters recorded against the Respondent.

53. In December 2015, at a hearing before the Disciplinary Committee, a complaint that the Respondent had breached DBL 13 by failing to reply to request for information was proved. That complaint related to information required the Professional Conduct Department regarding this investigation. The Respondent was reprimanded, fined £4,000 and ordered to produce the required information.

54. On 6 November 2017, the Respondent agreed a consent order with the IC relating to four complaints. These concerned an incorrect claim for relief on a capital gain; failing to use an acceptable valuation method for valuing shares; and two instances of failing to reply to professional correspondence. The sanction was a severe reprimand and a fine of £10,000.

55. Ms Sutherland-Mack submitted that the previous findings were of a similar nature to the finding made on Complaint 3 in that they involved a failure by the Respondent to comply with his professional obligations.

56. Ms Sutherland-Mack accepted that there was no evidence that any loss had been caused as a result of the Respondent's failure to properly prepare the 2014 accounts and that there had been no negative impact on his client. However, she submitted that failing to include a note in the accounts explaining the change in comparatives, knowing that the revised abbreviated accounts for 2013 had not been filed, was an aggravating feature.

57. Ms Sutherland-Mack referred the Tribunal to ICAEW's *Guidance on Sanctions*, in particular to sections 9m and 13b which are as follows:

> Failing to act competently: (i) Acting without having the required expertise or despite having that expertise work was of a very poor nature. Starting point: severe reprimand and a category D financial penalty (£5,000) and/or order for remedial training.
>
> Accounts not in correct statutory format: (i) Work that is seriously defective. Starting point: severe reprimand, and a category D financial penalty (£5,000) and/or order for remedial training.

58. Ms Sutherland-Mack also applied for costs in the sum of £9,745.

59. The Respondent made no submissions on sanction or costs, having left the hearing at that stage to attend another appointment.

60. The Tribunal considered that no penalty less than a severe reprimand would be appropriate, having regard to the fact that the Respondent had been both reprimanded and severely reprimanded within the last 5 years albeit this complaint predated those sanctions.

61. The Tribunal therefore determined that the appropriate and proportionate sanction was a severe reprimand and in addition a fine of £5,000.

62. The Tribunal considered that some reduction should be made to the costs sought for the investigation on the basis that Complaints 1 and 2 had not been proved. However, the background to the case and the evidence presented would have been little different even if Complaints 1 and 2 had not been pursued. A hearing would have been necessary in any event because the Respondent denied Complaint 3. In light of these factors, the Tribunal considered it was appropriate to reduce costs from the sum claimed of £9,745 down to £8,500.

Sentencing order

63. The Respondent is severely reprimanded and fined £5,000.

64. The Respondent shall pay costs to ICAEW of £8,500.

Decision on publicity

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

Chairman	Mrs Mary Kelly	
Accountant Member	Mr Michael Ranson FCA	
Non Accountant Member	Mr Nigel Dodds	
Legal Assessor	Mr Andrew Granville Stafford	**027139**

5. **Mr Terry Macpherson** of
Basildon, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 20 October 2020

Type of Member Audit Affiliate

Terms of complaint

1. On 18 April 2018, Mr Terry Macpherson signed an audit report on the financial statements of the 'A' Ltd for the year ended 31 December 2017, in the name of 'B' when

    a. He was ineligible to act as a qualified auditor because he was not a member of a recognised supervisory body and eligible for appointment under the rules of that body contrary to section 91 of the Co-operative and Community Benefit Act 2014;

    And/or

    b. These actions were dishonest because

        i. he knew that 'B' had not been engaged to provide the audit; and/or
        ii. he knew he was ineligible to sign, not being a qualified auditor.

Mr Terry Macpherson is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a (effective from 11 October 2017).

Hearing date

20 October 2020

Previous hearing date(s)

Case Management Hearing 1 September 2020

Pre-hearing review or final hearing

Sanctions Hearing

Complaint found proved

Yes, on admission

Sentencing order

A financial penalty of £1,200 and an order for payment of the Investigation Committee's costs of £4,800, the total of £6,000 to be paid monthly at the rate of £500, the first payment to be made on 1st December 2020

Parties present

Mr Terry Macpherson appeared in person

Represented

The Investigation Committee (IC) was represented by Ms Sonia Stean

Hearing in public or private

The hearing was conducted remotely, details being published on the ICAEW website

Decision on service

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

Documents considered by the tribunal

The tribunal considered the documents contained in the IC's bundle together with financial evidence provided by Mr Macpherson

The Investigation Committee's (IC's) case

1. Mr Terry Macpherson (the Respondent) does not have a recognised accountancy qualification and is not a member of any accountancy body or institute. He was an ICAEW audit affiliate from 21 March 2018 until 14 November 2018, when he ceased being a principal of his firm, 'B'. As an ICAEW affiliate, as set out in the Supplemental Charter, the Respondent was required to observe and uphold the professional and ethical standards of ICAEW, and was subject to the disciplinary processes.

2. From 1989 to August 2018, the Respondent was an employee/salaried partner of 'B', which is an ICAEW member firm and until August 2018 was registered with ICAEW for audit.

3. In August 2018, the Professional Conduct Department of the ICAEW (PCD) received a complaint from Mr 'C', a partner of 'B', under the duty to report misconduct. In August 2018, the Respondent had admitted to signing the audit reports on the financial statements of two companies, over a number of years. The audit reports had been signed by the Respondent in the name of 'B'. The Respondent did not have Responsible Individual (RI) status and was therefore ineligible to sign the audit reports. The partners of 'B' were not aware that the Respondent had been signing the audit reports, in the name of 'B'.

4. Two entities for which the Respondent had signed and issued audit reports were 'D' Limited and 'E' Ltd. On 4 September 2018, both 'D' Limited and 'E' Ltd were placed into administration. Both companies had the same directors. The Respondent states that he issued audit reports on 'D' Limited for the financial years ended 2007 – 2017 and on 'E' Ltd for financial year ended 2012 – 2017.

5. The Respondent referred to his actions with regards to the accounts of 'D' Limited and 'E' Ltd as fraudulent. He has explained in a written statement that:

1) He has not correctly recorded the bad debt provision.

2) Loans have been understated, potentially by £5m.

3) Funds were paid out of the company to the directors and related entities.

4) One director had remote access to the finance system and bank account and made changes to the ledger.

5) The shares in the company were incorrectly disclosed.

6. The Respondent was working to try and recoup the missing funds of the company, and had managed to obtain charges of approximately £1.3m over assets. He estimates that overall fraudulent loss was circa £6m. He has provided further details of his conduct in a signed witness statement for the administrators of 'D' Limited and 'E' Ltd. That conduct is currently being investigated by the Financial Conduct Authority (FCA).

7. The 2017 financial statements of 'D' Limited and 'E' Ltd are undated. PCD has been unable to establish if and when audit reports were signed on these accounts.

8. The audit reports of 'D' Limited and 'E' Ltd, relating to the year ended 30 September 2016 and earlier financial periods, were signed prior to 21 March 2018, the date when the Respondent became an audit affiliate and therefore subject to ICAEW's disciplinary Bye-laws. Therefore, no complaints have been raised in respect of the audit reports of either 'D' Limited or 'E' Ltd.

9. Subsequent investigations by 'B' showed that the Respondent had also issued audit reports, when he was ineligible to do so, for 'F' Ltd, 'G' Ltd and 'A' Ltd. The Respondent has admitted signing these reports.

10. However, only one audit report in respect of these companies was signed between 21 March 2018 and 14 November 2018, the period when the Respondent was an audit affiliate and therefore subject to ICAEW's Disciplinary Bye-laws. A complaint has been raised in respect of the 2017 audit report signed in respect of the accounts of the 'A' Ltd.

11. A list of the audit reports that the Respondent has admitted to signing, some 36 in total, when he was ineligible to do so has been provided as background. The list has been prepared by PCD based on the information provided by the Respondent.

