



Disciplinary Orders and Regulatory Decisions

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Disciplinary orders

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mr Paul Anthony Megson FCA of
6 Freeman Road, High Heaton, Newcastle upon Tyne, NE7 7AH

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 6 June 2017

Type of Member Member

Terms of complaint

Mr P A Megson FCA failed to provide information, explanations and documents within 14 days of service of a letter dated 7 September 2016 requesting him to provide the same pursuant to Disciplinary Bye-law 13.

Mr Paul Anthony Megson is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.c

Hearing date

06 June 2017

Previous hearing date(s)

N/A

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order

- a) Severe reprimand
- b) fine of £4000 and
- c) costs of £1500

Procedural matters and findings

Parties present Paul Anthony Megson did not attend the hearing

Represented Mr Francis of ICAEW represented the Investigation Committee (IC)

Hearing in public or private The hearing was in public

Decision on service

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

Documents considered by the tribunal

The tribunal considered the documents contained in the IC bundle.

Findings on preliminary matters

As Mr Megson did not appear at the hearing, the IC made an application for the case to go ahead in his absence. The IC had served the documents in accordance with the rules on Mr Megson, attested by an administrator, showing that the papers had been sent to his registered address. The Tribunal considered the criteria set out in the case of R v Jones and also the case of GMC v Adeogba concerning the power of professional disciplinary tribunals to proceed in the absence of a defendant. The Tribunal was satisfied that reasonable efforts had been made by the IC to contact Mr Megson and that he had not engaged with the IC in anyway during the investigation or proceedings. It appeared that Mr Megson had simply decided not to respond in anyway to the IC, necessitating in the end the service of a DBL 13 letter, which again he had not responded to. Given this, the Tribunal took the view that it was appropriate to proceed in his absence.

Issues of fact and law

1. The defendant was engaged to prepare the Self-Assessment tax returns for Mr 'A' and Mr 'B' (the complainant). In September 2015 they were unable to contact him. They attempted contact by various means but the defendant could not be reached.
2. In January 2016, the complainant contacted ICAEW and an ICAEW Regional Director managed to contact the defendant by phone. In the call the defendant said he was retiring. The defendant started to resolve matters with the complainant but on 24 February 2016 the complainant reported further failures to respond. The Regional Director attempted to make contact again but failed to reach the defendant. They advised the complainant to make a complaint.
3. The complainant's new accountant requested professional clearance on the 21 September 2015 and chased for a response on the 5 February 2016. The complainant received a letter on 2 August 2016 from the defendant but this did not contain all the information required. There has been no response to the professional clearance request.
4. The defendant failed to respond to a letter issued under Disciplinary Bye-law 13 on 7 September 2016 that requested documents relating to this complaint.
5. ICAEW wrote to the defendant at his registered address seeking conciliation. No response was received.

6. The complainant said he had sent a letter to the defendant at a new address on 8 March 2016 by recorded delivery. This was signed for by 'P A Megson' on 10 March 2016.
7. The complaint was transferred to investigation. ICAEW wrote to the defendant with initial questions. The letter was sent to both addresses and emailed to his registered email.
8. On 2 August 2016 the defendant wrote to the complainant from the Stephenson Road address.
9. On 7 September 2016 the defendant was sent a letter requiring him to provide information, documentation and explanations. This was sent to his then registered address (Railway Cottages) and the address the defendant wrote to the complainant from (Stephenson Road). No response was received.
10. On 7 September 2016, as a result of the ICAEW Annual Return filing for Mr Megson's firm, (1.2.1 Accountancy Services) Mr Megson's primary address on ICAEW's records was changed from 4 Railway Cottages to 6 Freeman Road, which is the office address of 1.2.1 Accountancy Services.
11. No response was received from Mr Megson. No letters or e-mails have been returned as undelivered.

