



Disciplinary Orders and Regulatory Decisions

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. Mr Lawrence George Andrew Smith FCA of Tonbridge, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 July 2019

Type of Member Member

Terms of complaint

Mr Lawrence Smith FCA failed to comply with the Fundamental Principle of Integrity in that he signed a loan agreement dated 1 April 2011 as a witness when the signatory was not present and he had not witnessed the signatory sign the agreement.

Hearing date

16 July 2019

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order **Severe reprimand; fine of £3,000 and order to pay costs of £5,347**

Parties present The Respondent was not present or represented
Ms Victoria Morgan appeared on behalf of the Investigation Committee

Hearing in public or private The hearing was in public

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

Preliminary matter The tribunal considered an application by the Investigation Committee to proceed in the Respondent's absence. The tribunal considered the case of *R v Jones [Anthony]* [2003] 1 AC 1. It concluded that:

- the Respondent had not requested an adjournment;
- It was likely that that the respondent would not attend any future hearing;
- there was no likelihood of disadvantage to the Respondent in proceeding in his absence;
- the interests of justice would be best served by a timely hearing.

The tribunal decided the case would proceed in absence of the Respondent

Documents considered by the tribunal The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle numbered pages 1 – 24

The Investigation Committee's (IC's) case

The Respondent was at the material time an employee at 'A' LLP, holding the role of Head of Tax Planning at the firm. The Respondent worked alongside a partner at the firm, Mr 'B', until 9 December 2015 when Mr 'B' left the firm.

Mr 'B' was the engagement partner on services provided by 'A' LLP to a client, Mr 'C'. The services provided to Mr 'C' included the preparation of his personal tax returns and the preparation of statutory accounts for his three companies. Mr 'B' also provided various ad-hoc assistance to Mr 'C'.

Another client of the firm was Ms 'D'. Mr 'B' was also the engagement partner for services provided to Ms 'D' by 'A' LLP. The only services that the firm was engaged to provide to Ms 'D' was the preparation of her personal tax returns.

Ms 'D' and Mr 'C' entered into a loan agreement dated 1 April 2011 whereby Ms 'D' lent £100,000 to Mr 'C'. The loan agreement is signed by Mr 'C'.

The loan agreement states that it has been 'executed as a deed by Mr 'C' in the presence of...' The Respondent's signature appears as one of the witnesses to the agreement, together with his qualifications as a chartered accountant and address, purporting to have signed in the presence of Mr 'C'.

Another member of 'A' LLP staff, Ms 'E', also signed the loan agreement as a witness; Ms 'E' is not an ICAEW member.

In November 2015, at a meeting with two members of staff at 'A' LLP in November 2015, the Respondent confirmed that the signature on the loan agreement was his but that he had no recollection of signing it as a witness. He confirmed that he would have signed the [loan agreement] on instructions of Mr 'B' when [it] had been presented to him.

Mr 'B' confirmed to partners of the 'A' LLP, at a meeting on 8 December 2015 that he had asked members of staff to sign the documents as witnesses even though the signatories were not present. Mr 'B' also informed the Institute by letter dated 14 July 2016, that the loan agreement was handed to him by Mr 'C' once the lender and his wife had already signed the agreement.

The Respondent's representations

The Respondent provided the Institute with a witness statement on 16 June 2017 regarding the signing of the loan agreement as a witness. The Respondent states that it is his signature on the loan agreement as a witness, and also that the handwritten address on the agreement is his own handwriting. However, he does not have any recollection of signing the agreement as a witness. The Respondent states that whilst he does not believe that anyone else would have added his signature to the agreement, this is a possibility. He also states that he would not normally sign a document without first reading it and being aware of its contents, and that whilst he is unable to confirm, it is possible that the narrative on the agreement may have been covered by other documents when he signed it. The Respondent states that he will take greater care over what he signs in the future.

Issues of fact and law

The tribunal had to determine whether the allegation made against the Respondent had been proved on a balance of probabilities, that is, whether the tribunal concluded that it was more likely than not that the Respondent had committed the act complained of.

The tribunal had to be satisfied that the act complained of constituted a breach of the Fundamental Principle of Integrity, and in doing so he had brought discredit on himself, the Institute or the profession of accountancy, contrary to Disciplinary Bye-Law 4.1(a).