12. There are no complaints in respect of these reports as the conduct took place outside of the period when the Respondent was an audit affiliate and/or it cannot be established exactly when the audit report was actually signed by him as the audit report is undated/unsigned.

13. The 'A' Ltd is a registered society as defined by the Co-operative and Community Benefits Act 2014. The accounts of registered societies are required to be audited by a qualified auditor as defined in the Companies Act 2006 and the accounts are filed with the FCA and not with Companies House. For these purposes, a "qualified auditor" means a person eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006. This in turn means the individual or firm must be a member of a recognised supervisory body, and is eligible for appointment under the rules of that body.

14. On 22 March 2018, ICAEW wrote to confirm that the Respondent had been granted audit affiliate status with effect from 21 March 2018. The letter also explained that he was not allowed to be responsible for audit work or sign audit reports on behalf of 'B'. On 18 April 2018, the Respondent signed the audit report on the accounts of the 'A' Ltd for the year ended 31 December 2017. The accounts were signed in the name of 'B' and were filed with the FCA on 19 June 2018.

15. The Respondent was not a member of a supervisory body and was not eligible for appointment under ICAEW's rules and therefore he was not eligible to sign the audit report of the 'A' Ltd. As an audit affiliate he was subject to ICAEW Disciplinary Bye-laws as set out in the Supplemental Charter. He is no longer an audit affiliate of ICAEW but former members, which includes affiliate members, are still subject to the Disciplinary Bye-laws.

16. The Respondent confirmed to 'B' that he was approached personally by the 'A' Ltd to act for them in order to reduce costs as they were in financial difficulty. He charged 'A' Ltd £795 for the audit of the 2017 accounts through his company.

17. The Respondent admits to signing the audit report on the accounts of the 'A' Ltd for the year ended 31 December 2017 without the knowledge of his firm, which he states he understands to be wrong. The audit was carried out outside of the firm's time, at weekends and in evenings, and he invoiced for the work through his own personal company.

18. No one else at 'B' was either involved or aware of his conduct. He states that each individual at the firm has the highest integrity and he regrets his actions which may have damaged the firm's well-deserved reputation.

Respondent's case

19. The Respondent has, from the outset of the investigation, made full admissions in terms of signing the audit report and acting dishonestly, and has co-operated fully with the ICAEW. As stated above, he expressed regret at his actions. His motivation was to assist his clients who were in financial difficulties.

Conclusions and reasons for decision

20. The tribunal was satisfied that the complaint had been proved upon admission.

Matters relevant to sentencing

21. The Respondent had no previous findings of misconduct. The tribunal considered the *Guidance on Sanctions*. We reminded ourselves that the key principles are protection of the public, maintaining the reputation of the profession, upholding proper standards of conduct within the profession, and the correction and deterrence of misconduct. We considered that the complaint fell under the heading, Audit reports signed by a non-RI, para 5 c. Especially in the light of the admitted dishonesty, we assessed the conduct as very serious. The starting point was accordingly exclusion and a category C financial penalty (£10,000).

22. The aggravating feature was the previous history of a large number of audit reports being signed when they should not have been. The mitigating factors were the full co-operation with the investigation, the admissions made, and the fact that the motivating factor was the wish to assist clients. Because of his actions, the Respondent has lost his job, his career and a number of his friends. He is now working in a warehouse as a packer. We had regard to his financial circumstances, full details having been provided in March 2020.

Sentencing Order

23. Had the Respondent been a member of the ICAEW, we would have had no hesitation in making an exclusion order, but that is not an order open to us as he is not a member. Taking full account of all the matters set out above, we conclude that a fair and proportionate sanction is the imposition of a financial penalty in the sum of £1,200 and an order for payment of the IC's costs (which we find to be reasonable and proportionate) in the sum of £4,800. The sum of £6,000 is to be paid at the rate of £500 per month, the first payment to be made on 1st December 2020.

Decision on publicity

24. Publication with name.

Chair	Richard Jones QC	
Accountant Member	Martin Ward FCA	
Non Accountant Member	Rachel Forster	**045629**

APPEAL COMMITTEE PANEL ORDERS

6. **Mrs Janet Elizabeth Ashby [ACA]** of
Wakefield, United Kingdom

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 15 December 2020

Type of Member	Member
Date of Disciplinary Tribunal Hearing	25 November 2019
Date of Appeal Panel Hearing	15 December 2020

Terms of complaint found proven before the Disciplinary Tribunal

On 8 June 2018, Mrs Janet Ashby ACA was convicted at Leeds Crown Court of theft.

Mrs Janet Elizabeth Ashby is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(e) and 4.2(g)

Sentencing Order of Disciplinary Tribunal

Exclusion from membership
Pay costs of £4,350

Appeal against finding?	No
Appeal against Sentencing order?	No
Appeal against Costs	Yes

Decision of Appeal Panel

1. To reduce the costs order by the Disciplinary tribunal from £4,350 to one of £500 on the ground of lack of ability to pay;

2. To order that those costs shall not be enforced without the permission of the Appeal Panel such permission to be considered on an application by either party and only if based on a material change of circumstance.

3. No order for the costs of the appeal.

Procedural matters and findings

1 This was a virtual hearing conducted on line. The Appellant appeared in person and the Investigation Committee (IC) was represented by Ms Sonia Stean.

2 Though nominally a public hearing, in practice the virtual proceedings confined attendance to the parties.

3 Pre-hearing directions were given on 8 December 2020.

Grounds of appeal

4 The Appellant contested the costs order made by the DC on the ground that she did not have the means to pay.

Decision

5 The costs ordered by the DC should be reduced to £500.

6 It is ordered that those costs shall not be enforced without the permission of the Appeal Panel such permission to be considered on an application by either party and only if based on a material change of circumstance.

7 No order for the costs of the appeal.

Reasons for decision

8 Though the Panel considered that the costs incurred before the DC were on the high side given the circumstances where the Appellant could not contest the complaint in that she had been convicted of a serious criminal offence of dishonesty and sentenced to a term of imprisonment, nevertheless, as the Appellant did not question the quantum of the DC's costs order, the Panel was not minded to interfere with the DC's decision as to costs on its merits.

9 Whereas the DC was entirely right to make an order for costs, in the circumstances existing at present, it was clear that such an order would be wholly ineffective in practice and that attempting to collect would involve the Institute in far greater expense than would ever be recovered from the Appellant.

10 Furthermore the Appellant's personal situation had deteriorated since the DC hearing. Her past history, coupled with the restrictions imposed nationally in the light of coronavirus, meant that she had become one of the long-term unemployed with little prospect of a job. As a result of her conviction, her assets (including her matrimonial home) had been liquidated and sold and there remained a very large deficit. In fact (though not in law) the Appellant was heavily bankrupt.

11 It was clear both from the evidence filed and from her own evidence, that the Appellant's health both [PRIVATE] had been gravely impaired.

12 The Panel considered that the solution that combined both the practicalities of the situation and a recognition of the Appellant's current situation was to retain a nominal order for costs in the sum of £500, to mark the Panel's view that the DC had acted correctly in making a costs order, but to order that these costs should not be enforced without the permission of the Appeal Panel, such permission to be considered on an application by either party and only if based on a material change of circumstance.

13 Costs of the appeal were not sought by the IC and no order was made.

Chairman	Mr Richard Mawrey QC	
Accountant Member	Mr Brian Fisher FCA	
Accountant Member	Mr Richard Lea FCA	
Non Accountant Member	Ms Harsha Shewaram Hildebrand	
Non Accountant Member	Mr David Fisher	**035917**

6. **Mrs Janet Elizabeth Ashby [ACA]** of
Barnsley, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 25 November 2019

Type of Member Member

Terms of complaint

On 8 June 2018, Mrs Janet Ashby ACA was convicted at Leeds Crown Court of theft.

