Disciplinary Orders and Regulatory Decisions

DATE PUBLISHED: 5 DECEMBER 2018

Disciplinary orders

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. Mr Michael Eric Moss FCA of
Wilmslow, United Kingdom

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 3rd October 2018

Type of Member	Member

Terms of Complaint

On 1 June 2017 at 'X' Crown Court, Mr Michael Moss was convicted of stalking involving serious alarm/distress.

Mr Michael Eric Moss is therefore liable to disciplinary action under Disciplinary Bye-law 4.1e.

Bye-law 4.1e states ' that he has, in a court of competent jurisdiction, been convicted of an indictable offence (or has, before such a court, outside England and Wales been convicted of an offence corresponding to one which is indictable in England and Wales)'

Hearing date	3rd October 2018
Previous hearing dates	N/A
Pre-hearing review or final hearing	Final hearing
Complaint found proved	Yes
Sentencing order	Severe reprimand Costs of £2,875

Procedural matters and findings

Parties and representation	The Investigation Committee was represented by Mrs Silpa Tozer Mr Michael Eric Moss ('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 the defendant's Regulation 13 reply

Proceeding in absence

1. Notice of the hearing was sent by post to the defendant on 11 July 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.

2. In his Regulation 13 Answers dated the 13 August 2018 defendant said he would not be attending the hearing. He accepted the complaint and provided the Tribunal with written submissions.

3. In the circumstances nothing would be gained by an adjournment and there is a clear public interest in hearing the complaint. Therefore, the Tribunal was satisfied it was appropriate to proceed in the defendant's absence.

The Investigation Committee's case

4. The defendant has been a member of the ICAEW since 1955.

5. On 1 June 2017, the defendant pleaded guilty to and was convicted on an indictment containing one count of stalking involving fear of violence or alarm of distress contrary to section 4A(1)(b)(ii) of the Protection from Harassment Act 1997. The facts of the offence are set out in the judge's sentencing remarks.

6. In or about 2013 the defendant's wife became resident in a hospice. The defendant's victim, Ms A, was a member of staff at the hospice. The defendant developed an infatuation with Ms A, who was less than half his age. After about a year he started to make inappropriate comments to her and started to follow her around.

7. Ms A switched to the night shift in order avoid the defendant but he attended at night to try to see her. In April 2015, she left the hospice and began working elsewhere. The defendant subsequently found out where she had gone and on two occasions attended her workplace asking her work colleagues to pass letters on to her.

8. For a period the defendant did not try to contact Ms A. His wife passed away in August 2016. The defendant went back to Ms A's place of work in April 2017 and told members of staff there that he had been to her house. At that stage Ms A contacted the police.

9. On 22 April 2017, the defendant went to Ms A's house. The door was answered by her young son and he was asked to leave which he did, but subsequently returned to the house on a later occasion and this time Ms A answered the door. She immediately tried to shut it but the defendant stopped her doing so and entered the property. The police were informed and he was arrested.

10. On 22 June 2017, the defendant appeared at the Crown Court to be sentenced. The judge took into account the defendant's age, his previous good character and the fact that he was extremely remorseful for his actions. The judge accepted that the defendant's wife's illness and her subsequent death had had an adverse impact on him.

11. The defendant was sentenced to six months' imprisonment, suspended for 18 months. The judge also imposed an indefinite restraining order against the defendant.

12. As the offence for which the defendant was convicted is an indictable offence, the defendant is liable to disciplinary action under Disciplinary Bye-Law 4.1.e.

The defendant's case

13. The defendant admitted the complaint in his Regulation 13 Answers.

14. In his written submissions, the defendant told the Tribunal that he was truly sorry for the offence. He said was suffering from a momentary lapse following the stress of his wife's lengthy illness and

her death and he acted without realising the effect his actions would have on the victim. He pointed out that the Probation Service had recommended that he receive a conditional discharge, although the judge had not followed that recommendation.

15. He told the Tribunal that no previous complaints had been made against him. He had been a member of the Institute for over 60 years and although he was now retired from practice he valued his membership. He is a trustee of a local charity.

Conclusions and reasons for decision

Matters proved by admission

16. The tribunal found the complaint proved by admission.

Matters relevant to sentencing

17. There were no previous disciplinary matters recorded against the defendant.

18. The defendant is now aged 'X' and has been retired from practice for over 10 years. The Tribunal took into account the fact that he had admitted the offence and expressed remorse. He had co-operated with the ICAEW investigation. The Tribunal was concerned however, that the defendant had not demonstrated full insight into the effect his offending had had on his victim. This was a serious offence which had persisted over a lengthy period of time.

19. The offending had been addressed by the sentence imposed by the criminal court and given the defendant's otherwise good record, the Tribunal considered it would be disproportionate to remove the defendant from membership of the Institute. The risk to the reputation of the Institute must be viewed in light of the fact that the defendant is retired and is no longer practising. A severe reprimand was the proportionate sanction and would appropriately mark the Institute's disapproval of this type of behaviour.

20. The IC applied for costs in the sum of £3,188.17. Mrs Tozer however accepted that some reduction from this figure would be justified to take into account the time taken to hear this matter. The Tribunal took into account the information the defendant had supplied about his financial circumstances.

Sentencing order

21. The Tribunal severely reprimanded the defendant.

22. The Tribunal ordered the defendant to pay costs of £2,875.

Decision on publicity.

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

Chairman	Ms Mary Kelly	
Accountant Member	Mr Mike Ranson FCA	
Non Accountant Member	Mr Nigel Dodds	
Legal Assessor	Mr Andrew Granville Stafford	**039799**

2. Mr Freddie Sandberg of
London, United Kingdom

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 3rd October 2018

Type of Member	Provisional Member

Terms of Complaint

On 19 May 2017 at 'X' Crown Court, Mr Freddie Sandberg was convicted of wounding/inflicting grievous bodily harm.

Mr Freddie Sandberg is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.e.

Bye-law 4.1.e states 'that he has, in a court of competent jurisdiction, been convicted of an indictable offence (or has, before such a court, outside England and Wales been convicted of an offence corresponding to one which is indictable in England and Wales).'

Hearing dates	3rd October 2018
Previous hearing dates	N/A
Pre-hearing review or final hearing	Final hearing
Complaint found proved	Yes
Sentencing order	Severe reprimand Costs of £3,500
Procedural matters and findings	
Parties and representation	The Investigation Committee was represented by Mrs Silpa Tozer Mr Sandberg ('the defendant') was 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 the documents supplied by the defendant.

The Investigation Committee's case

1. On 19 May 2017, the defendant pleaded guilty at 'X' Crown Court to one count of unlawful wounding contrary to section 20 of the Offences Against the Person Act 1861.

2. The offence occurred in the early hours of 1 January 2017 in a nightclub in London. Whilst heavily intoxicated the defendant got into an alteration with another man and struck him a single blow in the face whilst holding a glass bottle. The bottle smashed causing injuries to the victim's face and hand. He had to have surgery to his eye and was left with the possibility of lifelong numbness to one of his hands.

