Disciplinary Orders and Regulatory Decisions

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1

Mr Christopher James Lloyd FCA of
Tring, United Kingdom

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 18th April 2018

Type of Member	Member

Terms of Complaint

Mr C J Lloyd FCA failed to provide by 16 June 2016 the information, explanations and documents requested in a letter dated 1 June 2016 issued under Disciplinary Bye-law 13.

Mr Christopher James Lloyd is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.c

Hearing dates	18th April 2018
Previous hearing dates	None
Pre-hearing review or final hearing	Final hearing
Complaint found proved	Yes
Sentencing order	Reprimand Fine £2,500 Costs £1,500 Payment in equal instalments over 25 months

Procedural matters and findings

Parties and representation	The Investigation Committee ('IC') was represented by Mrs Silpa Tozar The defendant was not present 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 and an email from the defendant dated 17 April 2018

Preliminary matters

1. Notice of the hearing was sent by post to Mr Christopher Lloyd ('the defendant') on 14 March 2018. The notice was sent to his registered address. The Tribunal was satisfied that service had been effected in accordance with Regulations 3 and 5 of the Disciplinary Committee Regulations ('DCR').

2. In an email sent to ICAEW on 17 April 2018 the defendant said he was unable to attend the hearing. He added that attending by video link would 'not be feasible'. He provided the Tribunal with written submissions in relation to the complaint. He did not provide any detail in this email as to why he was unable to attend. In previous correspondence with ICAEW he has said he is suffering from ill health

3. The Tribunal considered it was appropriate to proceed in the defendant's absence. He was clearly aware of the hearing. He had not applied for an adjournment and he had not supplied any medical evidence showing that he was unfit to take part in the hearing. The Tribunal considered that it was unlikely he would attend a future hearing if the case was relisted and accordingly no useful purpose would be served by an adjournment. The hearing therefore proceeded in the defendant's absence.

The Investigation Committee's case

4. The defendant has been a member of ICAEW since May 1975.

5. On 13 November 2015 ICAEW received a complaint from Mr 'A' regarding work that the defendant had in relation to a trust.

6. On 15 January 2016 ICAEW informed the defendant that the complaint had been referred for conciliation. The letter requested that the defendant provide information to Mr 'A' and send a copy to ICAEW. No response was received and a chaser letter was sent on 29 January 2016.

7. The defendant spoke to the case manager by telephone on 8 February 2016. The defendant was informed that a written response was required from him. A further letter was sent to the defendant on 9 February 2016 requiring his response to the enquiries by 19 February 2016.

8. On 19 February 2016 the defendant telephoned ICAEW saying he had been ill, he was having computer problems and he was unable to meet the deadline. He said he would provide a response by 23 February 2016. However no response was received.

9. On 3 March 2016 a letter was sent to the defendant warning him that in the absence of a response a formal notice under Disciplinary Bye-law ('DBL') 13 would be sent.

10. The defendant telephoned ICAEW on 18 March 2016. He said he had been experiencing technical issues and ill health. He was told that a written response was required by 24 March 2016.

11. On 14 April 2016 the defendant was informed that the complaint had been transferred from conciliation to investigation. The letter set out the information he was required to provide. He was asked to provide this information by 28 April 2016. No response was received.

12. A further chaser letter was sent on 29 April 2016. On the same day the defendant called ICAEW and asked for an extension of time. He was asked to provide his response by 16 May 2016. The defendant phoned again on 16 May 2016 and left a voicemail message asking for a two week extension. A letter was sent on that date giving the defendant until 31 May 2016 to answer the enquiries and warning that notice under DBL 13 would be served on him in default of a formal response.

13. On 31 May 2016 the defendant telephoned ICAEW saying he was unable to meet the deadline. He asked for a further extension which was refused.

14. On 1 June 2016 a formal letter under DBL 13 was sent to the defendant from the Head of Investigation of the Professional Conduct Department. It set out the information that was required from the defendant and gave a deadline of 16 June 2016. It warned the defendant that in the absence of a reply the matter would be referred to the Investigation Committee. No response has been received to that letter.

15. DBL 13 states:

> *13.1 The Investigation Committee shall have power by notice served on any respondent or respondent firm to call for such information, such explanations and such books, records and documents as the Committee considers necessary to enable it or the head of staff to perform its or his functions under these bye-laws.*
>
> *13.2 It shall be the duty of any person or body on whom a notice is served under paragraph 1 to comply with it within the period of fourteen days beginning with the date of service or such longer period as the Investigation Committee may allow.*

16. The IC's case was that the defendant has accordingly committed a breach of DBL 13 and is therefore liable to disciplinary action under DBL 4.1.c which renders a member liable to disciplinary action 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.'

The defendant's case

17. The defendant's written submissions to the Tribunal were contained in an email to ICAEW dated 17 April 2018. He said that the original complaint from Mr 'A' which led to the investigation had been 'satisfied'. He accepted he was culpable in not fully responding to the requests for information but he relied on mitigating circumstances. These included references to health and family problems he had experienced. He apologised for his inaction and referred to his previous unblemished record.

18. The defendant also provided details of his financial circumstances.

Conclusions and reasons for decision

Decision on complaint

19. The Tribunal was satisfied that the evidence before it supported the complaint. Further the defendant has not disputed the allegation. Therefore the Tribunal found the complaint proved.

Matters relevant to sentencing

20. There were no previous disciplinary matters recorded against the defendant. The Tribunal also took into account the mitigation advanced by the defendant.

21. The Tribunal had regard to ICAEW's *Guidance on Sanctions*. The Tribunal considered the relevant starting point was a severe reprimand and a financial penalty of £3,250. The defendant had responded to the Institute by telephone on a number of occasions but without providing the information required.

22. Failing to co-operate with an investigation is a serious matter. The defendant had been asked on a number of occasions prior to the service of the DBL 13 request to provide the required information and he had not done so. However the Tribunal accepted that the defendant's ill health was a factor which mitigated his default.

23. The Tribunal considered that in the circumstances of this case the appropriate sanction was a reprimand and a fine of £2,500.

24. The IC made an application for costs which was supported by a schedule.

25. The Tribunal considered that in principle the defendant should pay the costs incurred as a result of his default. However, having regard the amount of work reasonably required to prosecute this complaint and, in particular, to the defendant's means, the Tribunal was of the view that an appropriate sum for the defendant to pay was £1,500. Further, in light of his means, the Tribunal also considered it would be appropriate to give the defendant time to pay.

Sentencing order

26. Therefore in the Tribunal's view the appropriate and proportionate sanction was a reprimand and a fine of £2,500.

27. The Tribunal ordered the defendant to pay costs of £1,500.

28. The Tribunal ordered the defendant to pay the fine and costs over 25 months in equal monthly instalments of £160 with the first payment due on 1 June 2018.

Decision on publicity.

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

Chairman	Mr Richard Farrant
Accountant Member	Mr Mike Ranson FCA
Non Accountant Member	Mr Graham Humby
Legal Assessor	Mr Andrew Granville Stafford

034741

2

Mr William Beach of London, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 24 April, 11 and 12 June 2018

Type of Member Provisional Member

Terms of complaint

1A - Between 23 November 2014 and 6 December 2014 Mr William Beach improperly took 10 days paid study leave when he knew he should have taken paid or unpaid holiday.

OR IN THE ALTERNATIVE

1B - Between 23 November 2014 and 6 December 2014 Mr William Beach took 10 days paid study leave when he should have known he was required to take paid or unpaid holiday.

2A - Mr William Beach failed to comply with the fundamental principle of integrity in that he failed to inform his employer that he was working from home and available for work to be allocated to him on the following days:

a. from and including 23 March 2015 to 27 March 2015 (5 days)
b. from and including 30 March 2015 to 2 April 2015 (4 days)
c. from and including 7 April 2015 to 10 April 2015 (4 days)
d. from and including 26 May 2015 to 29 May 2015 (4 days)
e. from and including 1 June 2015 to 5 June 2015 (5 days)
f. 8 June 2015 and 10 June 2015 (2 days)

when he should have informed them.