Conclusions and reasons for decision

The Respondent has admitted that the signature on the loan agreement as a witness is his, and also that the handwritten address on the agreement is his own handwriting. The tribunal considered that his admission and the document bearing his signature was prima facie evidence that he had committed the act set out in the allegation against him. There being no evidence submitted to rebut that evidence, the tribunal concluded that on a balance of probabilities the Respondent had committed the act complained of.

The tribunal took the view that to sign a loan agreement as a witness to a signatory, the signatory not signing in his presence is a serious matter and the more so for a chartered accountant on whose integrity the public and the profession is entitled to rely. The Tribunal was therefore satisfied that in committing the act complained of, the Respondent had brought discredit on himself, the Institute and the accountancy profession.

Matters relevant to sentencing

It was apparent that the Respondent had signed the loan agreement purporting to witness the signature of Mr 'C' at the instigation of Mr 'B', a partner in the firm. The Tribunal was informed by the case presenter that on 11 June 2019, Mr 'B' had admitted, inter alia, an offence of failure to comply with the Fundamental Principle of Integrity in that he requested [the Respondent] ... to witness [a signature] on a loan agreement when the [signatory] was not present and [the Respondent] had not seen the [signatory] sign the document.

The Tribunal took the view that the Respondent was responsible for his actions and ought to have been aware of the significance of signing a loan agreement in the form of a deed as a witness. The document in question was a deed recording a loan for a substantial amount of money, £100,000, and the tribunal would have expected the Respondent as a chartered accountant and a responsible professional person to have taken care in appending his signature as a witness to such a document. At the very least it was a reckless act on his part. The tribunal took into account the role of Mr 'B' who had encouraged and indeed instructed him to sign. This was a significant mitigating factor in the case of the Respondent.

The Tribunal took into account that the Respondent was of hitherto good character and, as far as the IC was aware, continued to be employed as a chartered accountant, albeit without a practising certificate.

Sentencing Order

The tribunal had regard to the *Guidance on Sanctions* and imposed a sanction of a severe reprimand together with a fine of £3,000.

The IC made an application for costs supported by a schedule. The tribunal took the view that the costs were appropriate and properly incurred and awarded the full sum sought against the Respondent, namely £5,347.00

Decision on publicity

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

Chairman
Accountant Member
Non Accountant Member

Ms Rosalind Wright QC
Mr Michael Barton FCA
Mr Graham Humby

033147

APPEAL COMMITTEE ORDERS

2. Mr Philip Raymond Pawson [FCA] of Wetherby, United Kingdom

A panel of the Appeal Committee made the decision recorded below having heard an appeal on insert date of hearing 30 September 2019

Type of Member	Member
Date of Disciplinary Tribunal Hearing	21 February 2019
Date of Appeal Panel Hearing	30 September 2019

Terms of complaint found proven before the Disciplinary Tribunal

1. Mr Philip Raymond Pawson while a director of 'A' Ltd, 'B' Ltd, 'C' Ltd, 'D' Ltd, 'E' Ltd, 'F' Ltd, 'G' Ltd, 'H' Ltd and 'I' Ltd demonstrated by his behaviour that he was unfit to be a director of a company by (including amongst other things):
 - (i) Misleading the shareholders as to the level of his remuneration

Sentencing Order of the Disciplinary Tribunal

Exclusion, fine of £5,000 and costs of £3,000

Appeal against finding?	Yes
Appeal against Sentencing order?	Yes
Appeal against Costs	Yes
Decision of Appeal Panel	Appeal dismissed both against finding and against sanction.

Procedural matters and findings

- 1 The Investigation Committee (IC) was represented by Mr Mark Vinall (Counsel) and Mrs Emily Healy-Howell (Solicitor). The Appellant appeared in person
- 2 The hearing was in public.
- 3 On 9 September 2019 the Chairman granted the Appellant's application to adduce 3 new evidence.