Mrs Janet Elizabeth Ashby is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(e) and 4.2(g)

Disciplinary bye-laws:

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

> *e. if any of the circumstances set out in paragraph 2 exist with respect to him.*

4.2 Those circumstances are:

> *g. that he has, in a court of competent jurisdiction, been convicted of an indictable offence (or has, before such a court, outside England and Wales been convicted of an offence corresponding to one which is indictable in England and Wales.)*

Hearing dates	25th November 2019
Previous hearing dates	N/A
Pre-hearing review or final hearing	Final hearing
Complaint found proved	Yes on admission
Sentencing order	Excluded from membership Costs of £4,350

Procedural matters and findings

Parties and representation	The Investigation Committee was represented by Mrs Sonia Stean The Respondent attended the hearing by video link and was not represented
Hearing in public or private	The hearing was in public
Decision on service	The Tribunal was satisfied that service was in accordance with regulations 3 and 5 of the Disciplinary Committee Regulations
Documents considered by the Tribunal	The Tribunal considered the documents contained in the Investigation Committee's bundle together with the regulation 13 representations and medical evidence submitted by the respondent.

The Investigation Committee's case

66. The Respondent has been a member of the ICAEW since 1990.

67. On 8 June 2018, the Respondent was convicted by a jury after a trial at Leeds Crown Court on an indictment containing one count of theft.

68. The Respondent was sentenced on 11 June 2018 to 2 years and 6 months imprisonment and ordered to pay a Victim's Surcharge of £120.

69. The Respondent was convicted of stealing from a relative, Mr 'A'. The facts of the offence leading to the Respondent's conviction are set out in His Honour Judge Kearl QC's sentencing remarks.

70. Mr 'A' was an elderly man. His assets were a small amount of savings and a house. The house had no mortgage as he had paid it off during his working life. In May 2013, the Respondent persuaded Mr 'A' to let her have power of attorney over his affairs. She persuaded him to take an equity release in two parts, firstly for £37,500 and secondly for £27,000.

71. This money was put in to a joint account for the Respondent and Mr 'A', who trusted the Respondent to act in his best interests. However, she did the opposite. Of the money advanced from the equity release, the Respondent stole between £40,000 and £50,000, which, amongst other things, she used to pay her daughter's school fees. She also used it to pay off some of her mortgage arrears and buy presents for her children.

72. HHJ Kearl stated that Mr 'A' put his financial affairs in her hands knowing that she was an accountant and someone who he thought could be trusted. The Respondent exploited that trust. She syphoned off the money, without keeping any record of what she was doing. She hid her actions from Mr 'A''s son, who she knew was intended to be the beneficiary under his will. There was evidence that, despite having had a well-paid job with the NHS, the Respondent had been living beyond her means.

73. HHJ Kearl described the offence as 'mean and nasty', and when Mr 'A' gave evidence, she accused him of being confused and forgetting what he had promised to give her. Her account was not believed by the jury.

74. In terms of mitigation, HHJ Kearl took in to account that the Respondent had no previous convictions and therefore these actions were out of character. [PRIVATE] HHJ Kearl also took in to account that the offending occurred some time ago and that she had taken good physical care of Mr 'A' for a long period of time before the offending.

75. It was however, an aggravating feature that the offending took place over the course of nearly a year and therefore was sustained.

76. HHJ Kearl concluded that the Respondent's culpability was high, as the theft involved a breach of trust, a significant degree of planning and her victim was vulnerable. The harm was also said to be high due to the amount stolen and Mr 'A''s loss of confidence in who he trusts. The judge stated that the Respondent must be sentenced to prison and that it was not appropriate to suspend the sentence.

77. HHJ Kearl sentenced the Respondent to two years six months imprisonment. She would also be subject to confiscation proceedings.

78. The Respondent was released from prison in April 2019 and is currently on licence.

79. The Respondent has been convicted of an indictable offence in a court of competent jurisdiction in the UK, for which she received an immediate custodial sentence. Therefore, she is liable to disciplinary action under Disciplinary Bye-Law 4.1(e) by virtue of Disciplinary Bye-law 4.2(g).

The Respondent's case

80. The Respondent admitted the complaint.

81. In her Regulation 13 Answers the Respondent stated that the offence of which she was convicted related to her personal life and in no way related to her work. She had looked after Mr A for 35 years following the death of his wife, when she stated his own child abandoned him. She indicated this was why she looked after his finances and the equity release was to be spent on converting her house so that he could go and live with her family rather than going into a care home, which he didn't want to do. She accepted that she should have kept an audit trail [PRIVATE].

82. [PRIVATE]

83. [PRIVATE]

84. The Respondent told the Tribunal that she was truly sorry for the shame that this offence had brought on her family. She has had to sell her house, is in poor health and is currently unable to work. She emphasised her previous good personal and work record and the importance to her of her membership of the Institute.

Conclusions and reasons for decision

Matters proved by admission

85. The tribunal found the complaint proved by admission.

Matters relevant to sentencing

86. There were no previous disciplinary matters recorded against the Respondent. The Tribunal took into account that until her conviction she had been of good character and it had regard to the medical report she had supplied to the Tribunal.

87. This was however a serious offence of dishonesty committed in breach of trust on an elderly and vulnerable victim which resulted in a lengthy immediate custodial sentence. Such behaviour is fundamentally incompatible with continued membership of the Institute.

88. The Tribunal had regard to ICAEW's *Guidance on Sanctions* ('GDS'). The starting point for sanction where a member has been convicted of an offence involving dishonesty or breach of trust or where a member receives a custodial sentence, whether suspended or not, is exclusion.

89. In the Tribunal's view there was no reason to depart from this starting point. The Tribunal therefore ordered that the Respondent be excluded from membership.

90. The IC applied for costs in the sum of £6,431.50. The Respondent provided the Tribunal with a statement of her financial circumstances. She accepted that costs had been incurred by the IC but emphasised she was not in a position to pay the sum sought.

91. The Tribunal considered that in principle the Respondent ought to pay the costs of the investigation and the hearing. However, it considered that it was appropriate to reduce the sum claimed on the basis that, because of her admission, the hearing had taken less than a full day and to reflect to some extent her financial circumstances.

92. The Tribunal ordered the Respondent to pay costs of £4,350.

Sentencing order

93. Therefore, in the Tribunal's view the appropriate and proportionate sanction was to exclude the Respondent from membership of the ICAEW.

94. The Tribunal ordered the Respondent to pay costs of £4,350.

Decision on publicity

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

Chairman	Mrs Mary Kelly	
Accountant Member	Mr Mike Ranson FCA	
Non Accountant Member	Ms Jane Rees	
Legal Assessor	Mr Andrew Granville Stafford	**035917**

7. **Mr Ronald David Enticott FCA** of
of Chertsey, United Kingdom

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 15 December 2020

Type of Member	Member
Date of Disciplinary Tribunal Hearing	5 July 2017
Date of Appeal Panel Hearing	15 December 2020

Terms of complaint found proven before the Disciplinary Tribunal

1. Mr Ronald Enticott FCA failed to comply with regulation 21 of the Clients' Money Regulations because, on 23 occasions, he caused or permitted funds to be withdrawn from his firm's client account which were greater than the credit balances held for those clients. Full particulars are set out in a letter sent to Mr Enticott dated 5 February 2016.
2. Mr Ronald Enticott FCA failed to comply with regulation 10 of the Clients' Money Regulations as on the following two occasions he paid funds from clients into the firm's office bank account:
    a) £397.40 on 16 January 2012
    b) £102.83 on 24 October 2012
3. Mr Ronald Enticott FCA failed to comply with regulation 11 of the Clients' Money Regulations as he paid funds on the following two occasions into the client bank account which were personal funds of the firm and not Clients' Money:
    1. £3,000 on 29 January 2013
    2. £10,000 on 7 January 2014

Mr Ronald David Enticott is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c.
Disciplinary Bye-Law 4.1c

Sentencing Order of the Disciplinary Tribunal

Reprimand
Fine of £1,000
Costs of £4,500

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

Decision of Appeal Panel

1. Appeal against the findings dismissed.
2. Appeal against penalty allowed in part. The panel substitutes the order of
    a. Reprimand
    b. No fine
    c. Costs of the DC hearing reduced to £1,000
    d. No order for costs of the appeal.