OR IN THE ALTERNATIVE

2B - Mr William Beach failed to inform his employer that he was working from home and available for work to be allocated to him on the following days:

a. from and including 23 March 2015 to 27 March 2015 (5 days)
b. from and including 30 March 2015 to 2 April 2015 (4 days)
c. from and including 7 April 2015 to 10 April 2015 (4 days)
d. from and including 26 May 2015 to 29 May 2015 (4 days)
e. from and including 1 June 2015 to 5 June 2015 (5 days)
f. 8 June 2015 and 10 June 2015 (2 days)

when he should have informed them.

Mr William Beach is liable to disciplinary action under Disciplinary Bye-law (DBL) 4.1a in respect of head 1A and 2A and DBL 4.1.b in respect of head 1B and 2B.

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

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

24 April, 11 and 12 June 2018

Previous hearing date(s)

None

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes. Heads of complaint 1A and 2A proved and 1B and 2B proved on admission in the alternative
All heads of complaint proven	Yes.
Sentencing order	Reprimand

Procedural matters and findings

Parties present	Mr William Beach was present.
Represented	Mr Beach was represented by Miss Rachna Gokani of Counsel. The Investigation Committee (IC) was represented by Miss Jessica Sutherland-Mack.
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 IC's bundle together with a bundle supplied by Mr Beach. The tribunal also considered evidence of Mr Beach's means.
Findings on preliminary matters	The tribunal heard an application by Mr Beach to exclude some documentary evidence adduced by the IC as a preliminary issue on the first day of the hearing. The application was dismissed. (The substantive complaint was heard on the second and third days.) Reasons for the decision on the preliminary issue are set out in Part I before the reasons relating to the substantive complaint in Part II.

Note

1. At all material times, the Defendant had admitted heads 1B and 2B of the complaint (the IC's alternative case) and liability for them. These heads were not in issue during the three days of hearing, neither were the facts supporting them. In issue were the main heads 1A and 2A, which were denied. Because only the alternative case was admitted, there was a hearing of the main case. This will be explained in greater detail below.

Part I - The Preliminary Issue – Application to Exclude

1. By an application, Mr Beach applied to exclude from the record ten documents which he considered were inadmissible and which had been adduced by the IC. They were documents 6, 8, 12, 13, 14, 15, 19, 20, 21 and 41 in the IC's bundle. They fall into four categories: (a) records of meetings or interviews at 'A' (8, 12, 14 and 15); (b) summaries of interviews with "potential witnesses" and documents produced by them (13, 19, 20 and 21); (c) a document whose provenance is unstated by the author (41); (d) opinions of 'A' (14 and 15).

The Defendant's Case

2. The overarching reason for their exclusion was the interests of justice and fairness.

3. There were also particular reasons, specific to each category of document.

4. Category (a). Documents 8 and 12 are only summaries of interviews by 'A' with Mr Beach (there is no verbatim account) and were stated to be created only for 'A's internal purposes. In those interviews, Mr Beach was not legally represented and was not told that the answers he gave might be used for regulatory purposes.

5. Documents 14 and 15 are notes of interviews where Mr Beach was not legally represented and he was not told that his answers might be used for regulatory purposes. Furthermore, the documents disclose the opinions of 'A' which are irrelevant for the tribunal; they also disclose findings of fact 'A' made which are also irrelevant to the findings of fact which the tribunal must make.

6. Category (b). These are notes of interviews with three 'A' individuals made by 'A' in the course of investigating Mr Beach's conduct. The IC relies on these notes. They are hearsay.

7. Furthermore, the notes are only a summary and their stated purpose was for "internal processes" (not ICAEW regulatory purposes).

8. Also, there is no verbatim note of the interviews, Mr Beach was not represented nor was he given the opportunity to ask the witnesses any questions.

9. The IC failed to take witness statements from these three individuals, and it ought to have done. It has failed to call the witnesses and it ought to have done. Their evidence, which is potentially unreliable, cannot be challenged and the weight to be given to that evidence cannot be accurately assessed.

10. Category (c). This is an email from an in-house solicitor at 'A' to an investigator at the ICAEW referring to a possible 'A' policy of working from home. It expresses the position as that solicitor understands it to be. The reason it is objected to is that the provenance of the solicitor's knowledge is unstated.

11. Category (d). This document is an email from a person at 'A' to ICAEW staff informing them that the Defendant had been subject to 'A's disciplinary process which concluded with his dismissal; there had been an appeal. It is objected to because the opinions and findings of 'A' are not relevant to the exercise of the tribunal. The comments about documents 14 and 15 above are applied as well.

The IC's Case

12. The IC resisted the application. In its submission, the admissibility of the documents do not deny the Defendant a fair hearing and it is not unfair on him to adduce them. There is nothing in their contents which deny him this. The Defendant is at liberty to take issue with as much of the documentation and what it contains as he wishes.

13. As to hearsay, the Disciplinary Committee Regulations stipulate in terms that the strict rules of evidence do not apply. There is no reason why this hearsay evidence, in and of itself, is inadmissible. The IC is entitled to adduce hearsay evidence and it has done so.

14. The issues in this case, given the admissions of heads 1B and 2B are now very narrow; in particular, there are practically no issues of fact to determine. This needs to be borne in mind when considering the application. (The upshot of the application succeeding would be the removal of the IC's case in its entirety.)

15. In response to the categories of documents, the IC submits as follows.

16. Category (a) The Defendant and 'A' are both regulated by ICAEW, and they were when the Defendant commissioned the acts complained of, and was investigated by 'A'. It is immaterial whether these documents were commissioned for internal purposes only. That does not mean they fall outside the wider regulatory environment in which they were created. The fact that a regulated firm creates an internal document which is only for their internal use does not preclude that document from being used by its regulator or from preventing the firm telling the regulator what it contains.

17. Category (b) These documents contain little, if anything, in dispute in this matter. It cannot be unfair to admit it for that reason. The interviewees have confirmed the note as a fair summary of the interview. It has corroborative value.

18. Documents 13 and 19 do not contain anything which is not in dispute, has not already been conceded as a matter of fact or which is unfair or prejudicial to the Defendant.

19. Document 20 contains a glowing character reference for the Defendant; it is anything but prejudicial to him.

20. Document 21 is a review chart of what work the Defendant had done over the period 23/3/2015 to 10/4/2015. There is no real dispute about this and given the admissions already made, the evidence it seeks to adduce is moot.

21. Category (c). This is not prejudicial or unfair. It helps "to set the scene" and informs the tribunal accordingly.

22. Category (d) is a simple statement of fact which is obviously relevant and is not in issue. It does not record the findings of 'A'.

23. There is no need to call witnesses in this case; the facts speak for themselves and are, for the most part, admitted. Calling witnesses to prove their evidence does not advance the case, or the justice of it, any further.

The Tribunal's Reasons

24. The starting point is the permissive regulation that the strict rules of evidence do not apply. This means that it is not necessary for either side to prove its case in accordance with the strict rules of evidence. (That would include calling witnesses to confirm what they said or wrote in documents.) This in turn means that hearsay evidence is permissible as a matter of regulation.

25. It is not necessary to explain the reasoning behind this regulation. However, the tribunal is aware that this approach is not uncommon in the professional regulatory field and it is reasonable to surmise that one reason for this may be to lessen the administrative and costs burdens for parties and to ensure that cases are managed and disposed of proportionately.

26. First, the facts in this case are largely agreed and are not in issue. The tribunal accepts the IC's submission that, given the basic entitlement to admit hearsay evidence, there is nothing in the documents which, unless they are each strictly proved, is so prejudicial to the Defendant, or deny him a fair hearing, that they should not be admitted.