Conclusions and reasons for decision

12. The tribunal found the complaint proved.
13. On 7 September 2016 a formal letter requesting a response pursuant to DBL13 was sent to the defendant's Railway Cottage and Stephenson Road address. On the 8 September 2016, after the change of address by Annual Return submission took place, document 24 and 25 (among others) were served upon the defendants then registered address of Freeman Road.
14. ICAEW received no response to these letters. As the defendant has failed to respond to a request pursuant to DBL13 he is in breach of DBL4.1.c.

Matters relevant to sentencing

15. The tribunal took into account its *Guidance on Sanctions*.
16. Mr Megson had no prior disciplinary record.
17. It appeared to the tribunal that Mr Megson had decided simply to opt out of any engagement with his regulator, both in terms of the underlying investigation and this complaint. This was conduct which in and of itself fell way below the standards expected of chartered accountants. The regulatory role of the ICAEW was a critical part of maintaining the public's confidence in the profession.

Sentencing Order

18. The Tribunal decided to impose the following sanction:

- a) Severe reprimand;
- b) fine of £4000 and
- c) costs of £1500

Decision on publicity

19. Publicity with names.

Chairman

Mrs Mary Kelly

Accountant Member

Mr Ian Walker FCA

Non Accountant Member

Ms Jane Rees

Legal Assessor

Ms Melanie Carter

036016

2 Mr Samuel Nunn of
4 Lytham Road, Kirkby-in-Ashfield, NOTTINGHAM, NG17 8NQ.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 6 June 2017

Type of Member Provisional Member

Mr Nunn has been convicted of indictable offences resulting in a suspended custodial sentence. The Tribunal found him in breach of Disciplinary Bye-Law 4.1(a) and ordered that he cease to be a provisional member and be ineligible for re-registration as a provisional member for two years from 6 July 2017.

Chairman	Mrs Mary Kelly
Accountant Member	Mr Ian Walker FCA
Non Accountant Member	Ms Jane Rees
Legal Assessor	Ms Melanie Carter

032655

APPEAL COMMITTEE ORDERS

3 Mr Philip Robert Nuttall FCA of
Buckle Barton Ltd, Sanderson House, 22 Station Road, Horsforth LEEDS, LS18 5NT.

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 6 June 2017

Type of Member Member

Date of Disciplinary Tribunal Hearing 7 and 8 December 2016

Date of Appeal Panel Hearing 6 June 2017

Terms of complaint found proven before the Disciplinary Tribunal

- 1 Mr P R Nuttall FCA acted contrary to ICAEW *Code of Ethics* s110 (Integrity) in that he prepared the following misleading letters regarding Mr 'B's involvement in a proposed new agency:
 - A A letter dated 5 January 2009 on behalf of Mr 'B' to 'A', which stated that Mr 'B' 'cannot move forward with the proposal';which he knew did not correctly reflect Mr 'B's involvement in the proposed new agency.
- 2 Mr PR Nuttall ACA acted contrary to ICAEW Code of Ethics s 110 (Integrity) in that he
 - (i) Assisted Mr Appleton in breaching his fiduciary duty to 'C' Ltd;
 - (ii) Allowed money to be paid through the 'D' client account in order to set up an agency in conflict with Mr 'B's fiduciary duty.

If proven, the member may be liable to disciplinary action under Disciplinary Bye-law 4.1a.

Disciplinary Bye-law 4.1a states:

- 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.

Sentencing Order

- (i) Severe reprimand
- (ii) Fine of £10,000
- (iii) Costs in the sum of £10,000

Appeal against finding?	Yes
Appeal against Sentencing order?	Yes
Appeal against Costs	Yes
Decision of Appeal Panel	Appeal allowed in part in relation to the sentencing order only.

Procedural matters and findings

- 1 The Appellant represented himself. Miss Jessica Sutherland-Mack appeared on behalf of the Investigation Committee.
- 2 The hearing was in public.
- 3 The Grounds of Appeal made a number of specific challenges to the Disciplinary Committee's decision to find the complaints proved. During the course of the hearing, it became apparent that the Appellant also sought to challenge the Disciplinary Committee's sentencing and costs orders. The Appeal therefore proceeded as a challenge to all aspects of the Disciplinary Committee's decision.