3. The defendant was sentenced on 8 June 2017. In his sentencing remarks the judge gave the defendant for his plea of guilty and his previous good character. The judge accepted it was an isolated incident and the defendant was demonstrating a determination to control his alcohol consumption. As aggravating factors the judge referred to the amount that the defendant had drunk that day, the extent to which he lost control and the fear that must have been caused to other people who were around. The judge also said that the use of the glass bottle was an aggravating factor although the judge accepted the defendant was so drunk he did not know it was in his hand or have an intention to use it.

4. The judge imposed a sentence of 12 months' imprisonment suspended for 18 months. In addition, he was ordered to complete 200 hours of unpaid work in 12 months and pay £5,000 compensation to the victim. An Alcohol Abstinence Monitoring requirement for 120 days was imposed.

5. Disciplinary Bye-law ('DBL') 4.1.e provides that a Member is liable for disciplinary action if he has been convicted of an indictable offence.

The defendant's case

6. The defendant admitted the complaint. He expressed remorse and told the Tribunal he had drastically reduced his alcohol consumption. He had complied with the court's orders regarding unpaid community work, alcohol abstinence monitoring and compensation. He had now passed all his accountancy exams and was hoping to pursue a career in accountancy.

Conclusions and reasons for decision

Matters proved by admission

7. The tribunal found the complaint proved by admission.

Matters relevant to sentencing

8. There were no previous disciplinary matters recorded against the defendant. The Committee took into account his previous good character and the fact that he had admitted the offence. He had self-reported to the ICAEW and had co-operated with the ICAEW investigation. This was a serious offence but the Tribunal accepted that the defendant had taken all the steps he could to try to remedy matters. The Tribunal was impressed by the contrition shown by the defendant when he appeared before it.

9. As the defendant is a provisional member the available sanctions are set out in DBL 22.7. The Tribunal considered that the appropriate and proportionate sanction was a severe reprimand. This would mark the seriousness of the offending whilst offering the defendant an opportunity to continue his career in accounting.

10. The IC applied for costs in the sum of £3,878.17. Mrs Tozer however accepted that some reduction from this figure would be justified to take into account the time taken to hear this matter. The Tribunal also took into account the information provided by the defendant about his financial circumstances.

Sentencing order

11. Pursuant to DBL 22.7(f) the defendant is severely reprimanded.

12. The Tribunal ordered the defendant to pay costs of £3,500.

Decision on publicity.

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

Chairman	Ms Mary Kelly	
Accountant Member	Mr Mike Ranson FCA	
Non Accountant Member	Mr Nigel Dodds	
Legal Assessor	Mr Andrew Granville Stafford	**039335**

3. Auker Rhodes Professional Services LLP of
Aire Valley Business Centre, Lawkholme Lane, Keighley, West Yorkshire, BD21 3HW.

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 - 18 October

Type of Member Firm

Terms of complaint

1. From on or after 1 July 2012 to 28 September 2015 Auker Rhodes Professional Services LLP failed to return client money to Mr M despite his request for his monies to be repaid to him, contrary to regulation 20A of the Clients' Money Regulations
2. Between 15 March 2012 and 31 July 2012 Auker Rhodes Professional Services LLP failed to hold client money in excess of £10,000 in separate designated client money accounts, contrary to Regulation 13 of the Clients' Money Regulations.
3. On 31 July 2012 Auker Rhodes Professional Services LLP failed to comply with regulation 20h of the Clients' Money Regulations as the firm withdrew £88,030 from the general client bank account using funds held for Mr M (£27,283), Mr B (£31,256) and Mr P (£29,491), to pay for invoices due from 'A' and 'D'P LLP without written authority from Mr M, Mr B or Mr P to use those funds.

Auker Rhodes Professional Services LLP is therefore liable to disciplinary action under Disciplinary Bye-law 5.1c

Hearing date

16 - 18 October 2018 inclusive

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes
All heads of complaint proven	Yes
Sentencing order	Reprimand; £5,000 fine and ordered to pay costs of £14,930.00
Parties present	Ms Jessica Sutherland-Mack on behalf of the Investigation Committee Ms Sarah George, Committee Administrator Mr Grant Rudloff of Auker Rhodes LLP, the Respondent Firm Other representative of Auker Rhodes LLP
Respondent represented by	Mr David Bradly of Counsel, instructed by Chris Cope of Accountants National Complaint Services Limited
Hearing in public or private	The hearing was in public

Documents considered by the Tribunal The Tribunal considered the documents contained in the Investigation Committee's bundle (together with Defence bundle numbered D1 – 99 and additional documents, numbered D100 – 102 produced during the hearing.

Findings on preliminary matters An application was made by the defence for the Defence bundle numbered D1 – 99 and the witness statement of Grant Rudloff to be admitted in evidence despite non-compliance with the time limit for service set out in paragraphs 14 and 17 of the Disciplinary Regulations. Counsel explained that he had only recently had a conference with the expert witness instructed by the defence and in the light of that conference had advised that Mr Rudloff be tendered as a witness and that the documents referred to be served on the Investigation Committee and the Tribunal. The Tribunal gave careful consideration to the application and decided that in the interest of natural justice they could be admitted in evidence.

1. The Investigation Committee's (IC's) case

2. Background to complaint

2.1 On 10 June 2014 a complaint was received by ICAEW from Mr M. It concerned payment of fees and the non-return of monies by Auker Rhodes LLP said by Mr M to belong to him.

2.2 Auker Rhodes Professional Services LLP (Auker Rhodes) acted for 'A' and 'D' LLP as auditors and tax advisers. The Partners of Auker Rhodes were and remain Mr Richard Kenyon, Mr Grant Rudloff and Mr Richard Doyle. The Partners of 'D' LLP were Mr M, Mr P and Mr B. Messrs M, P and B were also directors of 'A'.

2.3 Auker Rhodes made a capital allowances claim for 'D' Ltd on a contingent fee basis, which resulted in a personal income tax refund to Messrs M, B and P totalling £148,030. These tax refunds were paid direct to Auker Rhodes by HMRC in March 2012 and April 2012 and related to the personal income tax of Messrs M, P & B**.**

2.4 Payment dates and amounts are broken down as follows:

Date of refund	**Amount £**	**Individual the refund belonged to**
15 March 2012	51,256	A B
15 March 2012	49,491	L P
3 April 2012	47,283	A M
Total	**148,030**	

2.5 The refunds were initially banked in Auker Rhodes' general client bank account. At no time were they held in separate designated bank accounts for each individual.

2.6 On 26 June 2012, Auker Rhodes received written authority from Mr M and Mr B for a transfer of £20,000 from each of their refunds respectively. The monies were to be paid into the 'A' bank account**.** Auker Rhodes also received written authority from Mr P's wife

for a transfer of £60,000 held in Auker Rhodes' general client account to the 'A' bank account. On 26 June 2012 a payment of £60,000 was made by Auker Rhodes to 'A'.