27. Secondly, the only live issues before the tribunal are (i) did the Defendant improperly take 10 days paid leave when he knew he should either have taken paid or unpaid holiday and; (ii) did he breach the fundamental principle of integrity by failing to inform his employer he was working from home? Of these issues, the only issue of fact is the state of knowledge of the Defendant, and that issue is not particularly assisted by much of what is in the documents before the tribunal.

28. Thirdly, the Defendant has the right and opportunity to challenge the documents as he sees fit, including giving evidence himself and calling evidence in rebuttal. This was expressly explained to him in the Chairman's introductory remarks given before the hearing began. This point is particularly relevant for "category [a]", which are documents recording interviews with the Defendant. The same applies to "document [d]"; if that is seriously in dispute, the Defendant can speak to its accuracy.

29. The tribunal considers that the objections made to the documents by the Defendant are really matters of weight rather than their admissibility. For example, the absence of a witness to face cross-examination is not a reason to refuse to admit the document which refers to what they said; it may be a reason to assess its weight. As another example, if the Defendant considers that the notes of the interviews with him are incorrect, he has the opportunity to say so himself at the hearing before the tribunal. He can, in effect, have the last word on the subject.

30. The tribunal considers it irrelevant that the Defendant was not represented in his interviews with 'A' (it would be unusual if he were) or had not been told that what he said may have regulatory consequences. He alone is responsible for what he tells his employer and how he behaves as a regulated person; his employer and the ICAEW is entitled to expect him to behave accordingly. No unfairness results if his own words are used in such circumstances. There is no obligation on 'A' to tell him that and, in any event, it is obvious to any reasonably competent member of ICAEW (provisional or not) that his or her own actions or words in such situations must always have possible regulatory consequences because they are being spoken in a fully regulated environment.

31. Category [c] speaks for itself. Any objection as to what it actually proves goes to weight, not admissibility.

32. The document at category [d] simply states matters of fact which are not in issue. It would be wrong to exclude it.

33. The tribunal is also aware that IC, in common with other regulators, has to make judgments as to how much evidence is necessary to prove its case and does not have to adduce evidence in such a manner to suit the particular wishes of the Defendant. To call at least three live witnesses, as the Defendant criticises the IC for not doing, where (as has been alluded to above) the evidence is largely agreed or is not relevant anyway, does not appear to be an unreasonable or unfair decision to make. What weight is put on the documents in the absence of those witnesses is a matter for the tribunal.

34. For all these reasons, the tribunal dismisses the application.

Part II - The Substantive Complaint

The IC's case

35. At all material times, the Defendant was a provisional member of the ICAEW and an employee of 'A'. He was [redacted] years' old. He was training to become a chartered accountant. He had to take exams as well as fulfil his duties as an employee at 'A'.

36. 'A' use a computerised system called SAP to record their employees' time and use another system called Retain to plan and deploy their professional resources.

37. To use SAP, the Defendant had regularly to record his time using specific codes. To use Retain, his whereabouts should have been inputted to ensure that resource planners know he is available so that work can be allocated efficiently.

38. As to working from home, this is permissible on an *ad hoc* basis provided that prior approval is obtained. Unless it is obtained, such home working is not permissible.

Taking "Study Leave" – head of complaint 1A (denied) and 1B (admitted)

39. In September 2014, the Defendant failed three professional examinations and was obliged to retake them if he was to progress.

40. On 20 October 2014, the Defendant received an email from his employer about his retakes. It said: *"In accordance with the Firm's policy, no financial support is provided for exam retakes and study leave will only be granted for the day of the examination. Any additional time required must be taken from your annual holiday entitlement."* (Underlining added.)

41. On 23 October 2014, the Defendant spoke to 'B' of PQT about his failed examinations, on the telephone.

42. Moreover, 'A's training agreement and employment contract stipulates at para 6.4 *"The Employee will not be granted Study Leave in relation to any examinations which have previously been Failed on one or more occasions, except at the Employer's sole discretion."*

43. Such discretion (this is common ground) had not been exercised in the Defendant's favour, as seen in the email of 20 October 2014.

44. The Defendant arranged to retake his three exams on 8-9 December 2014. As part of his revision, he attended a course covering ten working days between 24 November 2014 and 5 December 2014. This period of time was not eligible as "Study Leave". It had to be taken as part of the Defendant's annual holiday entitlement.

45. For those 10 working days, the Defendant posted on SAP "ICAEW – PQT Allowance". This was done on 28 November and 5 December 2014. This would have meant to a person reading it that the Defendant was taking the 10 days as permitted Study Leave (PQT standing for Professional Qualification Training). It would also have meant that the Defendant was holding himself out as having had permission to do this. Furthermore, it meant that the time was not taken as part of annual holiday entitlement.

46. On 8 December 2014, the Defendant received an email from his employer about holiday entitlement. (This was a separate department to PQT.) It warned him that SAP showed that he was exceeding his annual holiday entitlement; any time which exceeded that should be taken as unpaid leave.

47. The Defendant responded on the following day. He said *"I can only assume this [exceeding of holiday entitlement] relates to revision courses that I booked onto. After talking to PQT about my circumstances they were aware that I would be doing this and charged to them and not to holiday – otherwise I have been misinformed. Can you please let me know about this since I obviously never wanted an extra 10 days holiday."*

48. The employer replied later in the day. The Defendant was asked to supply the dates when holiday entitlement might have been (apparently incorrectly) charged, instead of allocated to Study Leave or training. With that information, the timesheets could be amended to show that the annual holiday entitlement had not been exceeded after all. The Defendant was also asked whether he had anything from the PQT department confirming that he was permitted to charge the time to Study Leave.

49. Also on the same day, the Defendant replied that the dates were *"the last two weeks 24th to 28 November and 1st to 5th December".* (This corresponded with dates of his course.) He added *"They were provisionally put into Retain as Holiday but have not been charged to Holiday."*

50. As to confirmation from PQT department, the Defendant said *"I don't unfortunately I've just had discussions with the PQT advisors at the time about my circumstances via a conference call."*

51. Later, 'A' became concerned about discrepancies in the Defendant's timesheets and began to investigate them. In brief, in SAP the Defendant had wrongly allocated about 35 days to PQT training. There was a meeting on 17 August 2015 to gather information from the Defendant.

52. During this meeting, according to a non-verbatim note of it prepared by 'A', the Defendant was told that revision courses (such as the one taken by the Defendant in 2014) should always be booked as holiday and never to a training code (i.e. PQT). The Defendant stated *"Really*?" He added he was *"never made aware he should be taking holiday".* He also explained that he was poor at coding time and would have booked his time for "college" (that is, training) ahead of time, once the dates were available. In other words, he accounted for time before it was incurred.

53. The fact-gathering resulted in a formal investigation into the Defendant's conduct by 'A'. In short, 'A' were concerned that the Defendant was taking significant periods of paid study leave when he should not have been, and those who used Retain would have believed that he was studying and thus unavailable for work, when in fact he was available for work (but was not at work) because he was not permitted to take Study Leave, had no annual holiday entitlement left, and was not claiming unpaid leave. Moreover, because the Retain system was incorrect for this reason, the Defendant's actual whereabouts were unknown to his employer when they ought to have been known. 'A' suspected that the Defendant had misled the teams he had been working with into believing he was at college when he was not. He should have been at work, and was not.

54. The Defendant was interviewed on 9 September 2015. He claimed that by telephone on 23 October 2014, 'B' had allowed him to understand that he was authorised or permitted to code his revision course time to PQT. 'B', however, denied this when she was interviewed on 9 September. She told the investigators that only exam days can be coded to PQT; the rest of revision time has to be taken as holiday. As to the discussion on 23 October, this was about some personal circumstances and whether the firm would pay for the resat examinations; there was no discussion she could recall about how to code time. Miss 'B' also told the investigators that the policy regarding the correct coding for resat examinations is contained in the trainees' contracts and appears on the PQT website. It is also raised at trainee induction, is discussed in course visits and is highlighted again when and if a trainee fails an exam.