Grounds of appeal

- 8 The decision of the Tribunal was flawed because of substantial procedural irregularity by its failure to consider all the requirements of Section 4.1 of the Disciplinary Bye-Laws. ... Section 4.1 ... require[s] the Tribunal to consider whether any of the acts or defaults complained of were proved and, if so, whether such acts or defaults were likely to bring discredit on himself, the Institute or the profession of accountancy. The liability to disciplinary action only arises where both conditions are satisfied. The wording of section 4.1 makes it clear that the mere fact that an act or default is proved does not of itself give rise to such a liability. The Tribunal found three of the acts complained of to be proved. The Tribunal, however, failed in each case to consider the second requirement, namely the likelihood of discredit. The failure to consider a requirement necessary for the establishment of liability to disciplinary action is a substantial procedural irregularity ("Ground 1").
- 9 The Tribunal failed to identify which code of ethics it is alleged the Appellant breached. Because of the antiquity of the acts that are the subject of these complaints the present Code of Ethics that came into force on 1st January 2011 do not apply. Instead the applicable Code of Ethics were those in force between 1st September 2006 and 31st December 2010. The application of an incorrect Code of Ethics or alternatively the failure to identify which Code of Ethics has been applied amounts to a substantial procedural irregularity ("Ground 2").
- 10 The Tribunal approached the allegation contained in Complaint 1A incorrectly. The Tribunal are required to determine the complaint in accordance with the way in which it is drafted. Complaint 1A alleges that the Appellant prepared a misleading letter, dated 5th January 2009, which stated Mr 'B' 'cannot move forward with the proposal'. The words that are the subject matter of the complaint are, therefore limited. The Tribunal, however, considered not merely the statement that is the subject of the complaint, but the whole letter. Such an approach, exceeds the parameters of the complaint and amounts to a substantial procedural irregularity. Further, the Tribunal considered the complaint not simply in terms of the words stated therein, but also by reference to the

letter being misleading by omission. The complaint was framed upon and thus defined by specific words (“Ground 3”).

- 11 Insofar as the Tribunal found that the words contained in Complaint 1A, namely that Mr ‘B’ ‘cannot move forward with the proposal’, were misleading such a determination is one that no reasonable Tribunal would have made. The words are not a statement of fact, merely a statement of position. The words, viewed in isolation, even in the wider context of the letter itself, cannot reasonably be construed as being misleading (“Ground 4”).
- 12 Where the basis upon which Complaint 1A was found to be proved is unsustainable, the finding upon Complaint 2 is also unsustainable. The case upon Complaint 2 was largely founded upon the matters complained of in respect of Complaint 1. Where such matters are unsustainable, to consider them in respect of Complaint 2 amounts to a substantial procedural irregularity (“Ground 5”).
- 13 The Tribunal erred in taking into account the use of the ‘January’ letters by ‘B’ in disciplinary proceedings as assisting the latter in breaching his fiduciary duties to ‘C’ Limited. The disciplinary proceedings were to determine if Mr ‘B’ had breached his fiduciary duties and were thus subsequent to them. Therefore, the use of the letter within those proceedings could not have assisted Mr ‘B’ to breach his fiduciary duties as they had already, allegedly occurred (“Ground 6”).
- 14 The Tribunal approached the allegation contained in Complaint 2b) incorrectly. Complaint 2b) is made on the basis that allowing money to be paid through the ‘D’ client account in order to set up an agency was in conflict with Mr ‘B’s fiduciary duty. The Tribunal, however, determined the allegation upon the basis that the act complained of “assisted” Mr ‘B’ breach his duties to ‘C’ Limited. Complaint 2b) is not framed upon the basis of “assistance”. It is framed upon the basis that the matter complained of is in “conflict” with Mr ‘B’s fiduciary duty. “Assistance” is the basis upon which Complaint 2a) is framed. There is a clear distinction between the meaning of the two words and what they entail. Moreover, why would the Respondents use different wording in the respective complaints if they had the same meaning and/or effect. Accordingly, the Tribunal did not consider whether the matters complained amounted to a “conflict” with Mr ‘B’s fiduciary duty. Applying and/or determining Complaint 2b) by an incorrect approach amounts to a substantial procedural irregularity. The Tribunal have erred [paragraph 115] in their rejection of the submission that the £150,000 was money belonging to ‘E’ as her share in the deal. It follows therefore that the Tribunal have erred in finding that the £150,000 being paid into ‘D’s client account is evidence that the act complained of amounted to a “conflict” with Mr ‘B’s fiduciary duties. No persuasive documentation was produced before the Tribunal to evidence ‘E’s participation in the deal because Complaint 2b) was not presented in such a way as to suggest that such evidence was required. Had the complaint been presented in such a way, evidence would have been adduced in order to evidence the submission that the £150,000 belonged to ‘E’. In any event, it is submitted that the matter complained of, namely allowing money to be paid through the ‘D’ account, is itself not capable of amounting to a “conflict” with Mr ‘B’s fiduciary duty (“Ground 7”).