Grounds of appeal

- 4 The Tribunal based its findings on a material mistake of fact
- 5 The Tribunal was not conducted fairly due to a serious procedural irregularity

- 6 The orders were unreasonable having regard to all the circumstances made known to the tribunal at the hearing

Decision

- 7 Appeal dismissed as to findings and sanction
- 8 Appellant to pay the Investigation Committee's costs assessed at £13,386.50

Reasons for decision

- 9 The Appellant set up nine companies to acquire land from a former illegal land bank scheme. On setting up each of the companies he had invoiced the company for 'legal research' in the sum of £5,000. This sum was in reality additional remuneration to himself as director of the company. In promoting each individual company the Appellant, while disclosing that he proposed to draw a salary of £18,000, failed to disclose the £5,000. The substance of the complaint found proved by the Disciplinary Committee was that he had misled shareholders and intending shareholders in those companies as to the level of his remuneration.
- 10 The Appellant's mismanagement of the companies had led to a petition by the Secretary of State to wind up all nine companies. On 21 December 2011 H. H. Judge Pelling QC (sitting as a High Court Judge), after a hearing at which the Appellant gave evidence on oath, made winding up orders for all the companies and made findings of fact. These included findings that the £5,000 fee was unjustifiable, that the Appellant's business plan was unsustainable and that the Appellant had run the companies on the basis that most or all money coming in from investors was deployed in his own remuneration. The Judge found that the Appellant had not acted with commercial probity.
- 11 The Investigation Committee commenced an enquiry into the Appellant's conduct at the end of which, in September 2012, it decided to take no further action. The Appellant contended that this prevented the IC from taking any further action against him and that the entire proceedings were irregular. This submission (appeal ground 3) was patently misconceived and was rejected.
- 12 The Secretary of State then took proceedings under the Directors Disqualification Act 1986 and on 27 August 2015 the Appellant was disqualified for eight years by H. H. Judge Hodge QC (sitting as a High Court Judge) after a hearing where the Appellant was represented by counsel and gave evidence. The Judge found the Appellant had acted dishonestly, in particular by billing each company £5,000 for the same work. He found that the £5,000 was not disclosed as further remuneration and he rejected the Appellant's claim that he had subsequently reduced his salary to absorb the previous £5,000 payment.
- 13 Neither decision was appealed. Under the Disciplinary Bye-Laws, the factual findings of both Judges were admissible as prima facie evidence of the facts found and were so treated both by the DC and the Panel.
- 14 Both before the DC and the Panel the Appellant's argument was that as the figures for his drawings showed that on average over the years he had drawn less than his full salary of £18,000 plus the fee of £5,000 no shareholder had been misled, notwithstanding the Appellant's admission to the Panel that he had at no time communicated the existence of the £5,000 fee to the shareholders. The Appellant declined to give evidence before the DC, although his attention was drawn to his right to do so. There was thus no evidence to put against the factual findings of two High Court Judges.

- 15 The Panel concluded that the Judges and the DC had been right: the Appellant had seriously misled shareholders and had acted dishonestly and in breach of commercial probity. The Appellant's claim that he had reduced his salary to absorb the £5,000 fee was not demonstrated by the documents he adduced and the Panel accepted the findings of Judge Hodge that this explanation was completely untrue. The findings of the DC were thus fully justified and the appeal against them was dismissed.
- 16 The sanction of exclusion was amply justified by the guidelines, both because of the seriousness of the conduct in misleading shareholders and in the length of his disqualification as a director. There was no reason to interfere. The fine of £5,000 was in fact below the appropriate guideline figure and could not be impugned. The much reduced costs order of £3,000 was, in the circumstances, somewhat generous towards the Appellant. The appeal against sanction was without foundation and was dismissed.
- 17 As the unsuccessful party, the Appellant was ordered to pay the costs of the IC.