Procedural matters and findings

14 This was a virtual hearing conducted on line. The Appellant appeared in person and the Investigation Committee (IC) was represented by Ms Victoria Morgan

15 Though nominally a public hearing, in practice the virtual proceedings confined attendance to the parties.

16 Pre-hearing directions were given on 8 December 2020.

Grounds of appeal

17 The Appellant appealed against the findings of the DC on the ground that his admitted conduct did not breach the regulations specified in the complaints.

18 He appealed against the penalty on the basis that it was disproportionate given the mitigating circumstances.

Decision

19 The appeal against the findings was dismissed.

20 The appeal against penalty was allowed in part and an order substituted:
    a. Reprimand
    b. No fine.
    c. Costs before the DC reduced to £1,000
    d. No order for costs of the appeal.

Reasons for decision

21 The appeal against the findings was misconceived. The relevant provisions of the Clients' Money Regulations are clear and unambiguous and the Appellant's admitted conduct was obviously in breach of them. The Appellant accepted this at the time as, once the breaches were pointed out, he immediately desisted. The Regulations impose absolute obligations and the fact (which the Panel accepted) that the Appellant honestly believed that he was acting within the Regulations did not constitute a defence (although it is a mitigating factor).

22 In reassessing the penalty, the Panel considered that as there had been several breaches of the Regulations, however unintentional, the imposition of a reprimand was the least penalty that could properly be imposed and that order is to stand.

23 On the issue of fine and costs, the Panel was not only able to revisit the mitigating circumstances but to take into account events since the DC hearing. For reasons none of which could be described as the fault of the Appellant, the appeal had taken a very long time to reach a final hearing and this had impacted on the Appellant's health and wellbeing.

Now aged 78, he had retired from membership of the Institute and the complaints were by now of considerable antiquity.

24 This was a case with very strong mitigation:

a. The Appellant had acted in good faith throughout and had not consciously breached the Regulations.
b. The Appellant's conduct was solely designed to assist his clients with temporary delays in payment of tax.
c. No client (and indeed nobody else) had suffered any prejudice as a result of the Appellant's conduct.
d. When the breaches were drawn to his attention, he immediately changed his behaviour.
e. It might well have been possible for the Appellant to have achieved the same results by methods within the Regulations had he realised his existing conduct was in breach.
f. The Appellant was a long-standing member of the Institute with a clean record.

25 Given the exceptional circumstances and the fact that events had occurred which could not have been within the knowledge of the DC, the Panel felt it appropriate to remit the fine and to reduce the costs order.

26 The IC had undertaken not to claim its costs of the appeal irrespective of the result so no order for costs of the appeal was appropriate.

Chairman	Mr Richard Mawrey	
Accountant Member	Mr Brian Jonathan Fisher	
Accountant Member	Mr Richard Arthur Lea	
Accountant Member	Ms Harsha Hildebrand	
Non Accountant Member	Mr David Fisher	**027740**

7. **Mr Ronald David Enticott FCA**
Chertsey, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 5 July 2017

Type of Member Member

Terms of complaint

1. Mr Ronald Enticott FCA failed to comply with regulation 21 of the Clients' Money Regulations because, on 23 occasions, he caused or permitted funds to be withdrawn from his firm's client account which were greater than the credit balances held for those clients. Full particulars are set out in a letter sent to Mr Enticott dated 5 February 2016 (Appendix 1)
2. Mr Ronald Enticott FCA failed to comply with regulation 10 of the Clients' Money Regulations as on the following two occasions he paid funds from clients into the firm's office bank account:
    - £397.40 on 16 January 2012
    - £102.83 on 24 October 2012
3. Mr Ronald Enticott FCA failed to comply with regulation 11 of the Clients' Money Regulations as he paid funds on the following two occasions into the client bank account which were personal funds of the firm and not Clients' Money:
    - £3,000 on 29 January 2013
    - £10,000 on 7 January 2014

Mr Ronald David Enticott is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c. Disciplinary Bye-Law 4.1c states the following:

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

c. If he has committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them.

Hearing date

05 July 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) Reprimand; (ii) Fine of £1,000

Procedural matters and findings

Parties present	Mr Enticott was present.
Represented	Mr Enticott was represented by Mr Paul Powlesland of Counsel. The Investigation Committee (IC) was represented by Miss Kerenza Davis of Counsel.
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 a bundle prepared by Mr Enticott.

The ICAEW's Client Money Regulations

1. The Client Money Regulations ("the regulations") relevant for this matter provide as follows:

   Regulation 3

   *"**Clients' Money** means money of any currency (whether in the form of cash, cheque, draft or electronic transfer) which a Firm holds or receives for or from a client, including money held by a Firm as stakeholder, and which is not immediately due and payable on demand to the Firm for its own account…."*

   Regulation 6

   ***"Mixed monies** means monies received (whether in the form of cash, cheque, draft or electronic transfer) or held by a firm or principal in terms of Regulation 9 which comprises or includes clients' money and money due to the firm."*

Regulation 10

"Clients' Money or Mixed Monies received by a Firm or by any Principal must be paid immediately into a Client Bank Account, or to the client."

Regulation 11

"A Firm must only pay money into a Client Bank Account, if:

(a) the Firm is required to make such payment under these regulations; or

(b) the money is the Firm's own money and:

(i) It is required to be so paid for the purpose of opening and maintaining the account and the amount is the minimum amount required for that purpose; or

(ii) It is so paid in order to restore in whole or in part any money paid out of the account in contravention of these regulations"

Regulation 12

"A Firm shall not be regarded as having breached regulations 10 and 11 simply because it transpires that money which the Firm paid into a Client Bank Account in the reasonable belief that it was required so to do under these regulations should not have been paid into such account, provided that immediately upon discovering the error the Firm takes the necessary steps to withdraw the money which has been paid into such account in error."

Regulation 21

"The firm must ensure at all times the sum of the credit balances held for all clients is at least equal to the total balance held in all Client Bank Accounts and that no amount may be withdrawn from the bank account for any client which is greater than the credit balance held for that client."

Regulation 32

A Firm may cease to treat as client monies, any monies, when after taking reasonable steps to trace the client and return the monies, those monies remain unclaimed. (Guidance on "reasonable steps" is included in explanatory note 13). [sic] Such monies must then be paid by the member to a registered charity, subject to the following conditions: (a) The client must have remained untraced for 5 years. (b) Sums of below £10,000 (per client) may be paid to any registered charity. (c) For sums of £10,000 and above (per client), the registered charity must provide an indemnity against any claim subsequently made by the client for the money."

The IC's Case

2. The Defendant is a sole practitioner who practises through his firm 'A'. He advises clients on their tax affairs, including the preparation of their tax returns and arranging for payment of their tax liabilities. Some of the Defendant's clients do not, or cannot, use the HMRC's online tax payment facility, which is why he offers this service to them.

3. It is not any part of the IC's case that the Defendant has been dishonest or has lacked integrity, and no such allegation has been made. The case is that he has repeatedly breached the regulations.

First Head of Complaint

4. Regulation 21 places an obligation on a Firm (i) to ensure that the credit balance for each client of the firm is, at the very least, equal to the total balance of money held in all the Firm's Client Bank Accounts *and* (ii) not to withdraw an amount which is greater than the credit balance held for a particular client.

5. The Defendant breached regulation 21 on 23 occasions for the following reasons.

6. The factual basis for this head of complaint (and the other two heads) was the Defendant's practice of paying his clients' tax liabilities before he was put in funds by his clients, which is to say, before the individual client account held by his firm was credited with the client's money and when the individual client account had a zero credit balance. In short, he paid out before he paid in and he should not have done. There was no malice in this, and it may even have been done with good intention, but it was wrong.