2.7 On 28 June 2012, Auker Rhodes raised invoices for £31,744.86 (inc VAT) to 'D' LLP and £84,000.00 (inc VAT) to 'A'. The invoice to 'D' LLP was for work undertaken for the Capital Allowances Tax claim; the invoice to 'A' was for accounting, auditing and taxation services provided.

2.8 'D' LLP and 'A' were in financial difficulties that resulted in 'E' being appointed as administrators on 20 August 2012. Auker Rhodes were aware of the financial difficulties that both businesses were facing.

2.9 On 31 July 2012, Mr Richard Kenyon from Auker Rhodes emailed Messrs P, B and M stating that the firm was owed £126,665.78 for work done by them on behalf of 'D LLP' and 'A'. Auker Rhodes explained that they were going to offset the remaining tax refund monies of £88,030 against the 'A' invoice. Auker Rhodes comment in the email that this should serve to reduce the individual directors' loan accounts on the basis that they have personally settled a liability of the company. £40,627.38 was said by Auker Rhodes still to be owing.

2.10 On the same day £88,030 was transferred from the Auker Rhodes client account to their office account. There is no evidence that Messrs P, B or M gave written authority for the monies to be withdrawn from the general client account to be used in the way proposed by Auker Rhodes, or at all.

2.11 Mr M wrote to Auker Rhodes on 31 October 2012 requesting payment of the balance of his tax monies held by Auker Rhodes. Less the payment of £20,000 from the initial £47,283.00, this amounted to £27,283.00.

2.12 It appears that an out of court settlement was reached between Mr M and Auker Rhodes whereby £53,500 was paid by the latter to Mr M and Mr P's solicitor to resolve the matter of client monies. This amount, divided between both individuals, equates roughly to the outstanding amount that would have been due to both individuals, after release of the £60,000 originally requested by them, give or take a little. It is unknown at this stage what the exact division between the two was.

2.13 For completeness, the Investigation Committee (IC) concedes that there is no evidence before the Tribunal that Mr M asked for repayment of the monies in July/August as per his complaint. The evidence submitted by Mr M of this request is a record of a taped interview between him and Auker Rhodes. The reason why the IC concedes that the meeting could not have taken place in July/August is because it discusses the appointment of 'E' which took place in August 2012 and also the loan owed by Mr M on around 24 September amounting to £58,000. Therefore, this meeting would have had to have taken place at the earliest in September 2012.

2.14 Notwithstanding the observations in paragraph 2.12, the IC submit that the complaints can still be proved and do not undermine the IC's case.

Expert Reports - Summary

2.15 Experts have been instructed in this case. Ms 'F' of 'G' on behalf of Auker Rhodes and Mrs 'I' of 'H' on behalf of the IC. Ms 'F's first report is dated 05 January 2017; Mrs 'I's report and response is dated 08 September 2017.

2.16 Ms 'F' then provided a supplemental report dated 16 February 2018 which responded to Mrs 'I''s report. Both experts provided a joint report dated 24 May 2018 and a further joint report in the light of the further documents submitted by the Respondent on 16th October, 2018.

2.17 The IC submit that the key to all these complaints is whether the tax refunds paid into Auker Rhodes general client bank account in March and April 2012 belonged to Messrs M, P and B as individuals or, as contended by Auker Rhodes, it was held on behalf of them for 'A' as a group client.

2.18 The IC notes that the experts are diametrically opposed on this. While the IC do not intend to regurgitate the views of the experts, in summary, Ms 'F's view can be said to be that previous course of dealings by the directors and Auker Rhodes regarding payment of their tax through their 'A' Directors Loan Account (DLA) suggests that it was always their intention that Auker Rhodes would hold the money on behalf of 'A'. Ms 'F' also relies on the letter of a third Party, 'J', who was a personal tax manager at Auker Rhodes, requesting that Mr M pay the tax refund he received for the 2009/2010 year to the Company. While it is agreed between the experts and the IC that what Mr 'J' meant was for the monies to in fact go to Auker Rhodes, the overriding inference is that it was money that was to be held by the latter for 'A'. Further, once the tax refunds were paid into Auker Rhodes' client account and posted to the latter's ledger, Ms 'F's view is that they became funds held by them on behalf of 'A'.

2.19 By contrast, Mrs 'I' takes the view that the monies were always held on behalf of Messrs P, B and M as individuals. Mrs 'I' disagrees with the assertion that previous course of dealings for payment of tax returns through the DLA means that the money was held by Auker Rhodes on behalf of 'A'. She points out that this is a mechanism for payment of the individuals tax but is irrelevant to assessing:

- Ownership of funds;
- Whether Auker Rhodes should hold the funds;
- Whether there was a reason for holding the funds

2.20 Mrs 'I' observes that the tax refunds were personal tax rebates from HMRC for all three individuals and also states that in fact ownership of the funds does not change by recording those funds against a specific client ledger or receiving it into a general client money account.

2.21 Both experts agree that they have seen no evidence to show that the monies were to be held by Auker Rhodes on behalf of the company such that funds would be available to enable settlement of Auker Rhodes' fee for work being carried out by the latter for the Company.

2.22 Both experts also agree that if there were an arrangement between the individuals and Auker Rhodes that the money was to be held on behalf of the Company and the purpose of

that agreement was to hold fees to enable the settlement of fees incurred by Auker Rhodes, there would be no breach of the client money regulations.

2.23 Both experts agree they have seen no evidence to explain why Auker Rhodes continued to hold the money on behalf of the individuals after payment was made by HMRC and that the treatment of the financial statements by Auker Rhodes is at odds with their contention that the money was held by them on behalf of 'A'.

2.24 Both experts agree that if the monies were held on behalf of the individuals personally, no consent would be required from 'E' by Auker Rhodes and the latter would have been free to distribute the funds to them.

2.25 If the monies were found to be held on behalf of 'A' then 'E's consent would be needed to provide the funds to Messrs M, P and B.

2.26 Both experts agree that they have seen no evidence that the directors raised any objection to the invoices; however, they also agree that by November 2012 there is evidence suggesting that they were refuting the validity of the raising of the invoices and were of the impression that Auker Rhodes held the monies for them personally.

2.27 The IC submit that the report and evidence of Mrs 'I' is to be preferred and accepted by the Tribunal and sets out below a suggested approach to be taken by the Tribunal to reach any findings.

2.28 As stated in paragraph 2.16 above, the IC submit that the key to these complaints is who the money can be said to belong to; the partners/directors as individuals or 'A', and held by Auker Rhodes for the purpose of paying fees. The Tribunal's finding on this point will directly impact on whether the complaints are found proved.

2.29 **Complaint 1**

As set out in the joint expert report, if the monies are found to have belonged to Messrs M, P and B personally as individuals, then following any request by them, Auker Rhodes should have returned the funds. If the money is found to have belonged to the individuals personally this remains the case irrespective of 'E's involvement. Therefore it matters not for the purposes of finding the complaint proved, when Mr M asked for his outstanding funds to be paid to him because they were due and owed to him as an individual. The complaint can therefore be found proved as a breach of Client Money Regulation 20A.