55. The Defendant was dismissed from his employment at 'A'. He appealed but was not successful.

56. The Defendant knew he was required to take paid or unpaid holiday because (i) his training contract stated that he was not entitled to study leave for retakes; (ii) he was told in clear terms that he had to take study leave as part of his annual holiday entitlement (except for the date of the exam itself) by an email dated 20 October 2014; (iii) the email exchange on 8 December 2014 revealed 'A' asking the Defendant why he had extra holiday and he trying to reduce it by claiming an entitlement to study leave.

57. It was improper for the Defendant to take ten days paid study leave because he knew he was not entitled to do that, and, in particular, take payment for something to which he was not entitled (that is, study leave for re-sits). He knew, instead, that he should have taken paid or unpaid holiday entitlement to take his revision course. There is reasonable and cogent evidence to prove this. There is no reasonable or cogent evidence to prove the contrary.

Failing to inform employer of home working & availability for work (head of complaint 2A (denied) and 2B (admitted))

58. As mentioned above, 'A' uses the Retain system to monitor its staff's ability in order to resource work. For the system to work, information about the staff member's availability (or lack of it) has to be accurate.

59. In this case, the Defendant failed to inform 'A' that he was working from home and available for work on a series of dates set out in the complaint. He should not have done this.

60. On 24 June 2014, 'A' entered onto Retain the Defendant's examination dates and study leave dates. As mentioned above, the Defendant failed three of those exams. He retook them in December 2014. He failed one of them a second time. He wanted to re-retake it in March 2015. Training and tuition time was set aside commencing 23 March 2015. However, it transpired that he would be unable to take the March exam. He became aware of that in February 2015. He knew, instead, that the re-retake would have to be on 9 June 2015 and the training courses booked for March could not be taken after all.

61. However, the Defendant took no steps to change this on Retain with the effect that it appeared as though he was unavailable for work in March 2015 when in fact he was.

62. Furthermore, the Defendant posted the incorrect codes onto SAP for 24 days between 23 March 2015 and 10 June 2015. (These are specified in the complaint.) He posted time to PQT when he had no reason, entitlement or justification to do so.

63. Because the Defendant's Retain system and his SAP entries complimented each other, it would have appeared to an observer of both that the Defendant was unavailable for work because he was attending training courses. However, this was untrue because he was neither training nor unavailable for work.

64. On 17 August 2015, the Defendant was asked by his employer where he had been on these dates by his employer. He replied that (i) he was at work; (ii) he was in the office most days and working from home on the others; (iii) his work teams may have assumed he was at college (that is, training).

65. However, 'A's office building records showed that the Defendant had only entered the premises on Saturday 30 May and Sunday 31 May, within the period 23 March – 10 June 2015 (these two dates are not part of the complaint).

66. On 9 September 2015, the Defendant explained to 'A' that he was working from home in this period without approval. He said he had worked on two audit files (A and B) and produced a schedule of work to show that. However, he had not charged any of his time to client work.

67. The manager for audit A explained, however, that she thought the Defendant was at college. Most of the audit work for A had been completed before 23 March 2015, the first of the dates in which the Defendant signed off as training.

68. The manager for audit B explained that he thought the Defendant was at college. His assessment of the schedule of work was that it recorded work which was unlikely to have taken more than two days to complete.

Submissions of Head 2

69. Section 110.1 of the ICAEW Code of Ethics provides that it is a fundamental principle of integrity that professional accountants are straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.

70. Section 110.2 provides:

> *"In particular a professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes the information:*
>
> *a. Contains a material false or misleading statement;*
> *b. Contains statements or information furnished recklessly; or*
> *c. Omits or obscures information required to be included where such omission or obscurity would be misleading."*

71. The evidence proves that the Defendant failed to inform his employer that he was working from home and available for work to be allocated to him. Instead, he gave the impression, which was misleading, that he was at college (and thus unavailable for work) when he was not. He also failed properly to disclose his whereabouts to his employer by failing to tell it that he was *not* in college.

72. He did this by (i) not arranging for Retain to show he was available for work; (ii) not seeking approval to work from home; (iii) posting time which suggested he was not working.

73. It is misleading to third parties as, in not showing the true situation, he was wilfully not being straightforward. It was not just one day, which could be a mistake, but there were several block periods of time. This was not an oversight but was deliberate and shows lack of integrity.

The Defence

74. As noted above, heads of complaint 1B and 2B were admitted, as were the facts underpinning them.

75. Heads of complaint 1A and 2A were denied. As for 1A, the Defendant admits taking 10 days paid study leave when he should have known he was required to take paid or unpaid holiday. What he denies, however, as a matter of fact is (a) <u>improperly</u> taking that 10 days paid study leave when he (b) <u>knew</u> he should have taken paid or unpaid holiday. As for 2A, the Defendant denies breaching the fundamental principle of integrity.

76. It is common ground that the ICAEW has elected not to allege that the Defendant was dishonest.

77. Thus, ICAEW is precluded from alleging that the Defendant has breached the fundamental principle of integrity. The reason is that the ICAEW's definition of integrity at paragraph 110.5 (a) of the Code of Ethics is *"to be straightforward and honest in all professional and business relationships"*.

78. The ICAEW's definition of integrity is prescribed by the concepts of honesty and straightforwardness. Put succinctly, because the ICAEW does not specifically allege dishonesty it cannot rationally or sensibly allege a lack of integrity either.

79. Reliance is placed on (i) R on Application of Margaret May v The Chartered Institute of Management Accountants [2013] EWHC 1574 (Admin) and in particular paragraphs 154 -158 and 160; and (ii) David Wingate and another v The Solicitors Regulation Authority [2018] EWCA Civ 366.

80. In addition, as a matter of fact, the evidence does not prove that there has been a breach of the fundamental principle in any event.

Issues of fact and law

81. The standard of proof is the balance of probabilities.

82. The Defendant has admitted taking 10 days paid study leave when he should have known that he was required to take paid or unpaid holiday. He has also admitted that he failed to inform his employer that he was working from home and available for work on a range of dates between March 2015 and June 2015 totalling 24 days. These facts do not have to be determined because they are admitted. The Defendant also accepts that this professional misconduct is a breach of DBL 4.1(b).

83. Nevertheless, the tribunal was asked to determine whether more serious allegations are found proved or not. They are whether (i) the taking of 10 days leave was improper and the Defendant knew he should have taken paid or unpaid holiday and; (ii) the failure to inform his employer was a breach of the Fundamental Principle of integrity.

84. The issues are: (i) did the Defendant improperly take 10 days paid leave knowing that he should not have taken paid or unpaid holiday?

85. Is the tribunal entitled to find that there has been a breach of the Fundamental Principle of integrity in the absence of any discrete allegation of dishonesty?

86. If so, do the admitted facts of head of complaint 2 prove such a breach?

87. The tribunal found heads of complaint 1A and 2A proved and 1B and 2B proved on admission in the alternative.

Conclusions and reasons for decision

88. After the determination of the preliminary issue on day one, and before the hearing of the complaint properly got underway on day two, the Defendant announced that he was not intending to give oral evidence. There was a short adjournment at the beginning of day two to allow the IC's representative to review the presentation of the IC's case accordingly. This is mentioned here because it necessarily affected the evidence before the tribunal and indirectly its reasons.

Did the Defendant know he should have taken paid or unpaid holiday and was his taking paid study leave improper?

89. The Defendant (as was his right) elected not to give evidence in his defence and the IC was put to proof of its complaint without being able to cross-examine the Defendant. (He did, however, read out a prepared statement in mitigation.) The tribunal was also prevented from asking the Defendant any questions and being assisted by his answers. The tribunal must consider the evidence before it, which did not include any oral evidence at all from the Defendant. This amounted to the documents in the bundles.