7. The consequences of this practice were several. (i) on two occasions the Defendant had to pay his firm's money into the client account to stop it being overdrawn; (ii) the Defendant used money paid in by some clients to meet the liabilities of other clients; this second point meant; (iii) the clients whose money was used to pay the liabilities of other clients had insufficient funds in the client account to meet their own liabilities.

8. The sum of £788.04 was paid into the client account on 25 July 2011. There was no evidence provided to the Tribunal that it was client money within the definition in the Rules, and so, prima facie, it should not have been paid into the client account. In the event, some of this £788.04 (wherever it came from – that is unclear) was used to meet HMRC liabilities for several clients between 20 January 2012 and 11 October 2012. That money could not have belonged to each one of those clients, and probably did not belong to any of them, or to any client. £788.04 was eventually transferred from the client account to the firm's office account on 18 December 2014.

Second Head of Complaint

9. Regulation 10 places an obligation on the firm or a principal, who receives client money or mixed money, to pay that money immediately either to the client or into a client bank account.

10. The Defendant breached this regulation on two occasions for the following reasons.

11. On 16 January 2012, the Defendant paid £397.40 into the firm's office account. He did it again on 24 October 2012, in the sum of £102.83. These sums were clients' money. They also formed part of larger payments and, the Defendant has explained, were admittedly paid into the firm's office account because they were made out to the Defendant personally rather than his firm. The erroneous credits to the firm's office account were both corrected and transferred to the client account about two years later on 2 September 2014, despite the Defendant saying that he made regular reconciliations of the client account.

Third Head of Complaint

12. On 29 January 2012 the Defendant paid £3,000 of his firm's own money into the client account. He did it again on the 7 January 2014, in the sum of £10,000.

13. These two payments each constitute a breach of regulation 11 for the following reasons.

14. They are not payments of client money, but firm money, and not paid in accordance with the regulations. Regulation 11 (b), which permits payments of office money into the client account in certain circumstances is not engaged for the following reasons.

15. As office money, these payments were not made *"for the purposes of opening and maintaining"* the client account and were not paid *"in order to restore"* any money paid out in contravention of the regulations. The Defendant has explained that he made the payments to ensure that there were sufficient funds to meet his clients' tax liabilities, in other words, to ensure that the clients had enough funds to pay their tax before they actually put the Defendant in funds.

The Defence

16. The Defendant denied the complaint. His overarching submission was that he has not breached any of the regulations, which, in view of their lack of clarity and poor drafting are unclear and ambiguous. Any lack of clarity or ambiguity ought to be construed in favour of the Defendant and not the ICAEW. When the regulations are properly construed and applied to the Defendant's conduct, it is evident the Defendant had breached none of the regulations as alleged; on the contrary, he was compliant.

Defence to first head of complaint

17. The Defendant submitted that the language of regulation 21 is sufficiently elastic to mean that the phrase *"the sum of the credit balances held for all clients"* includes (i) client money held in the firm's office account and (ii) the firm's own money; both these species of money can be *"held for all clients"* because the regulation does not specify or discriminate where the *"balances held for all clients"* are to be found. The regulation not does mandate that such balances must be held in the client account.

18. This permissive approach is seen elsewhere in the regulations. Regulation 32 permits a firm to treat client monies as non-client monies in certain circumstances.

Defence to the second head of complaint

19. The Defendant submitted that the wording of regulation 10 is so poorly drafted that any interpretation should be made in his favour. More specifically, the language is sufficiently broad to cover situations where clients' money is paid first into the firm's account. Therefore, the obligation immediately to pay clients' money or mixed monies received by a firm into a client bank account can apply to situations where the firm has first paid client money into the firm's account (in error, for example). Under regulation 10, the principal must pay such money immediately to the client account upon discovery that client money had been paid into the firm's account. The significance of this construction and interpretation of regulation 10 is that where a firm transfers client money from the firm's account to the client account in these circumstances, it complies with, not breaches, regulation 10.

20. Moreover, the Defendant may rely on regulation 12 to defend himself against a breach of regulation 10. It is submitted that regulation 12 is another poorly drafted regulation where any interpretation and construction should be made in the Defendant's favour.

21. On its face, this regulation affords a defence to a breach of regulations 10 and 11. In short, the defence is that where money is paid into the client account which is not clients' money, no breach of regulation 10 or 11 will occur provided: (i) money was paid into the client account in the reasonable belief that it was paid in pursuant to the regulations and (ii) the wrongly-paid in money is paid out immediately upon the error being discovered.

22. Regulation 12 does not expressly apply to situations where client money is wrongly paid *into the Firm's account*, albeit in the reasonable belief that it was paid in pursuant to the Regulations. Furthermore, regulation 10 does not state that money which is *believed to be* client money must be paid immediately into the client account. It says that client money or mixed monies must be paid into the client account. Regulation 12 cannot, strictly speaking, be a defence to a breach of regulation 10 (even though it says it is) because regulation 10 only applies to client money or mixed monies, not money which was reasonably, but mistakenly, believed to be as such.

23. The cure of this apparent anomaly is to interpret and construe regulation 12 also to apply to situations where client money is mistakenly paid into the firm's account.

24. Were such an approach to regulation 12 to be adopted, the Defendant has a defence to the second head of complaint.

Defence to the third head of complaint

25. The Defendant paid £3,000 and £10,000 of firm money into the client account in compliance with regulation 11 (b) (ii) because he did so for the purpose of "maintaining" that account.

26. Further or alternatively, the defence in regulation 12 applies. The Defendant reasonably believed that he was required to pay the £13,000 into the client account pursuant to the regulations.

Issues of fact and law

27. The tribunal shall interpret the words of the regulations by giving them their ordinary English meaning and where appropriate the definitions attributed to them under the regulations. The tribunal shall adopt a purposive approach to the interpretation of the regulations, and shall apply common sense to that approach. That approach means that each regulation should be construed and interpreted within the broader context of the regulations as a whole.

28. The relevant standard of proof is the balance of probabilities.

29. There were no substantive issues of fact, except as to whether the sum of £788.04 was client money or not.

30. The issues to be determined were the proper construction and interpretation of the regulations and in particular regulations 10, 11, 12 and 21.

31. The tribunal found all three heads of the complaint proved.

Conclusions and reasons for decision

32. There was no substantive dispute of fact, except whether the sum of £788.04 (head of complaint 1) was client or firm money. The dispute between the parties centred on the construction and interpretation of the regulations.

33. The Defendant submitted that the regulations were very unclear and confusing, and there was little or no guidance from precedent and case law to assist in their construction and interpretation. The tribunal considered this submission to be exaggerated and incorrect. The regulations were written in straightforward and robust English and posed little difficulty in interpretation. The absence of precedent and case law is likely to testify to that. As to the Defendant's submission that the length of the hearing and the amount of semantic debate in it about the regulations proved his point, the tribunal disagreed. The regulations were comparatively easy to interpret; it was the Defendant's interpretations which proved to be harder to understand.

First head of complaint

34. The tribunal finds that there was insufficient evidence that the sum of £788.04 paid into the client account on 25 July 2011 was client money. The defendant was never able to identify where it came from. The IC showed convincingly, which was accepted by the Defendant in cross-examination, that this sum was also used to part-pay the tax liabilities of more than one client. This sum should not have been paid into the client account and should not have been used of for the purpose to which it was put. It should, furthermore, have been properly identified but it was not.

35. The tribunal finds that on 23 occasions the Defendant permitted funds to be withdrawn from his firm's client account which were greater than the credit balances held for those clients.

36. Regulation 21 imposes two obligations. The first is an obligation on a firm to ensure "at all times" that the sum of the credit balances held by the firm for all clients is "at least equal" to the total balance held in all client accounts. The second is an obligation to ensure that "no amount" can be withdrawn from the client account for any client which is greater than the credit balance of that client.