2.30 If however, the funds are found to have been held on behalf of 'A' then there would be no automatic entitlement to repayment of the funds despite Mr M's request. As it cannot be said by the IC that Mr M requested repayment of his monies before 'E's involvement, the latter's permission would have to be sought by Auker Rhodes. It does not appear from the evidence that Auker Rhodes did seek this permission. If the Tribunal form the view that the monies were held on behalf of 'A' then they cannot find the complaint found proved.

2.31 In order to reach this conclusion, the Tribunal would need to find that there was an agreement in place by Messrs M, P and B to this effect. The IC submit there is no such evidence and that the monies were never intended by the individuals to be held by Auker Rhodes on behalf of 'A'.

2.32 **Complaint 2**

Like complaint one, if the Tribunal form the view that the monies were held on behalf of the individuals, then it follows given that the amounts refunded to each one exceeded £10,000, individual accounts should have been set up in accordance with Client Money Regulation 13. The complaint can therefore be found proved.

2.33 If the Tribunal are of the view the monies were held on behalf of 'A' then the IC submitted the complaint as pleaded cannot be found proved. This is because if the monies are found to have been held on behalf of 'A' then logically there would only be a need for one client account to be opened to reflect the fact.

2.34 **Complaint 3**

Like the aforementioned complaints, if the Tribunal find that the monies belonged to Messrs M, P and B as individuals, written consent would be needed. However, as per the opinion of both experts, if the Tribunal find that the monies were held on behalf of 'A', no written consent would be needed due to the lapse of 30 days required by Client Money Regulation 22. As set out above, in order to find that the monies were held on behalf of 'A' the IC submit that Tribunal would need to find evidence of an agreement between the parties to this effect and both experts have agreed there is no evidence to this effect.

3. First head of complaint

3.1 Messrs M, P and B had overdrawn directors' loan accounts for (sic) 'A'. The loan accounts had arisen in part due to 'A' settling personal tax liabilities of the directors. As stated in paragraph 2.12 in or around September 2012 Mr M's loan account with 'A' was £58,000.

3.2 At the time of the meeting between Mr M and Auker Rhodes, the latter had already paid to Mr M (via 'A') £20,000 of his personal tax refund of £47,283. Auker Rhodes were therefore still holding £27,283 of Mr M's refunded monies.

3.3 During the meeting between Auker Rhodes and Mr M, Auker Rhodes told Mr M that if they paid these funds back to him, then the amount Mr M owed 'A' would increase to £88,000. The IC submit that it is likely Auker Rhodes were suggesting that the Administrators would include this money in Mr M's director's loan balance due to 'A', whereas, if Auker Rhodes used that money to settle their outstanding invoice, then Mr M would have settled a liability on behalf of the company.

3.4 Auker Rhodes said that whether they paid Mr M's money back to him or not made no difference to him but an enormous difference to Auker Rhodes. Mr M advises that he made it known he was recording the meeting; this is disputed by Auker Rhodes.

3.5 Auker Rhodes explained at the meeting they could see that from Mr M's point of view, the firm had managed to get payment of some invoices in preference to other creditors. But Auker Rhodes were thinking that the directors of 'A' shouldn't be unhappy about this because Auker Rhodes had tried to help the company. Mr M did not confirm in this meeting that he authorised payment of the 'A' invoice with the money held by Auker Rhodes.

3.6 On 31 October 2012 Mr M wrote to Auker Rhodes requesting that his outstanding tax refund of c.£30k be transferred into his bank account within 5 working days. Mr M explained that the monies were his personal tax refund and had no connection to 'A', so if the firm wanted payment of their invoice they should present such a claim to 'E' who were the administrators.

3.7 On 9 November 2012, 'E' wrote to Auker Rhodes to say that the directors of 'A' continued to challenge the validity of the invoices raised of £26,454.05 plus VAT and £70,000 plus VAT.

3.8 On 21 November 2012 Auker Rhodes replied to 'E' and explained the basis for the invoices which included reference to the engagement letter. Auker Rhodes comment that Mr P and Mr M were unaware whether the settlement of the invoice to 'A' had been reflected in their directors' loan balances and asked 'E' to clarify.

3.9 On 20 December 2012 Auker Rhodes replied to Mr M referring to their engagement letter with the "S" businesses and the standard terms of business. The letter states that where the firm have been unable to recover their outstanding fees from the corporate entity, they reserve the right to recover the fees from the directors of the company in question. Auker Rhodes say that they have therefore offset the tax refunds against the firm's invoice to 'A'.

3.10 Auker Rhodes commented that they were still owed £36,629 and reserved their right to recover these further monies in line with their terms of business.

3.11 ICAEW contacted 'E' during the investigation of this complaint and 'E' explained that they were not professionally comfortable with the behaviour of Auker Rhodes. However they were advised that the debt (tax repayment) was due to the directors and not the company so it was for the directors, not 'E' in their capacity as administrators, to pursue any claim against Auker Rhodes.

3.12 Auker Rhodes provided representations that the initial payment of £60,000 (being made up of £20,000 held on account of each of the three individual directors) was paid to 'A' despite, under the terms of their engagement letter, Auker Rhodes being contractually entitled to retain the monies in settlement of their outstanding fees.

3.13 Auker Rhodes state that on the basis that the three directors had only requested a transfer of £20,000 each, rather than the full amount, Auker Rhodes understood from discussions at the time that the balance of the funds were to be used in settlement of outstanding fees.

3.14 **Conclusion**

The IC submit that the tax refunds of Messrs M, P and B were personal monies to them as individuals. The IC dispute that this money was ever held by Auker Rhodes on behalf of 'A'. Consequently, when Mr M requested his monies to be returned, it should have been repaid.

3.15 Both experts disagree on the point of ownership and therefore it is a matter for the Tribunal whose evidence they prefer. Applying the expert reports to the facts of the case, the IC

submit that Mrs 'I's is to be preferred and should be adopted. The IC also submit that the agreed facts of the joint expert report support Mrs 'I's conclusion.

3.16 Regulation 20A of the Client Money Regulations states that clients' money must be returned to the client promptly as soon as there is no longer any reason to retain those funds.

3.17 As set out in the first report of Mrs 'I' (08 September 2017) there is no reason that she can determine why the entire monies were not paid over to the individuals or why the remaining balance after payment of the £20,000 was not returned to them. Further, the joint report states that both experts agree that they have not seen any evidence to explain why Auker Rhodes continued to hold the monies from April 2012.

3.18 In summary, it would appear that the only reason advanced by Auker Rhodes for their use of the remaining £88,030 is based on the proposition that there was some agreement in place between Auker Rhodes and Messrs M, P and B that the parties intended the money would held on behalf of 'A'. This agreement would support their retention of the monies.