90. There is clear evidence, which the Defendant did not challenge in oral evidence, that 'A' told the Defendant that he was not allowed to take paid study leave to re-sit an examination. It was in his contract at paragraph 6.4; also, 'A' told the Defendant in terms in an email dated 20 October 2014. It also appears on the PQT website. It is reasonable to assume that the Defendant had read and understood these communications and there is no positive evidence that he had not and did not. Moreover, as set out below, the Defendant admitted to 'A' investigators on 9 September 2015 that he had always understood that the individual is responsible for paying for resits in their own time, alongside work.

91. The tribunal was therefore satisfied that the Defendant knew both before and on 20 October 2014 that he ought to have taken paid holiday or unpaid leave if he wished to take time off to study for resits.

92. It does not necessarily follow, notwithstanding these notifications, that incorrectly taking paid leave for study leave for resits was *improper*; for example, it could have been inadvertent human error or an innocent mistake.

93. There is, however, evidence which on the balance of probability, satisfied the tribunal that this was not an innocent mistake.

94. First, there is the email exchange between the Defendant and 'A' on 8 December 2014. (This is particularly persuasive because it was broadly contemporaneous with the taking of holiday while revising.) In that exchange, the Defendant represented to his employer that he had spoken to PQT and it knew the time was being taken as paid leave (this was a reference to the conversation with 'B' on 23 October 2014). He also suggested that he had been informed by PQT that this was acceptable to it. When asked to support what he was saying, the Defendant could not, explaining that he had only discussed the matter on the telephone. There is, however, no evidence at all to corroborate the truth of what the Defendant told his employer on 8 December 2014. The Defendant also did not seek to confirm the position orally at the hearing before the tribunal.

95. Second, and in contrast, there is evidence that what the Defendant told his employer in December 2014 was not true. The telephone conversation with PQT in October 2014 was, as stated above, with 'B'. Ms 'B' took a note of the call (the Defendant did not). There is no mention of a discussion about how to code time or whether he could be paid while taking time to prepare for resits. The topics discussed were different.

96. Ms 'B's evidence before the 'A' investigators on 9 September 2015 (as set out in the interview note) was that the Defendant was not told, or led to believe, that he was permitted to take resit study leave as paid holiday.

97. The reason why this evidence is persuasive (apart from the probative superiority of a note taken of the telephone call in contrast to no note at all and Ms 'B' approving the internal interview note – effectively putting her name to its accuracy) is that what she says is consistent with 'A' policy and there is no reason offered by the Defendant or Ms 'B' why the guidance given to the Defendant in October 2014 on the telephone would have departed from that policy. It would have been irrational and odd if it had been.

98. Third, the Defendant eventually admitted to the 'A' investigators when he was interviewed on 9 September 2015 that (quoting from the interview note, not the Defendant's own words) *"he had always been of the understanding that it was the individual's responsibility to pay for their resits and that have to study for them in their own time, alongside work."*. The note was signed by the Defendant as a fair summary of the interview on 17 September 2015. He did not seek to challenge the fairness of that note.

99. In the light of this evidence, the tribunal finds that it was improper of the Defendant to have taken paid leave when he knew he was not allowed to. It was improper because it was not allowed by his employer and the Defendant knew it was not allowed, but he did it anyway.

100. For these reasons, the tribunal was satisfied that the IC had proved head of complaint 1A to the requisite standard.

On the facts of head of complaint 2, has there been a breach of the Fundamental Principle of Integrity which the tribunal is entitled to find?

101. The crux of the Defendant's legal argument is that the IC cannot on the one hand decline to allege dishonesty but on the other allege a lack of integrity. The reason for this is that the ICAEW has decided to define integrity in terms of dishonesty. While the terms are not synonymous, the Defendant submits, the IC has defined the professional integrity of its members in terms of honesty and has to abide by its own definition. Dishonesty forms no part of the IC's allegations, and so, they say, it must follow that integrity cannot either.

102. The case of *May* (see above) is, the Defendant believes, the only relevant reported case on accountants' integrity. While it deals with another accounting body and not ICAEW, each body has identical definitions of integrity.

103. The *May* case concerned a claim for judicial review by a member of the Chartered Institute of Management Accountants (CIMA) called Mrs May. She was found to have been guilty of professional misconduct by a disciplinary tribunal; she had appealed to CIMA's appeal body and her appeal failed in part. And so, she applied for judicial review of the part where the Appeal Committee had disagreed with her.

104. Mrs May's transgression was, very briefly, sending an email about a member's alleged misconduct to others in a way which was alleged to have lacked integrity, fairness, professionalism and other things.

105. CIMA's disciplinary appeal committee expressly did not raise any questions as to Mrs May's honesty. It acknowledged that no question of honesty arose. It also accepted the opinions of others that she was an honest person. However, it found that Mrs May had acted without integrity because she had not been straightforward.

106. The Judge did not accept that there was a meaningful distinction drawn by CIMA's appeal committee between acting dishonestly and acting not in a straightforward way. He also considered that to be straightforward "*is broadly synonymous with honest*" (*May* paragraph 155). Moreover, he said *"Integrity itself when used in the sense of a human quality is broadly synonymous with honesty."*

107. What troubled the Judge in *May* was inconsistency in the appeal committee's reasoning. First, it accepted as a general proposition that Mrs May was a person of integrity. Secondly, it wished to emphasise that in making a finding that she breached the section of integrity in CIMA's code it was not making a finding that she had acted dishonestly. Thirdly, moreover, the distinction the appeal committee sought to draw between acting dishonesty and not in a straightforward way was not a meaningful distinction to draw. For the Judge, this did not make sense and was flawed reasoning.

108. In March 2018, the Court of Appeal handed down its judgment in *Wingate*. This was a case, amongst other things, about the meaning of the word "integrity" as that word was used in the Solicitors Regulation Authority's Code of Conduct and Principles. That Code has a "principle" "to act with integrity". However, there is no prescriptive definition of "integrity" in the Code and the Court had to consider one.

109. Furthermore, the SRA's Code does not impose an express duty on a solicitor to act honestly. Being dishonest is not a discrete offence under the Code. It is an aggravating feature. As the Court remarked: *"If the SRA consider that a solicitor's breach of any of the Principles involved dishonesty, they will assert that as a separate allegation."* If a breach of one of the Principles involved dishonesty, the SRA will take a more serious view of that breach than if it had not. (Judgment para 74.) (It is accepted that if a discrete allegation of dishonesty is to be made in a regulatory context, it must be discretely pleaded and an opportunity for the defendant to answer that allegation.)

110. As to what "integrity" means, the Court said this from paragraph 95 onwards:

> *"As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty. In this regard, I agree with the observations of the Divisional Court in Williams and I disagree with the observations of Mostyn J in Malins.*
>
> *Integrity is more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.*
>
> *In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members….The underlying rationale is that professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards…*
>
> *…*
>
> *Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty.*
>
> *…*
>
> *The duty to act with integrity applies not only to what the professional person says, but to what they do…*

111. The tribunal notes that these words, from a very recent authority of a senior court, describe professional integrity which is not confined to the solicitors' profession. Although it appears *May* was not considered in *Wingate*, integrity's meaning is derived from "common parlance" as well as the law and "professional codes of conduct". The definition resolved the judicial debate which had been in place as to whether integrity and honesty are the same thing or not. The Court clearly considered they were not.

112. Putting to one side for the moment the "definition" of integrity in the ICAEW's Code of Ethics at paragraph 100.5, there would be no doubt that the Court's definition in *Wingate* would apply.

113. The issue, therefore, is whether and to what extent the definition of integrity in *Wingate* affects, if at all, the definition in paragraph 100.5 *"to be straightforward and honest in all professional and business relationships".*

114. The tribunal accepts the IC's submission that *Wingate* does advance judicial reasoning (and debate) on whether there is, in general terms, a meaningful semantic and legal distinction to be drawn between professional honesty and integrity. This is not just confined to solicitors' cases. The Judge in *May* thought not; the Court of Appeal in *Wingate* (following *Williams*) thought so. *Wingate* is the more recent authority and of a higher court.