Chairman	Mr Richard Mawrey QC	
Accountant Member	Mr Jon Newell FCA	
Accountant Member	Mr Martin Ward FCA	
Non Accountant Member	Mrs Maureen Brennan	
Non Accountant Member	Mrs Jane Rees	006861

Mr Philip Raymond Pawson [FCA] of
Wetherby, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 21 February 2019

Type of Member Member

Terms of complaint

Complaints

2. Mr Philip Raymond Pawson while a director of of 'A' Ltd, 'B' Ltd, 'C' Ltd, 'D' Ltd, 'E' Ltd, 'F' Ltd, 'G' Ltd, 'H' Ltd and 'I' Ltd demonstrated by his behaviour that he was unfit to be a director of a company by (including amongst other things):
 - a. Misleading the shareholders as to the level of his remuneration; and
 - b. Wrongly charging for legal advice.

as a result of which he was disqualified for a period of 8 years pursuant to S8 of the Company Directors Disqualification Act 1986 on 27 August 2015.
3. Mr Philip Raymond Pawson FCA failed to inform ICAEW of the commencement of CDDA proceedings against him in November 2014.

The Respondent is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.a.

Hearing date

21 February 2019

Previous hearing date(s)

Appeal Committee referred the complaint back to the Disciplinary Committee, 4 October 2018

Pre-hearing review or final hearing Final Hearing

Complaints found proved: **Complaint 1(i) was found proved**
Complaint 1(ii) was found not proved.
Complaint 2 was found not proved.

Sentencing order **Exclusion; a fine of £5,000 and ordered to pay £3,000 towards the costs of the proceedings**

Procedural matters and findings

Parties present Mr Philip Raymond Pawson (the Respondent), who was unrepresented
Ms Jessica Sutherland-Mack represented the Investigation Committee

Hearing in public or private The hearing was in public

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

Documents considered by the tribunal The Tribunal considered the documents contained in the Investigation Committee's (IC's) bundle numbered 1 – 393, together with a witness statement of Diane Waller, dated 2 January 2019 confirming that the Respondent had been give notice of the hearing on 21st February 2019 in accordance with the Disciplinary Committee Regulations. A number of documents were produced by the Respondent in the course of the hearing and copied to the Tribunal.

Admissions or denials of the Complaints The Respondent denied both Complaints.

Findings on preliminary matters

The Respondent made the following applications at the beginning of the hearing –

- (i) For a copy of the recording of the decision of the judgment of the Appeal Committee on 4 October 2018 and for a copy of the recording of the decision of the Tribunal of the Disciplinary Tribunal of 21 February 2019. He had received a transcript of the Appeal Committee's decision which he considered to be of poor quality,

The Tribunal heard representations from Ms Sutherland-Mack and ruled that it was not the practice of the ICAEW to make available copies of the recordings of disciplinary or appeal hearings and saw no reason to make an exception in the present case.

- (ii) That it was unfair to try again charges which had been before a previous disciplinary Panel and were the subject of a partly successful appeal, with one charge withdrawn from the Appeal Committee's consideration by the IC. The Respondent invoked Article 6 of the European Convention on Human Rights and claimed his right to a fair trial was impugned.

The Tribunal heard representations from Ms Sutherland-Mack who explained that the Respondent had originally faced four disciplinary charges which had been found proved and he had appealed to the Appeal Committee. That Committee had remitted to the Disciplinary Committee the two Complaints that the Respondent faced in these proceedings, had dismissed a third and the IC had withdrawn a fourth charge. That fourth charge had no bearing on the present proceedings and the Respondent's rights under Article 6 or otherwise were not impugned. The Panel ruled against the Respondent.

- (iii) To strike out the first Complaint on the basis of *res judicata* or cause of action estoppel. The Respondent submitted that the subject-matter of the Complaint had already been adjudicated and he produced a letter dated 12 November 2012 addressed to a Mr 'J' from the Case Manager, Professional Conduct Department, ICAEW, notifying him that "we have closed the files and will not be taking any disciplinary action against Mr Pawson.... Mr Pawson had fully disclosed to investors the salary he would charge. ...From my view of the report and the petition to wind up the nine recovery companies I saw no evidence of misconduct".

The Respondent also produced a copy of an email dated 14 December, 2012 from Mr 'K' to himself. He explained in that email that ICAEW had received "complaints' from 'T' and investors" and 'T' had supplied ICAEW with a copy of the witness statements in support of their winding-up petition. Mr 'K' "concluded that the answers you [Mr Pawson] provided were sufficient to close the case without being reported to any committee ... NO (sic) report was ever presented to any committee".