3.19 The IC submit this proposition cannot be supported by the evidence and indeed the evidence supplied by 'E' regarding the director's views on who the money belonged to indicates the opposite position. The letter written by Mr M in October 2012 and the contents of the meeting transcript support the view that as far as he was concerned, the money belonged to him personally as an individual and he wanted it back.

3.20 The IC therefore submit that Auker Rhodes are in breach of regulation 20A of the Client Money Regulations.

4. Second head of complaint

4.1 The tax refunds relating to Mr P and Mr B were received on 15 March 2012 and the refund relating to Mr M on 03 April 2012. The refunds received were as follows:

Date of refund	Amount £	Individual the refund belonged to
15 March 2012	51,256	A B
15 March 2012	49,491	L P
3 April 2012	47,283	A M
Total	**148,030**	

4.2 The refunds were made by HMRC into Auker Rhodes' client account in accordance with standing instructions. Auker Rhodes held the monies belonging to Messrs M, P and B in their general client account from when they received the payments from HMRC in March/April 2012 until the remaining funds were transferred to the Auker Rhodes office account on 31 July 2012.

4.3 Auker Rhodes held the full amount of £148,030 until 26 June 2012 when £60,000 was paid to 'A'. The remaining balance of £88,060 was transferred to Auker Rhodes office account on 31 July 2012.

4.4 Auker Rhodes appeared to initially acknowledge that they should have opened designated accounts for these monies. However, as per Ms 'F's supplemental expert report, their case appears to be that because the money was held by them on behalf of 'A', there would only be a need for one client account and not three.

4.5 The firm say they have reviewed internal procedures and made changes to ensure compliance with this rule going forward**.**

4.6 **Conclusion**

In line with Auker Rhodes instruction, Ms 'F' did not address Complaint 2 as it seemed it was admitted. The matter is not addressed in the joint report either. However, on the basis that the IC submit the monies personally belonged to the directors as individuals, it is contended that Regulation 13 of the Client Money Regulations has been breached by Auker Rhodes because separate designated client accounts for each director should have been set up.

4.7 The rational of the IC for this complaint being proved is that, if the monies held by Auker Rhodes can be said to belong to Messrs M, P and B personally, then it naturally flows that designated individual accounts should have been set up to hold the monies.

4.8 Regulation 13 states that where money of any one client in excess of £10,000 is held or expected to be held by the firm for more than 30 days, the money must be paid into a Client Bank Account designated by the name of the client or by a number or letters allocated to that account.

4.9 On the IC's case, it is submitted that Auker Rhodes have breached Client Money Regulation 13.

5. Third head of complaint

5.1 Auker Rhodes issued invoices in the sum of £70,000 plus VAT to 'A', and £26,454.05 plus VAT to 'D' LLP on 28 June 2012.

5.2 On 31 July 2012, Auker Rhodes emailed Mr M, Mr P and Mr B, and said that the firm was going to offset the client money held of £88,038 against the 'A' invoice**.** Auker Rhodes comment in the email that this should serve to reduce the individual director's loan accounts on the basis that they have personally settled a liability of the company.

5.3 On the same day the £88,030 was transferred from the Auker Rhodes client account to their office account**.** There is no evidence that Messrs M, P and B gave written authority for these funds to be used in settlement of the invoice to 'A' and the IC submit that there is no evidence of an agreement between the parties to this effect that would justify Auker Rhodes acting as it did.

5.4 Auker Rhodes explain that they transferred the £88,030.72 only after the 30 day period set down by Client Money Regulation 22. They state that they were entitled to use the directors' personal tax refund monies to settle their invoice**.**

5.5 Ms 'F' is of the view that because the monies were always held on behalf of 'A' this complaint is misplaced. Ms 'F' is also of the view that Client Money Regulation 22 has not been breached because there was no objection to the funds being used in this way and further that the 30 day condition had been met.

5.6 Client Money Regulation 22 only applies where the invoice being paid with the client money is an invoice to the client whose money is held. On the IC's case, the invoices Auker Rhodes issued were to 'A' and 'D' LLP not to Messrs M, P and B. Therefore, Auker Rhodes in fact used funds belonging to one client (Messrs M, P and B) to pay the invoice of another client ('A').

5.7 Auker Rhodes also appear to use their Terms of Business (TOB) as a defence to their action. The IC submit that in fact, the issue of the TOB is not strictly relevant in this case because the issue on point is who the monies belonged to. If the Tribunal finds that the monies belonged to Messrs M, P and B personally, written consent would be required by them for Auker Rhodes to withdraw the funds. If the Tribunal find the monies were held on behalf of 'A' then Client Money Regulation 22 would be engaged and no written consent would be required by virtue of the fact 30 days had elapsed since the raising of the invoice and there is no evidence of an objection being raised.

5.8 As said above, the Tribunal would need to conclude that there had been agreement between the parties that the funds would be held on behalf of 'A' for payment of fees. The IC submit there is no such evidence.

5.9 **Conclusion**

On the basis that the IC submit that the monies were held on behalf of Messrs M, B and P, written consent needed to be obtained by Auker Rhodes to withdraw the remaining monies from the general client account. On the grounds that this consent was not obtained Client Money Regulation 20h has been breached.

6 The Respondent's Case

6.1 The Respondent's case is that the monies resulting from the tax refunds were and remained the property of 'A'. They argue that there was "an overwhelming likelihood" that in any event, the money was held by Auker Rhodes for the benefit of 'A' and not the individuals, Mr M, Mr B or Mr P, and that "everyone worked on the basis that this was so, as tax rebates had always become the property of the company ('A') because the company paid the individuals' tax for them, out of its funds, so the general understanding of all was that tax rebates would not be paid for the benefit of the individuals, but for the benefit of the company ….".

6.2 The Respondent's case is that Auker Rhodes was therefore entitled to use this money to pay on invoices due to them from 'A', (30 days' notice having been given) the remaining monies to be refunded to 'A' and to off-set the directors' liabilities to the company under their DLAs.

6.3 The Respondent called Mr Grant Rudloff, a partner in Auker Rhodes, to give oral evidence to the Tribunal. Mr Rudloff explained that he was involved in the tax planning work of 'A' and 'D' LLP and also the tax partner with overall responsibility for the personal tax returns of Mr M, Mr P and Mr B. He said that 'A' always paid the personal tax bills of the three directors and that if any refunds were to be issued in relation to those personal tax returns, the refunds would be sent directly to the company.

6.4 Mr Rudloff reiterated that it was the Respondent's contention that the £88,030.72 was held by Auker Rhodes on behalf of 'A' and this was consented to by Messrs M, B and P by virtue of their having signed their respective tax returns between 2009-2010 mandating 'A' and subsequently Auker Rhodes Client Account as the recipient of any refund of overpaid tax.