37. The meaning of this regulation is clear. Its purpose is to oblige the firm (i) to ensure that the total of the credit balances of all clients is at, the least, the same as the total balance held in all client accounts and (ii) not to withdraw money from a client's account which the client does not have. The purpose and outcome of the regulation is also clear; it is to ensure that the firm does not overdraw either the firm's client account or an individual client balance. To spend money on behalf of a client which the client does not have is not a right given to a firm or a principal under the regulations. The firm and the principal is not a bank, cannot offer credit, and cannot treat client's property in this way.

38. The tribunal rejects the Defendant's interpretation of regulation 21 for the following reasons.

39. Regulation 21 does not state that *"credit balances held for all clients"* may include client money which is held in *the firm's* account or firm money.

40. The application of regulation 21 presupposes compliance with regulation 10, which is to pay client money into a client account immediately upon receipt (subject to any defence in regulation 12).

41. If the Defendant's interpretation were correct, it would mean that it would be immaterial whether client money is held in the client account or the firm's own account, which is not correct. It is material and important.

42. It would also mean that the defence of regulation 12 is a defence to a matter of no real significance at all.

43. It would further mean that when complying with regulation 21, it is possible for the firm or the principal "at all times" to know what amount client money, for each client, is held in the firm's own account.

44. This is inherently, a highly unlikely interpretation since if that were so, the firm would be aware that the client money in the firm's account ought not to be there and should be transferred to the client account immediately.

45. Regulation 32 is of no assistance. That is a deeming provision for a very specific situation, where client money unclaimed for five years may be treated as non-client money. It is not possible to extrapolate from that a general principle that the difference between firm and client money is blurred.

46. The need to segregate client from firm money is not only common sense (client money belongs to the client; firm money to the firm) but an obligation which informs all the regulations.

47. The tribunal finds that the Defendant failed to comply with regulation 21 on the 23 occasions in which he caused or permitted funds to be withdrawn from his firm's client account which were greater than the balances held for those clients.

Second head of complaint

48. The tribunal finds that the Defendant paid £397.40 of client money into his firm's account on 16 January 2012, and that he paid £102.83 of client money into his firm's account on 24 October 2012. By doing so, the Defendant breached regulation 10.

49. Regulation 10 imposes an obligation on a Firm or a Principal immediately to pay clients' money or mixed monies which it receives either into a client bank account or to the client.

50. The meaning of the language in regulation 10 is simple and clear, and its purpose is evident. If a firm or a principal receives money belonging to a client (which includes by a cheque or a banker's draft as well as money sent by electronic means), that money must immediately upon receipt (that is, when possession of it is taken) either be banked in the client account or given to the client. The purpose is to protect the interests of the client and to reduce the risk to the firm and the principal which comes with possessing property belonging to a client.

51. It must follow that if client money is paid into the firm's account then it is not immediately paid into the client account or given to the client and a breach of regulation 10 occurs.

52. It stands to reason and to common sense that in this event, the firm must immediately remedy the breach and transfer the client money from its wrongful place in the firm's account to the client account, or pay it to the client.

53. The tribunal rejects the Defendant's submission that he actually complies with regulation 10 by doing this. What he actually does, the tribunal considers, is to remedy a breach of it by doing very belatedly what he should have done immediately.

54. Regulation 12 does not defend the Defendant's actions in this case because a straightforward reading of its words shows that it does not apply to circumstances where a firm or a principal places client money into the firm's account. It only applies where non-client money is paid into the client account.

55. There is no need, contrary to what the Defendant submits, to imply into regulation 12 a defence of wrongly putting client money into *the firm's* account. First, it is reasonable to assume that if the drafters of the regulations wished there to be such a defence they would have said so; secondly, the reference to regulation 10 in regulation 12 is not as meaningless as the Defendant submits and does not warrant such an implied term.

56. Regulation 12 affords a defence to a firm or principal who mistakenly places money immediately into a client account in the reasonable belief that this was necessary under the regulations. That defence is available only if necessary steps are taken to withdraw the money from the client account immediately upon the error being discovered. The Defendant asserted that he performed reconciliations of the client account at least every five weeks, which should have revealed the mistake, yet the errors were not corrected until several months later, on 2 September 2014.

57. Since, under the regulations, money can only be put into a client account in accordance with regulations 10 and 11, it is not unreasonable or stretching the language of the regulations to refer to both those regulations when describing in regulation 12 a defence to the allegation that money had been wrongly posted there pursuant to them.

Third head of complaint

58. The tribunal finds that on 29 January 2012, the Defendant paid £3,000 of his Firm's own money into the Client Account. He did it again on 7 January 2014, in the sum of £10,000. These two payments each constitute a breach of Regulation 11.

59. Regulation 11 mandates a firm to pay money into its client account only for the reasons described in it.

60. The tribunal rejects the Defendant's submission that he paid these sums in order to "maintain" the client account, pursuant to regulation 11(b) (i). The tribunal interprets payments into the client account *"for the purpose of opening and maintaining the account and the minimum amount required for that purpose"* to mean that such payments are necessary in order to comply with the bank's requirements for opening an account and maintaining a balance to keep the account open. That is not the case in this matter, where the client account had been opened and was already maintained.

61. The tribunal also rejects the Defendant's submission that he paid these sums into the client account in the "*reasonable belief*" that he was "*required to do so under the regulations*", thus affording him a defence under regulation 12. The Defendant had the burden of proving such reasonable belief and did not discharge that burden.

62. The tribunal does not consider that the Defendant possessed such reasonable belief when he made the payments. On the contrary, the payments were made through practical necessity. He made the payments for the purposes of ensuring that there were sufficient funds to meet clients' tax liabilities, not in order to comply with the regulations.

Matters relevant to sentencing

63. 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 imposed was appropriate.

64. The breaches of the Client Money regulations which have been found are not “technical breaches”; they are breaches but which happen not to have had serious, adverse consequences. The matter is not one just of academic interest. Breaches of these Regulations could have had very serious consequences in other circumstances both for the practitioner and the clients; on the facts of this case there were no serious consequences and those circumstances did not arise.
65. There were a number of persuasive mitigating factors: (i) the Defendant’s clean disciplinary record after over 50 years as a member of ICAEW; (ii) the absence of any dishonesty or any motive of personal gain; (iii) the absence of any personal gain; (iv) no client or third party appears to have been harmed as a result of the Defendant’s actions (although they were all put at risk inadvertently; (v) the Defendant’s means.
66. The tribunal was not persuaded, as a mitigating factor, that the Defendant’s breaches of the Regulations were inadvertently brought about by the motive of helping his clients. It may be that he was trying to help his clients. However, ‘helping clients” is not an acceptable motive for breaching professional regulations, inadvertent or otherwise. Clients are not assisted by their advisor breaching his own professional standards.
67. The tribunal specifically rejects the point made in mitigation that the Defendant used his own money to help clients. This was a reference to the Defendant, in effect, lending his clients’ money interest free by paying their tax liabilities while he was waiting for the clients to put him in funds. While the Defendant may have done this motivated by the desire to help, this was not appropriate and must not be done again.
68. An aggravating factor is the repeated breaches of the Regulations over a period of time, although this factor is tempered by the fact that this was not deliberate.

Sentencing Order

Reprimand
Fine of £1,000
Costs of £4,500

Decision on publicity

Publication with name.