115. The tribunal considers that the definition of integrity in *Wingate*, and in particular the distinction it draws between honesty and integrity, ought to be applied when interpreting the definition in paragraph 100.5 of the Code of Ethics. Not to do this would have remarkable and undesirable consequences. The first would be that in the field of professional regulation there would, and could, be two definitions of integrity: the *Wingate* definition and the ICAEW's (and CIMA's) own definition.

116. The second would be, as the IC submitted, the remarkable proposition that if the ICAEW as a public regulator (set up to protect the public interest by maintaining professional standards) were unable or unwilling (by applying the appropriate legal test) to sustain an allegation of dishonesty against a member they would be precluded from making any kind of allegation of lack of integrity because of the way in which the Code of Conduct was worded (by one interpretation). Another way of putting it would be that the ICAEW is always prevented from alleging a lack of integrity unless it also alleges dishonesty at the same time. Moreover, unless it was able to prove dishonesty, it would be unable to prove any lack of integrity.

117. The Defendant candidly accepted that this must be the case and that the ICAEW's remedy is to change its definition of integrity.

118. The tribunal considers that such an approach is unrealistic, too legalistic and relies excessively on too narrow and prescriptive a definition of the words *"to be straightforward and honest in all professional and business relationships."* The tribunal is not persuaded that there are, needs to be, or should be, two types of professional integrity – one that applies to ICAEW''s and CIMA and another that apples to other professions.

119. The correct interpretation of paragraph 100.5 of the Code of Ethics is discovered in the light of *Wingate*. That is to say, (i) to interpret the word "integrity" in the Code as "a useful shorthand to express the higher standards" expected of ICAEW and (ii) to interpret the definition in a similar way. Rather than being prescriptive, the definition is descriptive. No-one doubts that to act with integrity involves being straightforward and honest (note the positive definition). Less attractive is the notion that not acting with integrity must always, on every occasion, involve not being straightforward and not acting honestly (note the negative definition). Such a narrow interpretation precludes, for example, acting recklessly or irresponsibly (two characteristics in a professional person which few would deny can lack integrity).

120. This approach to interpretation acknowledges the most recent law and does no violence to the language of the ICAEW's code.

121. This interpretation also assists paragraph 110.1. The Code states that *"The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness."* This is undoubtedly correct, but that is not *all* the principle imposes and the paragraph does not say "*only imposes*". Also, it is to read the language of this paragraph too narrowly to infer that it does; it also ignores *Wingate' s* observations cited above.

122. The tribunal accepts the IC's submission that the Defendant has, in effect, misapplied *May* to the facts of this case by over-stating its relevance. First, *May* is not an authority for the proposition that if ever ICAEW (or CIMA) wish to plead a lack of integrity it must also plead dishonesty and the two allegations stand or fall together. It says nothing of the kind. Secondly, the Court in *May* was, <u>on the facts</u>, troubled by several expressly stated inconsistencies in the appeal committee's own reasoning. (The appeal committee also drew a meaningless semantic distinction between dishonesty and a lack of being straightforward. That is not relevant in the current case.)

123. In contrast in the present case, the ICAEW has chosen specifically not to allege dishonesty against the Defendant, but to allege a breach of the fundamental principle of integrity. It has given its grounds for that allegation in the charge and its accompanying submissions. There is no serious complaint that the Defendant does not understand the complaint against him. It is clear. No unfairness has been wrought.

124. For these reasons, the tribunal is satisfied that it would be entitled to find a breach of the fundamental principle of integrity, were the facts to prove one.

125. In this case, the Defendant has admitted failing to inform his employer that he was working from home and available for work when he ought to have done and could have done. This failure occurred on 24 separate days. He was effectively unaccountable at work, in any meaningful sense, for that period. The evidence proves that the Defendant was aware of his obligation to do this, as well as his ability to do so, and he does not take issue with that.

126. The issue for the tribunal is whether this conduct shows a lack of professional integrity which is not dishonest. The tribunal finds that it does. The lack of integrity shown by the Defendant was being legally and professionally obliged to inform his employer, knowing that it ought to be done, knowing how to do it, but not doing it without any lawful excuse of reason. This was highly irresponsible of him; not dishonest. Rather, applying *Wingate*, the allegation is that the Defendant has failed to adhere to the higher standards which society expects from professional members. Telling your professional employer properly that you are working from home for a period over three weeks (necessarily without supervision) when it expects you to, and are ready to carry out professional work, are two of them.

127. For these reasons the tribunal finds this head of complaint proved.

Matters relevant to sentencing

128. The tribunal considered the *Guidance on Sanction* and saw no reason to depart from that. It was also satisfied that no lesser sanction than the one imposed was appropriate.

129. There was persuasive mitigation: (i) the Defendant has shown clear insight into his wrongdoing, he is remorseful and has apologised; (ii) the Defendant has tried hard to move on, seeking employment in a reputable firm (which knows of his position) that is supporting him; (iii) the Defendant's character witnesses which speak, in particular, of his good behaviour, honesty, reliability, competence and integrity after the events in question; (iv) the delay in bringing this case to a conclusion and the effect of that delay on the Defendant who is still a young man; (v) the realistic unlikelihood of the Defendant repeating the misconduct. This is a case involving poor behaviour by a young man several years ago with a former employer. He has moved on and wishes to better himself and further his career in the profession.

130. On the question of costs, the tribunal paid particular attention to the doctrine of proportionality, fairness and the Defendant's financial means.

Sentencing Order

Reprimand.

Costs in the sum of £4,200.

Costs are payable in 24 equal monthly instalments of £175 payable on the first day of each month. The first instalment is due on 1 August 2018.

Decision on publicity

Publication with name.

Non Accountant Chairman	Mr Ron Whitfield
Accountant Member	Mr Ian Walker FCA
Non Accountant Member	Miss Jane Rees
Legal Assessor	Mr Dominic Spenser Underhill

032056

3

Mr Prasath Sabanathan of South Croydon, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 29 May 2018

Type of Member Provisional Member

Terms of complaint

1. During a meeting on 7 September 2016, Mr Prasath Sabanathan told 'A' that he had visited his doctor between 6 and 12 July 2016, regarding gastritis. This was dishonest in that Mr Sabanathan knew he had not visited his doctor during this period regarding gastritis.
2. On or around 9 September 2016, Mr Prasath Sabanathan was dishonest in that he falsified a medical certificate dated 8 September 2016 from Dr 'B' and submitted this to 'A'.

Mr Prasath Sabanathan is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a.

Hearing date

29 May 2018

Previous hearing date

None

Pre-hearing review or final hearing	Final Hearing.
Complaint found proved	Yes, on admission.
All heads of complaint proven	Yes, on admission.
Sentencing order	Severe reprimand.
Parties present	Mr Prasath Sabanathan was present.
Represented	Mr Sabanathan was not represented. The Investigation Committee (IC) was represented by Ms. Lauren Jennings.
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 IC's bundle together with Mr Sabanathan's Regulation 13 Answers and evidence of his means.

The IC's case

1. The Defendant was at all material times a student member of ICAEW. He obtained student status on 3 March 2016. At all material times he was training at 'A'. He failed a professional examination in June 2016 and, again, on his second attempt in July 2016. In order to be allowed to have a third attempt at the examination, his employer required him to take various remedial actions including a mock examination and a review meeting with 'A' to determine if he could sit the professional examination for a third time. The defendant had failed to meet some of the criteria required to be allowed this further resit, and had not completed the mock examination. He told 'A' that he was unable to book the review meeting or complete the mock examination before the deadline set by 'A' because he had been unwell. He told 'A' he had visited his doctor regarding gastritis. He had not visited his doctor at this time, as he later admitted. This was dishonest.

2. Around 9 September 2016, in order to prove to 'A' that he had visited his doctor, the Defendant falsified a medical certificate allegedly from a Dr 'B'. In fact, this document had been created by the Defendant on his computer, using a previous certificate as template. It was a forgery. This act of falsification was an act of dishonesty.