Decision

- 15 The appeal against the Disciplinary Committee's determination that paragraphs 1A and 2 of the complaint were proved is dismissed. The appeal is allowed in respect of the sentencing order and a severe reprimand and a fine of £5,000 is substituted by the Appeal Committee for the original order. The appeal against costs was dismissed.
- 16 There was no order as to the costs of the hearing before the Appeal Committee.

Reasons for decision

17. At the start of its written reasons, the Disciplinary Committee correctly record that the terms of the complaint include express reference to Disciplinary Bye-Law 4.1. The Appellant is correct to highlight that there is no other reference to Bye-Law 4.1 in the course of the Disciplinary Committee's reasons.
- 18 The Disciplinary Committee did, however, make express reference to the Code of Ethics, section 110.1 (Integrity) by reminding itself 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." In considering each of the respective heads of the complaint, the Disciplinary Committee determined whether this principle of integrity had been breached by the Appellant.
- 19 The Appeal Committee determined that the Disciplinary Committee was not guilty of a substantial procedural error as alleged by Ground 1. The Appeal Committee considered that the Disciplinary Committee's reasons were sufficient to enable the parties to understand why they had won and lost. Further, by finding that the Appellant had acted in breach of section 110.1 of the Code of Ethics, the Appellant's conduct must have been likely to bring discredit upon himself, in accordance with Disciplinary Bye-Law 4.1a. Ground 1 is therefore dismissed.
- 20 In respect of Ground 2, the Appeal Committee was satisfied that there has been no material variation to the terms of section 110.1 over the relevant time period and there was no assertion made by the Appellant that the Disciplinary Committee had wrongly summarised the wording of the relevant section of the Code of Ethics in its decision. In the circumstances, the Appeal Committee considered that Ground 2 was a challenge without any substance.
- 21 The Appeal Committee was satisfied that, contrary to Ground 3, the Disciplinary Committee was entitled to take into account the whole of the letter dated 5 January 2009 when considering paragraph 1A of the complaint. The terms of paragraph 1A required the Disciplinary Committee to consider section 110 of the Code of Ethics, the specific quotation within the letter and the allegation that the Appellant knew that this quotation did not correctly reflect Mr 'B's involvement in the proposed new agency. The Appeal Committee determined that, as the Disciplinary Committee was required to reflect upon and determine Mr 'B's proposed involvement in the agency, it was entitled to look at the broader factual circumstances of the case, including the full terms of the letter dated 5 January 2009. In then determining whether paragraph 1A of the complaint was proved, the Disciplinary Committee was limited to focusing upon the specific quoted phrase in the letter and the Appeal Committee considered that it did so. Ground 3 is therefore dismissed.