6.5 Mr Rudloff was present at the meeting (which he recorded in his office diary as having taken place on November 1st, 2012) with Mr Kenyon of Auker Rhodes and Mr M, at which Mr M "was adamant about personal client money that we were holding" and that he and Mr Kenyon tried to explain to him that, even if it was personal client money, he (Mr M) would "simply owe more money to the company". Mr Rudloff remembered that the meeting ended with Mr M going away to clarify whether his director's loan account correctly recorded a reduction in the balance as a result of his agreeing to send the tax refund back to the company via Auker Rhodes' client account. He observed in his evidence that Mr M would not have understood the term or the implications of a "Client Account".

6.6 Ms 'F' was called as an expert witness before the Tribunal and confirmed the contents of her reports, including the joint reports she had prepared with Mrs 'I'. She gave as her opinion that Messrs M, B and P "must have" agreed to the refunds being treated as money belonging to 'A' as they had signed off their tax returns which contained the mandates above referred to. She confirmed that neither she nor Mrs 'I' had seen any written agreement to that effect.

7 Issues of fact and law

7.1 The only issue in dispute is the ownership of the monies resulting from the tax refunds paid by HMRC to the individuals, Mr M, Mr B and Mr P and deposited in Auker Rhodes' general Client Account on 15th March (Mr B and Mr P) and 3rd April 2012 (Mr M), in respect of the 2010 tax returns for the partners in 'A'. It is also undisputed that Mr M and Mr B each made requests by email on 26th June 2012 for £20,000 to be transferred to "our bank" with immediate effect. Mrs P made a request by email on the same day for £60,000 to be transferred to 'A's account, giving the bank account sort code and account number. £60,000 was transferred on 26th June, 2012, (that is, more than 30 days after the total monies, which amounted to £148,030 had been paid into the general Clients' Bank account) to the Auker Rhodes Office Account and thence to the bank account of 'A'.

7.2 It is common ground that Auker Rhodes did not hold separate, designated clients' accounts for each of its five clients referred to in these proceedings, namely, Mr M, Mr B, Mr P, 'A' and 'D' LLP.

7.3 The Respondent argues that the requests made by Messrs M and B and Mrs P indicate that the individuals were aware and indeed agreeing that this money was the company's money.

7.4 The IC argues that the effect of the transfer to 'A's bank account was to reduce the deficit in the directors' loan accounts with 'A' and did not have the effect of altering the ownership status of the money.

7.5 The applicable rules to which the Tribunal has had regard in considering the facts of this case were the ICAEW Clients' Money Regulations effective from 1 January 2011 and, in particular, to regulations 10, 13, 20h and 20A.

8 Conclusions and reasons for decision

8.1 The Tribunal took the view that the £148,030 tax refund paid into Auker Rhodes general Clients' Account on behalf of the three individuals, Mr M, Mr B and Mr P was and remained the property of those three individuals. Irrespective of the mechanics of how their personal tax was paid (in this case, via 'A'), the refunds were paid to them by HMRC and were their money. Mandating HMRC in the amended 2010 tax return to pay the money to Auker Rhodes' Clients Account did not, in the view of the Tribunal, change the ownership of the money from that of the individuals to that of 'A'.

8.2 The Tribunal found as significant the factor of the directors' loan accounts with 'A' which were in deficit. The Tribunal found, on a balance of probabilities, that the requests made by Mr M and Mr B (there is no evidence of a request by Mr P) to transfer £20,000 each of their funds to 'A's bank account was not to make a gift to the company but to reduce the deficits in their DLAs. The money was therefore used for the individuals' own purposes and to benefit them, by reducing their indebtedness in the DLAs.

8.3 Consequently, the Tribunal found that the money held by Auker Rhodes, namely, £88,030, being the balance of the £148,030 after the £60,000 had been transferred, was and remained the property of the three individuals, Mr M, Mr B and Mr P.

8.4 Therefore when Mr M made a request to Auker Rhodes on 31st October 2012 for the transfer to him of £30,000 "this being the sum by Auker Rhodes on my behalf [which] represent the balance of overpaid taxes claimed back from the Inland Revenue by you and on my behalf" and that sum was not so paid, the Tribunal finds that the Respondent was in breach of regulation 20A of the Clients' Money Regulations and that Complaint 1 is proved

8.5 Equally, when, on 31st July 2012, Auker Rhodes withdrew £88,030 from the general client bank account to pay invoices due from 'A' without written authority (and it is common ground that there was no written authority so to do), the Tribunal finds that the Respondent was in breach of regulation 20h of the Clients' Money Regulations and that therefore Complaint 3 is proved.

8.6 Since the Tribunal has found that the money held in the general clients' account from March until July 31st 2012 belonged in varying proportions to Messrs M, B and P and was not held in separate, designated client money accounts, as it should have been, the Tribunal finds that the Respondent was in breach of regulation 13 of the Client Money Regulations and that therefore Complaint 2 is proved.

9 Matters relevant to sentencing

9.1 Mr Bradly on behalf of the Respondent put forward a number of matters in mitigation. He submitted that no issue of dishonesty or deliberate intention to harm the clients arose. The Tribunal accepted that this was the case.

9.2 He also suggested that all three charges arose from the same set of circumstances and the premise that the Respondent had misapplied the Client Money Regulations by way of oversight rather than as a deliberate act to disadvantage the clients of the Respondent.

9.3 He further submitted that the Respondent had put in place a number of systems and controls to prevent any further infringements of the Client Money Regulations.

9.4 He further submitted that the Respondent had made recompense to Mr M by way of payment of some £53,000 by way of settlement of a claim made against the Respondent.

9.5 The Tribunal took these submissions into account in deciding on the appropriate sanction and did not find any specific aggravating factors.

10. Sanction

10.1 The Tribunal agreed with Mr Bradly that the three complaints could be taken together for the purpose of sanction and no separate penalty on each was appropriate. Having regard to the Institute's Guidance on Sanctions, the Tribunal decided that the appropriate sanction in this case was a reprimand and a fine of £5000.

11. Costs

11.1 A full schedule of the institute's costs was provided for the Tribunal, Ms Sutherland-Mack having deleted a number of items that she considered need not be included. The Tribunal observed that the evidence given by Mrs 'I' (and indeed that of Ms 'F' for the Respondent) did not substantially assist the Tribunal and indeed had the effect of unnecessarily lengthening the proceedings. The Tribunal therefore deducted the sum of £10,500 claimed for Mrs 'I's fees and expenses from the total bill of costs.

11.2 The Tribunal did, however, have regard to the consequences of the very late submission of a substantial number of documents by the Respondent's legal team, in breach of the Institute's Disciplinary Rules which require 21 days before the date of a Tribunal hearing for documents to be submitted. These documents were not submitted to the IC until two working days before the commencement of the hearing and almost three-quarters of a day's hearing was lost on the first day to enable the IC to take instructions on the new documents and for the Tribunal to consider them. This consequently lengthened the proceedings and the Tribunal considered it was right to

take that into account in deciding the amount of costs the Respondent should pay. In the circumstances, the Tribunal ordered the Respondent to pay the sum of £14,930 by way of costs.