3. For these reasons, the Defendant has breached DBL 4.1(a).

Issues of fact and law

4. The Defendant admitted the complaint and so there were no issues of fact or law to determine.

5. The tribunal found the entire complaint proved on admission.

Conclusions and reasons for decision

6. The Defendant has admitted to two serious acts of dishonesty towards his employer. One of those acts involved the forging of a document. The Defendant explained that after he had failed his examination on the second attempt he became desperate to save his career and lied to his employer and forged the certificate to support that lie.

7. This is unacceptable behavior from any member of the ICAEW, which expects its members to behave with honesty and integrity.

8. The tribunal noted the Defendant's explanation that he did indeed feel unwell in July 2016, but not unwell enough to excuse him from attending college and/or his examination. The tribunal also noted that this was not an attempt by the Defendant to excuse his conduct, but to tell the truth about what had happened.

Matters relevant to sentencing

9. The tribunal considered the *Guidance on Sanction* and saw no reason to depart from that. It was also satisfied that no lesser penalty than the one imposed was appropriate.

10. Mitigation in this case persuaded the majority of the tribunal that an order that the Defendant be declared unfit to be a member or cease to be a provisional member for a period would not be proportionate. The mitigation is that the Defendant had been a student member of the ICAEW for only a few months before the events in question and he was comparatively young at the time (about [redacted]). The sense of desperation felt by the Defendant when he failed his second attempt at the examination and which caused him to act dishonestly should be understood against this background. The majority of the tribunal also took into account the Defendant's early and frank admission, his insight into his wrongdoing, his expression (in writing but not at the hearing) of shame and his statement that he had declared the charges to his current employer.

11. Aggravating factors are that: (i) the Defendant, as an employee, was in a position of trust; (ii) that there is more than one act of dishonesty and; (iii) that he used the name of an actual medical practitioner as part of his forgery.

Sentencing Order

By a majority decision:

Severe reprimand.

By a unanimous decision:

Costs in the sum of £3,840.

Costs are payable in 12 equal monthly instalments of £320; the first instalment must be paid on 1 July 2018.

Decision on publicity

Publication with name.

Chairman	Mr Richard Farrant
Accountant Member	Mr Ian Walker FCA
Non Accountant Member	Miss Jane Rees
Legal Assessor	Mr Dominic Spenser Underhill

036443

APPEAL COMMITTEE ORDERS

4

Mr Christopher William Dix FCA of
Wakefield, West Yorkshire

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 22 May 2018

Type of Member	Member
Date of Disciplinary Tribunal Hearing	18, 19 and 20 April 2017
Date of Appeal Panel Hearing	22 May 2018

Terms of complaint found proven before the Disciplinary Tribunal

1. Mr C W Dix FCA failed to comply with section 110.1 of the Code of Ethics that he be straight forward and honest in his professional and business relationships as he failed to disclose to Mr 'A', a co-owner of 'B' Limited, payment arrangements he had made with a client namely 'C' Ltd and 'D' Ltd.

2. Between 14 July 2009 and 24 June 2014 Mr C W Dix FCA allowed the sum of £8000 due to 'B' Ltd to be paid into a personal bank account and thereafter to be improperly retained by him.

3A. Mr CW Dix FCA issued an audit report on accounts of 'E' Limited for the year ended 31 May 2012, signed on or around 25 February 2013 in the name of 'F' Limited when he knew his firm was not a Registered Auditor, contrary to Section 1213 of the Companies Act 2006.

4A. Mr CW Dix FCA issued an audit report on accounts of 'G' Limited for the year ended 31 December 2012, signed on 30 April 2013 in the name of 'H', when he knew his firm was not a Registered Auditor, contrary to Section 1213 Companies Act 2006.

5. Mr CW Dix FCA permitted abbreviated accounts to be filed when the client was not entitled to file them because an audit report had been attached on the following occasions:

   a. Accounts for the year ended 31 May 2012 for 'E' Limited signed on or around 25 February 2013.

   b. Accounts for the year ended 31 December 2012 for 'G' Limited signed on 30 April 2013.

Disciplinary Tribunal's Sentencing Order

(i) Severe reprimand
(ii) Fine of £50,000
(iii) Costs of £16,720
(iv) Fine and costs to be paid within 30 days of service of the Record of Decision

Appeal against finding?	Yes against complaint 1: otherwise no
Appeal against Sentencing order?	Yes
Appeal against Costs	Yes

Decision of Appeal Panel

Appeal against finding: dismissed. Appeal against sentencing order: allowed in part

If appeal allowed in part, set out brief details here
Fine reduced to £25,000
Fine and costs to be paid within one year of 22 May 2018

Procedural matters and findings

1 The Appellant was represented by Mr David Bradly, Counsel. The Investigation Committee was represented by Ms Jessica Sutherland-Mack

2 The hearing was in public

3 No preliminary application was made

Grounds of appeal

4 The Disciplinary Committee (DC) was wrong to find complaint 1 proved, alternatively to hold that, if proved, it was sufficiently serious for exclusion to be considered as the sentencing starting point.

5 The DC had wrongly treated complaint 2 as if it were a complaint of dishonesty.

6 The fine of £50,000 was excessive and disproportionate and did not take adequate account of the fact that the Appellant was a sole practitioner of limited means.

7 The order for costs was disproportionate.

8 The decision as to time to pay was wrong in principle and unfair.

Decision

9 The appeal against the finding on complaint 1 is dismissed.

10 The appeal against the fine of £50,000 is allowed and a fine of £25,000 substituted.

11 The appeal against the costs order is dismissed.

12 The order in respect of time to pay the fine and costs is varied to an order that the Appellant should pay the fine and costs within one year of 22 May 2018.

13 Otherwise the decision of the Disciplinary Committee is to stand.

Reasons for decision

14 By a majority of four to one, the Panel considered that the DC's finding that complaint 1 had been proved was justified, though the Panel differed from the DC as to the reasoning from the evidence. While the Panel considered that the evidence before the DC did not justify the conclusion either that there had been an arrangement between Mrs 'I' and the Appellant whereby accountancy fees due from 'D' Limited and 'C' Limited would be set off against sums due from the Appellant to those companies for travel bills or that Mrs 'I' had, to the Appellant's knowledge, a belief that such an agreement had been made, the Panel considered that the course of dealing between the Appellant and Mrs 'I' was such that there must have been some arrangement, however informal, as to the non-payment by those companies of accountancy fees for some four years, given that the Appellant had continued to provide accountancy services without payment and no attempt had been made to deliver fee notes or invoices. The Panel felt that the conduct of Mr 'A', the other director of 'B' Limited, particularly in issuing invoices and starting proceedings against the companies was only explicable on the basis that the Appellant had failed to disclose to him, as he ought, the true nature of his dealings with Mrs 'I' and the arrangement with her that had resulted in work being done for several years with no fee note or invoice being rendered. The Panel also felt that the Appellant's subsequent conduct in personally paying the bulk of the two companies' bills to 'B', was entirely consistent with an acknowledgment by the Appellant of his failure to treat Mr 'A' to the standard required by section 110.1 of the Code of Ethics. The Panel thus considered that complaint 1 had been amply made out.

15 The Panel rejected the suggestion that the DC had treated complaint 2 as involving dishonesty. The IC had expressly disavowed any suggestion of dishonesty and, in any event, had a charge of dishonesty in relation to misappropriation of client moneys been proved, exclusion would normally have been the only course open to the DC. Nevertheless the Panel considered that the Appellant's conduct in completing two cheques in respect of sums due to 'B' with the names of himself and his wife as payees, improperly retaining the money and making no attempt to account for it to 'B' was indefensible and that his subsequent (and undocumented) claim to be entitled to set these sums against expenses due to him from 'B' was contrived and unbelievable. The DC was right to consider these two separate incidents, a year apart, as deliberate wrongdoing, albeit falling short of actual dishonesty, and to impose a severe financial penalty.