- 22 By Ground 4, the Appellant asserted that the Disciplinary Committee's finding that the words that Mr Appleton 'cannot move forward with the proposal' were misleading was one that no reasonable Tribunal would have made. In his oral submissions, the Appellant stated that the words were both a statement of fact and a statement of position and that everything within the letter was theoretically, factually and technically correct. The Disciplinary Committee state at paragraph 94 of its reasons why it found the words were misleading. The Appeal Committee considered that the Disciplinary Committee was perfectly entitled to reach the decision that it had and there was no error of law or fact which it made in reaching that conclusion. Ground 4 was therefore also dismissed.
23. As the Appeal Committee did not find that the Disciplinary Committee's decision in respect of paragraph 1A was unsustainable for the reasons given above, the premise upon which Ground 5 was founded simply did not arise. Ground 5 was therefore dismissed.
- 24 The Appeal Committee found that the issue raised by Ground 6 did disclose an error in the Disciplinary Committee's reasoning. Paragraph 2(i) of the complaint required consideration as to whether or not the Appellant had assisted Mr 'B' in breaching his fiduciary duty to 'C' Limited. At paragraph 113 of its reasons, the Disciplinary Committee found that the letter dated 5 January 2009 had been used to defend Mr 'B' in disciplinary proceedings which had been brought against him by 'C' Limited. The Appeal Committee's judgment was that, at best, this was an irrelevant consideration which could have no bearing upon paragraph 2(i) of the complaint. However, the Appeal Committee was also satisfied that the subsequent use of the letter by Mr 'B' had nothing to do with the Appellant and therefore he could not be said to have assisted Mr 'B' in this respect. Further, the use of the letter by Mr 'B' was not to assist a breach of his fiduciary duty but rather as an attempt to cover up his previous involvement. Paragraph 113 of the Disciplinary Committee's reasons is therefore misconceived.
- 25 However, paragraph 112 the Disciplinary Committee's reasons justify its decision to find paragraph 2(i) of the complaint proved in any event. As there is no basis upon which the paragraph 112 finding can be overturned, the Appellant's challenge by way of Ground 6, whilst well-founded in the Appeal Committee's judgment in respect of paragraph 113, cannot result in a variation to the ultimate decision of the Disciplinary Committee.
- 26 Finally, in respect of Ground 7, the Appeal Committee considered that the Disciplinary Committee were entitled to reach the conclusion that it did at paragraph 115 of its reasons, namely that the Appellant had allowed money to be paid through the client account for the purposes of setting up an agency in conflict with Mr 'B's fiduciary duty. The email from Mr 'B' to Mr 'F' and copied to the Appellant dated 16 April 2009 in which it was stated, "Obviously going through you so I am not seen investing – this agreed with Phil [the Appellant]" is ample evidence of this state of affairs. The Appeal Committee was satisfied that to facilitate Mr 'B's attempt to avoid being seen to be directly involved in the transaction is conduct which does amount to a breach of s110 of the Code of Ethics. Ground 7 is therefore also dismissed.