Non Accountant Chairman	Mr Richard Farrant	
Accountant Member	Mr Mike Ranson FCA	
Non Accountant Member	Ms Martha Maher	
Legal Assessor	Mr Dominic Spenser Underhill	**027740**

8. **Mr Andrew Scott** of
Reading, United Kingdom

Consent order made on 22 February 2021

With the agreement of Mr Andrew Scott of Reading, United Kingdom the Investigation Committee made an order that he be reprimanded, fined £3,000 and pay costs of £1,480 with respect to a complaint that:

> On 10 March 2020, the Taxation Disciplinary Board made a finding of fact that Mr Andrew Scott was guilty of breaches of Rule 5.6.2 of the Professional Rules and Practice Guidelines (PRPG) 2006 and Rule 2.17 of the 2004 edition of Professional Conduct in Relation to Taxation (PCRT) in that, in 2007, he:
>
> a) did not advise his client as to the risks of a tax avoidance scheme, failed to communicate clearly, in writing, that he was not giving tax advice as to the risks inherent in the scheme, and to expressly disclaim any responsibility in this respect, in breach of rule 5.6.2 of the PRPG
>
> b) failed to consider carefully the merits of arrangements which may be considered artificial by the tax authority, in the light of his client's wider interests, in breach of rule 2.17 of the 2004 edition of the PCRT.
>
> Mr Andrew Scott was censured and is therefore liable to disciplinary action under Disciplinary Byelaw 4.1b by virtue of Disciplinary Bye-law 7.2c.

043652

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9. **Mr Mark Richard McLean FCA** of
Solihull, United Kingdom

Consent order made on 22 February 2021

With the agreement of Mr Mark Richard McLean of Solihull, United Kingdom the Investigation Committee made an order that he be reprimanded, fined £1,050 and costs of £1,302 with respect to a complaint that:

1. Between 13 June 2018 and 22 October 2018, Mr Mark Richard McLean FCA, on behalf of "X" Ltd (formerly "Y") accepted/and or continued appointment and signed audit reports for the entities listed below, in breach of paragraph 2.61 of the Revised FRC Ethical Standard 2016 as the firm was not permitted to accept appointment as auditor, as "Z" Ltd, a network firm, was appointed as an officer of the company (company secretary) to those clients.

   a. "A" Limited, year ended 31 December 2017, audit report signed on 22 October 2018; and/or

b. “B” Limited, year ended 31 March 2018, audit report signed on 13 June 2018; and/or

c. “C” Limited, year ended 31 March 2018, audit report signed on 10 July 2018; and/or

d. “D” Limited, year ended 31 March 2018, audit report signed on 10 July 2018; and/or

e. “E” Limited, year ended 31 March 2018, audit report signed on 10 July 2018.

047460

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10. **Mr Jeremy Steven Newman FCA** of
London, United Kingdom

Consent order made on 5 March 2021

With the agreement of Mr Jeremy Steven Newman of London, United Kingdom the Investigation Committee made an order that he be severely reprimanded, fined £7,000 and pay costs of £4,330 with respect to complaints that:

1. Between 14 September 2014 and 7 November 2018, Mr Jeremy Steven Newman FCA engaged in public practice without a practising certificate, contrary to Principal Bye-law 51a.

2. Between 14 September 2014 and 31 May 2017, Mr Jeremy Steven Newman FCA engaged in public practice without holding qualifying professional indemnity insurance contrary to Regulation 3.1 of the Professional Indemnity Insurance Regulations.

3. Between 1 June 2017 and 8 October 2018, Mr Jeremy Steven Newman FCA engaged in public practice without professional indemnity insurance contrary to Regulation 3.1 of the Professional Indemnity Insurance Regulations.

4. Between 14 September 2014 and 25 June 2017, Mr Jeremy Steven Newman FCA failed to ensure that the following companies were registered with an Anti-Money Laundering Supervisor as required by the Money Laundering Regulations 2007:

   a. “A” Ltd; and/or
   b. “B” Ltd.

5. Between 26 June 2017 and 25 June 2018 Mr Jeremy Steven Newman FCA failed to ensure that the following companies were registered with an Anti-Money Laundering Supervisor as required by the Money Laundering Regulations 2017:

   a. “A” Ltd; and/or
   b. “B” Ltd.

044951

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11. **Mr Kevin John Budge FCA** of
London, United Kingdom

Consent order made on 5 March 2021

With the agreement of Mr Kevin John Budge of Bromsgrove, United Kingdom the Investigation Committee made an order that he be severely reprimanded, fined £7,000; and pay costs of £4,710 with respect to complaints that:

1. Between 14 September 2014 and 7 November 2018, Mr Kevin John Budge FCA engaged in public practice without a practicing certificate, contrary to Principal Bye-law 51a.

2. Between 14 September 2014 and 31 May 2017, Mr Kevin John Budge FCA engaged in public practice without holding qualifying professional indemnity insurance contrary to Regulation 3.1 of the Professional Indemnity Insurance Regulations.

3. Between 1 June 2017 and 8 October 2018, Mr Kevin John Budge FCA engaged in public practice without professional indemnity insurance contrary to Regulation 3.1 of the Professional Indemnity Insurance Regulations.

4. Between 14 September 2014 and 25 June 2017, Mr Kevin John Budge FCA failed to ensure that the following companies were registered with an Anti-Money Laundering Supervisor as required by the Money Laundering Regulations 2007:

   a. “A” Ltd; and/or
   b. “B” Ltd.

5. Between 26 June 2017 and 25 June 2018, Mr Kevin John Budge FCA failed to ensure that the following companies were registered with an Anti-Money Laundering Supervisor as required by the Money Laundering Regulations 2017:

   a. “A” Ltd; and/or
   b. “B” Ltd.

044950

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12. **Mrs Elizabeth Jane Newell FCA** of
Milton Keynes, United Kingdom

Consent order made on 5 March 2021

With the agreement of Mrs Elizabeth Jane Newell of Milton Keynes, United Kingdom the Investigation Committee made an order that she be severely reprimanded, fined £7,000; and pay costs of £2,938 with respect to a complaint that:

On 31 March 2015, Mrs Elizabeth Jane Newell FCA accepted a loan from an affiliate of an audit client in breach of APB Ethical Standard 2.

046467

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13. **Clive Owen LLP** of
Darlington, United Kingdom

Consent order made on 5 March 2021

With the agreement of Clive Owen LLP of Darlington, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £20,925 and pay costs of £11,135 with respect to complaints that:

1. On 8 June 2015, Clive Owen LLP issued an unmodified audit report on the financial statements of ”A” Limited for the year ended 31 March 2015 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland) and that the accounts had been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice when:

   a) the audit was not properly conducted in accordance with International Standard on Auditing (UK and Ireland) 230 ‘Audit Documentation’, in that the firm failed to document a sufficient and appropriate audit record of the basis for the auditor’s report in respect of the disclosure of margin call deposits;

   and/or

   b) the financial statements were not compliant with the Statement of Standard Accounting Practice 20 in respect of the accounting treatment of items related to foreign currency gains and losses.

2. On 8 June 2015, Clive Owen LLP issued an unmodified audit report on the financial statements of “B” Limited for the year ended 31 March 2015 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland) and that the accounts had been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice when:

   a) the audit was not properly conducted in accordance with International Standard on Auditing (UK and Ireland) 230 ‘Audit Documentation’, in that the firm failed to document a sufficient and appropriate audit record of the basis for the auditor’s report in respect of the disclosure of margin call deposits;

   and/or

   b) the financial statements were not compliant with the Statement of Standard Accounting Practice 20 in respect of the accounting treatment of items related to foreign currency gains and losses.

3. On 26 May 2016, Clive Owen LLP issued an unmodified audit report on the financial statements of “A” Limited for the year ended 31 March 2016 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland)

and that the accounts had been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice when:

a) the audit was not properly 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 on which to base the audit opinion in respect of demonstrating that hedge accounting could be applied;

and/or

b) the audit was not properly conducted in accordance with International Standard on Auditing (UK and Ireland) 230 'Audit Documentation', in that:

i. the firm failed to document a sufficient and appropriate audit record of the basis for the auditor's report in respect of the accounting for the movement in the fair value of foreign exchange contracts; and/or

ii. the firm failed to document a sufficient and appropriate audit record of the basis for the auditor's report in respect of the disclosure of margin call deposits;

and/or

c) the financial statements were not compliant with Financial Reporting Standard 102 in respect of the accounting treatment of items related to foreign currency exchange.