12. Decision on publicity

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

Chairman	Ms Rosalind Wright QC	
Accountant Member	Mr Jon Newell FCA	
Non Accountant Member	Mr Nigel Dodds	**022292**

4. **Mr John Victor Barton FCA** of
Preston, United Kingdom

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 29 May 2018 of hearing

Type of Member	Member
Date of Disciplinary Tribunal Hearing	23 August and 9 October 2017 October
Date of Appeal Panel Hearing	29 May 2018

Terms of complaint found proven before the Disciplinary Tribunal

1. Between 9 May 2011 and 12 March 2012 Mr John Barton FCA failed to efficiently deal with the personal tax enquiry of his client Mr 'A' contrary to Section 130.4 of the Codeof Ethics.
2. Between 9 May 2011 and 24 September 2015 Mr John Barton FCA failed to deal fairly with his client Mr 'A', contrary to Section 240.2d of the Code of Ethics in that he told Mr 'A' that if he paid Mr Barton's fees in full he would ultimately recover the majority ofhis fees for him from HMRC under the financial redress scheme but failed to advise him that if he was unable to recover the whole amount of those fees then Mr 'A' would be liablefor the entire amount.

Mr John Victor Barton is therefore liable to disciplinary action under Disciplinary Bye-law (DBL) 4.1b in respect of head one of the formal complaint and DBL 4.1.a in respect of head two of the formal complaint.

Sentencing Order of Disciplinary Tribunal

(i) Reprimand
(ii) Fine of £2,650
(iii) Costs of £17,588.50

Appeal against finding?	Yes
Appeal against Sentencing order?	Yes
Appeal against Costs	Yes
Decision of Appeal Panel	Appeal allowed. Order of the Disciplinary Committee to be set aside with no order as to the costs of that hearing. The Institute to pay the Appellant's costs of the appeal in the sum of £24,740.

Reasons for decision

Procedural matters and findings

1 The Appellant attended and was represented by Mr Kenneth Hamer of Counsel and Mr Christopher Cope solicitor. 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 In relation to Complaint 1, the Disciplinary Committee (DC) was wrong to hold that the Appellant's handling of his client's dispute with the Tax Credit Office (TCO) of HMRC had been inefficient both in general and in finding that the Appellant should have volunteered to supply the TCO with figures for his client's income and outgoings for a different period from that it had requested.

5 Alternatively if the Appellant's handling of the dispute was inefficient, such inefficiency was not of the gravity required to amount to a breach of s 130.4 of the Code of Ethics or Disciplinary Bye-law 4.1.b

6 In relation to Complaint 2, once the DC had held it was not satisfied as to the first element (namely that the Appellant had orally informed his client that the majority of his fees would be recovered from HMRC as compensation for their failures in handling the dispute), the second element (failure to warn the client that any part of his fees not recovered from HMRC would have to be borne by the client himself) could not stand.

7 As to sentence, the order for costs made by the DC was disproportionately too high.

Decision

8 The appeal would be allowed in relation to both complaints and the order of the DC set aside with no order as to the costs of the hearing before the DC. The appeal against sentence thus became unnecessary.

9 The Institute was ordered to pay the Appellant's costs of the appeal in the sum of £24,740.

Reasons for Decision

10 As to Complaint 1, the Panel concluded that the Appellant's handling of his client's dispute with the TCO left a great deal to be desired. The Appellant had adopted a position of non-cooperation, indeed active confrontation, with the TCO and had written a large number of wholly unnecessary letters, a high proportion of them in offensive and aggressive terms, often making accusations of bad faith and duplicity. This conduct was only marginally mitigated by the fact that the TCO's handling of the issue was also deficient.

11 The Panel felt that the Appellant was at fault in not drawing the attention of his client or the TCO that, under SI 2003/654, his client was entitled to claim tax credits in respect of a period when he had been abroad. Thus, while the Appellant had eventually obtained the reinstatement of his client's tax credits, the Panel felt that this could have been achieved much earlier and with a much lower expenditure of time and money than had occurred.

12 The Panel thus had no difficulty in concluding that the Appellant's handling of his client's affairs had been inefficient (as well as needlessly confrontational).

13 Bearing in mind, however, the stringent rules for determining whether conduct is likely to bring a profession into disrepute, the Panel concluded, with some misgivings, that the Appellant's conduct fell just short of this degree of seriousness and he was entitled to havehis appeal on Complaint 1 allowed.

14 As to Complaint 2, the IC' representative having conceded that the first part of the complaint could not survive the DC's findings of fact, the Panel agreed that the second partof the complaint (even if not bad for duplicity) could not survive in isolation. The Appellant was thus entitled to have his appeal on Complaint 2 allowed.

15 The order of the DC was thus set aside. No very strenuous application for the Appellant's costs before the DC was made by counsel and the Panel felt that the appropriate course was to let costs lie where they fell.

16 As the Appellant had been completely successful in his appeal, it was appropriate to make an order for costs in his favour and the IC's representative made no submissions as to their quantum. The Panel considered that it was appropriate for the Appellant to be represented by counsel and solicitors as it was unlikely that his appeal would have prospered without them. The sum claimed was reasonable in the circumstances.

Non Accountant Chairman	Mr Richard Mawrey QC
Affiliate Member	Ms Fiona Miller
Accountant Member	Mr David Kaye FCA
Non Accountant Member	Mr Geoff Baines
Non Accountant Member	Mr Shahzad Aziz

026119

INVESTIGATION COMMITTEE CONSENT ORDERS

5. Mrs 'X'

Consent order made on 13 November 2018

With the agreement of Mrs 'X' of London, United Kingdom the Investigation Committee made an order that she be reprimanded, fined £750 and pay costs of £1,130 with respect to a complaint that:

Between 19 February 2016 and 3 December 2017 Mrs 'X' FCA engaged in public practice without a practising certificate contrary to Principal Bye-law 51a.

041769

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6. Mr Stephen Mark Quinn FCA

Consent order made on 13 November 2018

With the agreement of Mr Stephen Mark Quinn FCA of Altrincham, United Kingdom the Investigation Committee made an order that he be severely reprimanded, fined £7,500 and pay costs of £3,160 with respect to a complaint that:

1. Mr Quinn failed to register 107 IVA's which were approved by creditors between 21 March 2011 and 29 July 2014, and a further 8 IVA's which were approved between 4 August 2014 and 6 March 2015 with the Department in the timescale prescribed in Rule 5.28 of the Insolvency Rules (NI) 1991 (as amended by The Insolvency (Amendment) Rules (Northern Ireland) 2003).

2. Mr Quinn failed to register six certificates of termination with the Department in the timescale prescribed in Rule 5.33 of the Insolvency Rules (NI) 1991(as amended by The Insolvency (Amendment) Rules (Northern Ireland) 2003).