27. In respect of the sentencing order, the Appeal Committee considered that the Disciplinary Committee's reasoning was sparse and limited. The Appeal Committee was concerned that paragraph 125 of its reasons suggested that the Disciplinary Committee did not consider the range of sanctions potentially available to it only in an ascending order of seriousness. Although it was referenced, there also did not appear within the Disciplinary Committee's reasons to be any detailed consideration of the Guidance on Sanctions. The Appeal Committee also judged that there was an apparent failure to consider the significant overlap between paragraphs 1 and 2(i) of the complaint, which ought to have been reflected in the overall sanction applied. Further, the Appeal Committee considered the Disciplinary Committee erred in treating as an aggravating factor the manner in which it perceived the Appellant had conducted himself during the hearing before it. The Appeal Committee did not consider that to be a proper consideration to take into account when determining the relative seriousness of a complaint but, if it was, it would seem to amount to a complete overlap with the additional factor of a lack of remorse or insight which the Disciplinary Committee separately identified.
28. The Appeal Committee therefore determined that the Disciplinary Committee did fall into error in determining the appropriate sanction. The Appeal Committee applied the Guidance on Sanctions and determined that the most relevant category was for a serious ethical breach. In the circumstances, the suggested starting point is a severe reprimand with a fine of £4,000 to £8,000. The Guidance's aggravating factors did not readily apply to the Appellant's case, although his conduct was undertaken in the course of business and may be said to have been deliberate. The important mitigating factors are that the Appellant's actions were all undertaken at the request of Mr 'B', he has a clean disciplinary record and there has a significant delay in bring this matter to a hearing, which the Appeal Committee thought was most regrettable and was a significant mitigating factor.
29. In the circumstances, the Appeal Committee determined that the sentencing order should be varied so that the Appellant should be subject to a severe reprimand and a fine reduced to £5,000. The costs order of £10,000 was not varied, as the Appeal Committee was satisfied that the Disciplinary Committee had fairly imposed a proportionate amount of the total costs sought.
30. Given the Appeal Committee's decision, it determined that there should be no order as to costs in respect of the hearing before it.

Non Accountant Chairman
Non Accountant Member
Accountant Member
Accountant Member
Non Accountant Member

Mr Angus Withington
Mrs Jane Valentine
Mr Lee Manning FCA
Mr Andrew Strickland FCA
Mr Geoff Baines

006602

INVESTIGATION COMMITTEE CONSENT ORDERS

4 Mr Steven Hare FCA

Consent order made on 6 July 2017

With the agreement of Mr Steven Graham Hare of 2 Victoria Cottages, Victoria Road, HARROGATE, HG2 0HQ, the Investigation Committee made an order that he be severely reprimanded, fined £3,000 and pay costs of £3,500 following a finding of a prima facie case that:

Mr Steven Hare FCA, as MD of 'X Ltd', failed to comply with the Fundamental Principle of Integrity in that he provided a witness statement to an employment tribunal which was misleading by omission in that it failed to give an accurate account of what had happened to €90 that had gone missing in the care home.

034356

AUDIT REGISTRATION COMMITTEE

ORDER – 12 APRIL 2017

5 Publicity statement

Baxters, Mill Road Farmhouse, Low Road, North Tuddenham, Dereham, NR20 3AB, has agreed to pay a regulatory penalty of £8,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Audit Regulations 3.20 and 6.06 in that the firm failed to carry out annual audit compliance reviews, including a review of whole-firm procedures and cold file reviews, and for the incorrect statements on its 2011-2015 annual returns.

037242

ORDER – 21 June 2017

6 Publicity statement

Higginson & Co (UK) Ltd, 3 Kensworth Gate, 200-204 High Street South, Dunstable, Bedfordshire, LU6 3HS, has agreed to pay a regulatory penalty of £2,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 6.06 for failing to update its articles of association despite agreeing to do so during a previous audit monitoring visit.

038849

ORDER – 17 May 2017

7 Publicity statement

Harrison Holt, High Park Farm, Kirkbymoorside, York, YO62 7HS, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 6.06 in that the firm incorrectly completed its 2011-2016 annual returns by confirming that annual cold file reviews had been conducted and that a record of the results had been retained, when this was not the case.

037941

ORDER – 26 June 2017

8 Publicity statement

The registration as company auditor of Ashford Read, Basepoint Enterprise Centre, Andersons Road, Southampton SO14 5FE was withdrawn on 26 June 2017 under regulation 7.03d of the Audit Regulations and Guidance for failure to pay the annual registration fees due under regulation 2.13.

039752

Investment Business Committee

ORDER – 26 June 2017

9 Publicity statement

The Designated Professional Body licence of Ashford Read, Basepoint Enterprise Centre, Andersons Road, Southampton, SO14 5FE was withdrawn on 26 June 2017 under DPB regulation 2.18 of the Designated Professional Body (Investment Business) Handbook 2016 for failure to pay the annual licence fees under regulation 2.07e.

039817

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