4. On 26 May 2016, Clive Owen LLP issued an unmodified audit report on the financial statements of "B" Limited for the year ended 31 March 2016 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland) and that the accounts had been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice when:

a) the audit was not properly 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 on which to base the audit opinion in respect of demonstrating that hedge accounting could be applied;

and/or

b) the audit was not properly conducted in accordance with International Standard on Auditing (UK and Ireland) 230 'Audit Documentation', in that:

i. the firm failed to document a sufficient and appropriate audit record of the basis for the auditor's report in respect of the accounting for the movement in the fair value of foreign exchange contracts; and/or

ii. the firm failed to document a sufficient and appropriate audit record of the basis for the auditor's report in respect of the disclosure of margin call deposits;

and/or

c) the financial statements were not compliant with Financial Reporting Standard 102 in respect of the accounting treatment of items related to foreign currency exchange.

043246

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14. **Mr Anthony Joseph Leopold Fava FCA** of
Richmond, United Kingdom

Consent order made on 5 March 2021

With the agreement of Mr Anthony Joseph Leopold Fava of Richmond, United Kingdom the Investigation Committee made an order that he be severely reprimanded, fined £700 and pay costs of £2,530 with respect to a complaint that:

Between 16 October 2007 and on or around 23 October 2017 Mr Anthony Fava FCA failed to notify ICAEW that he was engaged in public practice through "X" as required by Section 3 (Information to be supplied) of the Regulations governing the information to be supplied by members (effective to 30 November 2010) and the Information to be supplied by members regulations (effective 1 December 2010).

047287

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15. **Mr Milan Pandya FCCA** of
Borehamwood, United Kingdom

Consent order made on 15 March 2021

With the agreement of Mr Milan Pandya of Borehamwood, United Kingdom the Investigation Committee made an order that he be reprimanded, fined £2,800 and pay costs of £2,145 with respect to a complaint that:

Mr Milan Pandya FCCA submitted the 2017 and 2018 ICAEW annual returns of "A" Ltd, which contained the following errors:

i. Incorrectly states that the firm is an ICAEW member firm because the sole director was not an ICAEW member; and / or

ii. Incorrectly states that ICAEW is the firm's anti-money laundering supervisory authority, when "A" Ltd is not an ICAEW member firm; and / or

iii. Incorrectly states that the firm does not use the description Chartered Accountants when the description was being used on the firm's website; and / or

iv. Mr X was listed as a principal, when he was not a principal of the firm (2018 only).

041862

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16. **Haysmacintyre LLP** of
London, United Kingdom

Consent order made on 17 March 2021

With the agreement of Haysmacintyre LLP of London, United Kingdom the Investigation Committee made an order that the firm be reprimanded, fined £5,250 and pay costs of £2,765 with respect to complaints that:

1. Haysmacintyre provided the following prohibited non-audit services to "A" in breach of paragraph 5.167R of the Revised Ethical Standard 2016 as its subsidiary, "B" Limited, was a public interest entity:

   a. The preparation of the financial statements of "A" for the year ended 31 December 2017; and/or

   b. The preparation of the financial statements of "A" for the year ended 31 December 2018.

2. Haysmacintyre provided the following prohibited non-audit services to "B" Limited in breach of paragraph 5.167R of the Revised Ethical Standard 2016 as it was a public interest entity:

   a. Advice relating to an employee salary sacrifice scheme in February 2017; and/or
   b. PAYE Settlement agreement work for the 2016/17 tax year; and/or
   c. PAYE Settlement agreement work for the 2017/18 tax year.

053149

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17. **Mr Philip James Tarbun FCA** of
Morecome, United Kingdom

Consent order made on 19 March 2021

With the agreement of Mr Philip James Tarbun of Morecambe, United Kingdom the Investigation Committee made an order that he be reprimanded and fined £2,310 with respect to complaints that:

1. Between 25 May 2017 and 1 May 2019 Mr Philip Tarbun FCA failed to comply with Regulation 6 governing the use of the description 'Chartered Accountants', as his firm, "X" Ltd (formerly "Y" Ltd) described itself as a firm of Chartered Accountants when not eligible to do so because "X" Ltd was not an ICAEW member firm.

2. Between 25 May 2017 and 10 October 2019, Mr Philip Tarbun FCA failed to comply with the Money Laundering Regulations 2007, because his firm was not supervised by an appropriate anti-money laundering supervisory authority.

3. Between 28 November 2016 and 18 August 2017 Mr Philip Tarbun FCA failed to comply with Regulation 6 governing the use of the description 'Chartered Accountants', as his firm, "Z" Ltd described itself as a firm of Chartered Accountants when not eligible to do so because a director of the company, Mr "A", was not a member or affiliate member of ICAEW.

4. Between 25 April 2019 and 24 September 2019 Mr Philip Tarbun FCA failed to comply with Regulation 6 governing the use of the description ‘Chartered Accountants’, as his firm, “Z” Ltd described itself as a firm of Chartered Accountants when not eligible to do so because a director of the company, Mr “A”, was not a member or affiliate member of ICAEW.

049018

INVESTIGATION COMMITTEE FIXED PENALTY ORDER

18. **Sedulo Audit Limited**

Penalty order made on 27 January 2021

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

With the agreement of Sedulo Audit Ltd, the Investigation Committee ordered that Sedulo Audit Ltd, of Leeds, South Yorkshire be reprimanded and given a fixed penalty of £696.50 representing a financial penalty of £995 to which a discount of 30% has been applied with respect to a complaint that:

> Between 6 August 2019 and 12 August 2020, Sedulo Audit Ltd used the description 'Chartered Accountants' when it was not entitled to do so, in breach of regulation 12 of the Regulations Governing the Use of the Description Chartered Accountants and ICAEW General Affiliates (effective 19 June 2017), as one of the directors, Ms X, was neither an ICAEW member nor affiliate member of ICAEW.

056503

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19. **Greenback Alan LLP**

Penalty Order made on 7 January 2021

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

With the agreement of Greenback Alan LLP, the Investigation Committee ordered that Greenback Alan LLP of London be reprimanded and given a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

> Greenback Alan LLP, following a QAD visit in 2014, confirmed in respect of ensuring ongoing client due diligence was performed for all clients, that:
>
> > *"We are also introducing a control, to be maintained on our client database, which will maintain a record to demonstrate annual review of client due diligence. This control will be introduced in the week beginning 1 September 2014."*
>
> but at a QAD visit on 2 and 3 August 2018, it was found that the assurance had not been complied with.

047938

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20. **Graeme Young FCA**

Penalty Order made on 4 January 2021

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

With the agreement of Graeme Young FCA, the Investigation Committee ordered that Graeme Young FCA of Kent be reprimanded and given a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

> Between 7 November 2019 and 26 June 2020, Mr Graeme Lindsay Young FCA was in breach of Principal Bye-law 51a as he was a principal of an ICAEW firm and did not hold a practising certificate.

056008

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21. **Mr Graham Higgins ACA**

Penalty Order made on 15 March 2021

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

With the agreement of Mr Graham Higgins ACA, the Investigation Committee ordered that Mr Graham Higgins ACA, of Devon, United Kingdom be reprimanded and given a fixed penalty with respect to a complaint that:

> On 29 June 2019 and 30 June 2019 Mr Graham Higgins ACA assaulted a female by beating her.

058325

AUDIT REGISTRATION COMMITTEE

ORDER – 10 FEBRUARY 2021

22. **Parkins Accountants Ltd**

Publicity statement

Parkins Accountants Ltd, Rotherham, United Kingdom, has agreed to pay a regulatory penalty of £11,848, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.11 and 2.03a, for its failure to notify ICAEW of changes in directors at the firm within 10 business days and its failure to ensure that two directors held affiliate status.

057595

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