026730

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7. Mr Alex Roper

Consent order made on 13 November 2018

With the agreement of Mr Alex Roper of Ilkeston, United Kingdom, the Investigation Committee made an order that he be reprimanded and pay costs of £1,405 with respect to a complaint that:

On 27 March 2017, Mr Alex Roper drove a motor vehicle after consuming alcohol in excess of the prescribed limit.

040955

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8. Kingston Smith LLP

Consent order made on 13 November 2018

With the agreement of Kingston Smith LLP of London, United Kingdom the Investigation Committee made an order that the firm be severely reprimanded, fined £13,750 and pay costs of £5,974 with respect to a complaint that:

On 24 September 2015 Kingston Smith LLP issued an unqualified audit opinion in respect of the accounts of 'X' Limited (formerly known as 'Y' plc) for the year ended 30 September 2014, in breach of the following International Standards on Auditing (UK & Ireland) (ISA):

b) ISA 500 Audit Evidence in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions regarding the carrying value of fixed assets, and/or.

c) ISA 230 Audit Documentation in that the auditor failed to document the evidence obtained and the conclusions reached in relation to the audit of fixed asset investments.

035061

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9. Mr Philip John Kendell FCA

Consent order made on 13 November 2018

With the agreement of Mr Philip John Kendell FCA of Tetbury, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £2,650 and pay costs of £1,475 with respect to a complaint that:

Mr Philip Kendell FCA breached paragraph 130.1(b) of the Code of Ethics in that he failed to act diligently in his role as trustee and treasurer of 'X', in that

3. He was made aware in September 2014 by the Independent Examiner of 'X' that payments to trustees by the charity were potentially in breach of its Memorandum and Articles of Association, but he:

    - failed to obtain advice from the Charity Commission until 25 May 2015; and
    - continued to allow payments to trustees and connected persons until October 2015 when the Charity Commission stated that all payments should cease.

031212

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10. Thorne Widgery Accountancy Ltd

Consent order made on 13 November 2018

With the agreement of Thorne Widgery Accountancy Ltd of Hereford, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £8,000 and pay costs of £4,067 with respect to a complaint that:

On 1 November 2017 Thorne Widgery Accountancy Ltd signed an unqualified audit report in respect of the financial statements of 'X' for the year ended 31 March 2017 when conditions and relationships existed which would make it probable that an objective, reasonable and informed third party would conclude that the independence of the firm was compromised, in breach of the FRC's Revised Ethical Standard 2016.

038535

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11. Miss Raisa-Maria Bratucu

Consent order made on 13 November 2018

With the agreement of Miss Raisa-Maria Bratucu of London, United Kingdom, the Investigation Committee made an order that she be severely reprimanded and pay costs of £2,192 with respect to a complaint that:

On or around 26 July 2017 Miss Raisa-Maria Bratucu failed to comply with Section 140 of the Code of Ethics, Confidentiality when she posted a client's employee data on Snapchat.

040349

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12. Mr Christopher Jones

Consent order made on 13 November 2018

With the agreement of Mr Christopher Jones of Bournemouth, United Kingdom, the Investigation Committee made an order that he be reprimanded and pay costs of £968 with respect to a complaint that:

On 23 December 2017 Mr Christopher Jones drove a motor vehicle after consuming alcohol in excess of the prescribed limit.

043244

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13. K M Business Solutions Limited

Consent order made on 13 November 2018

With the agreement of K M Business Solutions Limited of Burnley, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £5,000 and pay costs of £8,430 with respect to a complaint that:

1. K M Business Solutions Ltd, following a QAD visit on 3 March 2010, confirmed that in respect of a finding they had failed to carry out and document anti-money laundering client due diligence checks on all clients:

   "Instructions are being drafted to ensure that this is now undertaken. To be complete within 3-6 months"

   but at a subsequent QAD visit on 5 November 2015 it was found that the assurance had not been complied with.

2. K M Business Solutions Ltd failed to comply with regulation 22 of Clients' Money Regulations as, on 50 occasions, fees were withdrawn from the client money bank account when either the precise amount had not been agreed by the client or a formula had not been agreed in writing or thirty days had not elapsed since the date of delivery to the client of a statement of fees.

3. K M Business Solutions Ltd failed to comply with regulation 21 of the Clients' Money Regulations because, on the following three occasions, they caused or permitted funds to be withdrawn from the firm's client account which were greater than the credit balances held for those clients:

   24 June 2013 – overdrawn balance of £9,047.84
   24 February 2011 – overdrawn balance of £18.26
   28 September 2012 – overdrawn balance of £8.00

4. On 31 occasions K M Business Solutions Ltd failed to comply with regulation 20h of the Clients' Money Regulations as the firm withdrew amounts from the general client bank account using funds held for one client, to pay for invoices due from other clients without written authority from the clients the funds belonged to, to use those funds.

034667

INVESTIGATION COMMITTEE FIXED PENALTY ORDER

14. Reid & Co Corporate Services Limited

Penalty order made on 26 October 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 Reid & Co Corporate Services Limited, the Investigation Committee ordered that Reid & Co Corporate Services Limited, Artemis House, 4a Bramley Road, Mount Farm, Milton Keynes, MK1 1PT, 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:

> In respect of complying with the Money Laundering Regulations 2007, Reid & Co Corporate Services Ltd confirmed following a Quality Assurance Department visit on 25 August 2009: *'Files will be updated to document due diligence procedures and risk assessments on all clients. The annual money laundering compliance review will be carried out in the next 4-6 weeks.'*
> but at a subsequent Quality Assurance Department visit carried out on 6 June 2017, it was found that this assurance had not been complied with.

043201

AUDIT REGISTRATION COMMITTEE

ORDER – 10 OCTOBER 2018

15. Publicity Statement

ma2 Limited, 5 Crescent East, Thornton-Cleveleys, Lancashire, FY5 3LJ, has agreed to pay a regulatory penalty of £3,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breaches of Audit Regulations 3.10 and 3.20, in that the firm:

- signed an audit report for a client when the firm had failed to conduct an audit in accordance with the ISA's; and
- failed to carry out cold file reviews as part of its annual audit compliance reviews between 2011 and 2018.

044063

INSOLVENCY LICENSING COMMITTEE

16. Licence Withdrawal

On 25 October 2018, the Insolvency Licensing Committee ordered that the insolvency licence of Mr Gordon Craig BA FCA, Chorley, United Kingdom be withdrawn with immediate effect under Regulation 5.14 of the *Insolvency Licensing Regulations and Guidance Notes* on the grounds that his continued authorisation is likely to be prejudicial to the public interest.

044615

INSOLVENCY LICENSING COMMITTEE

17. Regulatory Penalty

On 25 October 2018, the Insolvency Licensing Committee ordered Mr Alisdair James Fraser Findlay MBA ACA, Cheltenham, United Kingdom to pay a regulatory penalty of £1,000.00 for failure to undertake a compliance review in accordance with the requirements of Regulation 3.13 of the *Insolvency Licensing Regulations and Guidance Notes*.

044966

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