16 The Panel reviewed the fine by taking a holistic view of the Appellant's conduct and by taking his means into account. Viewed globally, the Panel considered that the fine was disproportionately high and could properly be reduced to £25,000.

17 The appeal against the order of costs was not pursued.

18 The question of time to pay fell to be considered afresh at the date of the appeal. Having heard evidence of the Appellant's means and personal circumstances the Panel considered that the fine and costs should be paid within a year of the date of the appeal hearing, 22 May 2018.

19 There was no other appeal against the findings or sentence of the DC and to that extent the order of the DC stands.

Non Accountant Chairman	Mr Richard Mawrey QC
ICAEW Affiliate Member	Ms Fiona Miller
ICAEW Member	Mr Richard Arthur Lea
Non Accountant Member	Ms Ruth Todd
Non Accountant Member	Mr Geoff Baines

021597

INVESTIGATION COMMITTEE CONSENT ORDERS

5 ORDER

INVESTIGATION COMMITTEE DECISION – 28 JUNE 2018

With the agreement of Mr Chetan Mistry ACA of London, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £500 and pay costs of £1,255 with respect to a complaint that:

Between 20 June 2016 and 12 March 2017 Mr Chetan Mistry ACA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51a.

038483

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6 ORDER

INVESTIGATION COMMITTEE DECISION – 28 JUNE 2018

With the agreement of Mr Dominic Andrew Watkins ACA of Scarborough, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £1,000 and pay costs of £1,718 with respect of a complaint that:

Between 18 May 2012 and 1 October 2015, Mr Dominic Watkins ACA engaged in public practice when he was not eligible, contrary to regulation 20 of the ACA Student Regulations.

034947

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7 ORDER

INVESTIGATION COMMITTEE DECISION – 28 JUNE 2018

With the agreement of Mr Michael James Kenyon FCA of Cheshire, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £2,000 and pay costs of £2,193 with respect to a complaint that:

Mr Michael Kenyon FCA incorrectly prepared the VAT returns for 'X' for:

· the period ended 30 June 2013; and
· quarters ended 30 September 2013 to 30 June 2016 inclusive.

038672

8 ORDER

INVESTIGATION COMMITTEE DECISION – 28 JUNE 2018

With the agreement of BBK Partnership of 1 Beauchamp Court, Victors Way, Barnet, Hertfordshire, EN5 5TZ, the Investigation Committee made an order that the firm be severely reprimanded, fined £2,700 and pay costs of £2,105 with respect to a complaint that:

1. BBK Partnership prepared the unaudited financial statements of 'X' plc for the period ended 31 August 2015, when the company was not entitled to exemption from audit under sections 477 and 478 of the Companies Act 2006 as the company was a public company.

2. BBK Partnership prepared the unaudited financial statements of 'X' plc for the period ended 31 August 2015 which stated that the accounts had been prepared in accordance with the special provisions of Part 15 of the Companies Act 2006 relating to small companies and with the Financial Reporting Standard for Smaller Entities (effective April 2008) when the company was not entitled to claim small company exemptions under section 384 of the Companies Act 2006 as the company was a public company.

3. BBK Partnership prepared the unaudited financial statements of 'X' plc for the year ended 31 August 2016, when the company was not entitled to exemption from audit under sections 477 and 478 of the Companies Act 2006 as the company was a public company.

4. BBK Partnership prepared the unaudited financial statements of 'X' plc for the year ended 31 August 2016 which stated that the accounts had been prepared in accordance with the special provisions of Part 15 of the Companies Act 2006 relating to small companies and with the Financial Reporting Standard for Smaller Entities (effective January 2015) when the company was not entitled to claim small company exemptions under section 384 of the Companies Act 2006 as the company was a public company.

040640

Consent Orders

9 ORDER

INVESTIGATION COMMITTEE FIXED PENALTY ORDER

Mrs Joanne Moran ACA

Penalty order made on 13 July 2018

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 Mrs Joanne Moran ACA, the Investigation Committee ordered that Mrs Joanne Moran ACA, of Nottingham, be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

> Between 20 October 2016 and 5 February 2018, Mrs Joanne Moran ACA engaged in public practice, through 'A' Ltd, without holding a practising certificate contrary to Principal Bye-law 51a.

042741

10 ORDER

INVESTIGATION COMMITTEE FIXED PENALTY ORDER

Mr Geoffrey Dawson FCA

Penalty order made on 13 July 2018

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 Geoffrey Dawson FCA, the Investigation Committee ordered that Mr Geoffrey Dawson FCA, of Northampton be reprimanded and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

> Between 1 March 2002 and 2 March 2018, Mr Geoffrey Dawson FCA, engaged in public practice, through 'A' Ltd, without holding a practising certificate contrary to Principal Bye-law 51a.

042999

AUDIT REGISTRATION COMMITTEE

ORDER – 13 JUNE 2018

11 Publicity statement

Brooks Mayfield Limited, 12 Bridgford Road, West Bridgford, Nottingham, NG2 6AB, has agreed to pay a regulatory penalty of £7,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Audit Regulation 3.01, by continuing to act as auditor of two clients for the two years immediately after a principal in the firm, who was also the audit engagement partner for these audits, became director of the clients, contrary to APB Ethical Standard 2.

025687

ORDER – 16 MAY 2018

12 Publicity statement

Sheppard & Co Limited, West Barn, C/o Down Farm, Hindon, Salisbury, Wiltshire, SP3 5TA, has agreed to pay a regulatory penalty of £2,495, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.11, 2.03a and 6.06 in that the firm failed to notify ICAEW of a director's appointment within 10 business days, failed to ensure that the new director held affiliate status and for incorrectly completing its 2017 annual return.

043376

ORDER – 13 JUNE 2018

13 Publicity statement

Deloitte LLP, 2 New Street Square, London, EC4A 3BZ, has agreed to pay a regulatory penalty of £2,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of paragraph 5.06 of the ICAEW Licensed Practice Handbook for allowing an ATOL Accountant's Report to be signed by an individual in the firm who was not, at the time, properly appointed as a licensed practitioner.

043914

ORDER – 13 JUNE 2018

14 Publicity statement

Matravers, Bridgewater House, Century Park, Caspian Road, Altrincham, Cheshire, WA14 5HH, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 4.04 and 4.05 for allowing an employee, who was not a designated Responsible Individual in the firm to sign two audit reports between October 2017 and February 2018.

043916

ORDER – 13 JUNE 2018

15 Publicity statement

Gatley Read, Prince of Wales House, 18/19 Salmon Fields Business Village, Royton, Oldham, OL2 6HT, has agreed to pay a regulatory penalty of £2,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Audit Regulations 3.03 and 6.06 in that the firm:

- failed to apply suitable safeguards to an audit where recurring fees from the client were between 10% and 15% of the firm's total practice income; and
- disclosed incorrect fees received from its largest audit client, on its 2015 and 2016 annual returns.

042356

INVESTMENT BUSINESS COMMITTEE

ORDER – 21 JUNE 2018

16 Publicity statement

Magma Audit LLP, 16 Davy Court, Castle Mound Way, Rugby, Warwickshire CV23 0UZ, has agreed to pay a regulatory charge of £4,209, which was decided by the Investment Business Committee. This was in view of the firm's admitted breach of Regulation 3.09 of the DPB (Investment Business) Handbook 2016 for providing services to clients of a connected firm which were not complementary to other professional services.

043578

ORDER – 1 FEBRUARY 2018

17 Publicity statement

'In view of the firm's admitted breach of DPB Regulations 2.03b and 2.07diii, Exchequer Accountancy Services Ltd of 1st Floor, The Exchange, St. John Street, Chester, CH1 1DA, has agreed to pay a regulatory charge (determined by the Investment Business Committee) of £1,500, for failing to notify ICAEW of the appointment of two directors on 1 October 2015 and failing to obtain DPB affiliate status for one of them until 27 November 2017.'

041287