The Tribunal heard representations from Ms Sutherland-Mack. The Tribunal ruled that Complaint 1 had not been the subject of a judicial or an ICAEW disciplinary adjudication (other than the proceedings referred to above which had been the subject of an appeal by the Respondent and a reference back to this Panel). The IC referred the Panel to a letter that was sent to the defendant by ICAEW on 12 November 2012 informing him that the matter would be closed. It went on to say that "that the file will be retained for a period of two years and if we receive any complaints during that period it may be reopened." At that stage, the Professional Conduct Department was not aware of, nor had it been provided with a copy of Judge Pelling QC's Judgment of 21 December 2011 in the winding-up proceedings.

In any event, the letter dated 12 November 2012, from Mr 'K' to Mr 'J', on which the Respondent relied, pre-dated the hearing under the Directors Disqualification Act, 1986, on 24 – 27 August 2015 before HHJ Hodge QC, and was an expression of the opinion, at that time, of a staff member of the ICAEW and did not constitute a judicial or quasi-judicial finding. The Complaint was not therefore *res judicata* and the Respondent's application to dismiss it was refused.

- (iv) The Respondent questioned the application of the 2013 Disciplinary bye-laws in relation to the alleged breaches.

The IC submitted that the liability of a Member arises under the disciplinary bye-laws and regulations in force at the time when the facts or matters complained of occurred. In this case, liability is engaged under 4.1a of the 2013 bye-laws for both complaints. The Respondent argued that the bye-laws in force in 2011 were those applicable to these proceedings and accordingly recourse was had to the disciplinary bye-laws in force in 2011. It was noted that Disciplinary Bye-law 4.1.a. was identically worded in the 2011 and the 2013 editions. The regulations governing the procedure of the Panel are those currently in force.

Background

1. The Respondent was at all material times, a director of nine companies which were incorporated between 26 October 2007 and 4 October 2010. The companies were formed to promote recovery schemes arising from previous schemes, to which he was not connected, that the FSA had decided were unlawful collective investments. The Respondent controlled each of the nine companies.
2. The original collective investment schemes, promoted by a Mr 'L', traded as 'M' and later 'N' Ltd. and were concerned in marketing plots of land offering high levels of return should planning permission be obtained to develop them. The Respondent's recovery companies had, as their objective, the raising of further finance from the plot owners and the seeking of planning permission in a way that did not contravene the collective investment scheme regulations, as the earlier schemes had done.
3. The plot owners were invited to subscribe for the recovery companies in proportion to the numbers of plots they owned. The object was to bring all (or a critical mass) of the plot holders together to acquire the land from the trustee in bankruptcy, fund the fees that would be incurred in seeking planning permission and meet the costs of forming the recovery companies.
4. Each company had a website which included the following –
 - The company would be funded in order to step into the place of 'M' and pursue the plot holders' interests in seeking planning permission for the site.
 - The cash raised from those who subscribed for shares in the company would be used to meet the everyday running costs of the company, mainly a modest retainer for the Director and professional fees for planning consultants and other professionals associated with the planning process.
 - A Leeds based firm of Chartered Accountants, 'O', had advised that the Respondent's remuneration package should be largely performance-based and therefore proposed that a retainer of £1,500 per month should be paid as salary and the capital structure of the company should be such that the Respondent would receive 30% of the revenue from the sale of the land.
5. The Respondent's nine recovery companies were compulsorily wound up by the court on 21 December 2011 after a successful petition by the Secretary of State for Business Innovation and Skills. The court determined that it was in the public interest for the companies to be wound up.

6. In November 2014 the Secretary of State then brought disqualification proceedings against the Respondent under section 8 of the Company Directors Disqualification Act (CDDA) 1986 in respect of the same underlying issues. The Respondent contested those proceedings. However, in August 2015 the latter was disqualified as a director of a company for eight years.
7. The IC submitted that the facts which gave rise to the Directors Disqualification Order established that:
 - (a) Shareholders were misled regarding the Respondent's level of remuneration; and
 - (b) That he wrongly charged for legal advice – Complaint 1.
8. The IC further submitted that the Respondent failed to self-report to the ICAEW the commencement of CDDA proceedings against him in November 2014, when he knew or should have known it was in the public interest to do so where there were facts or matters that indicated that he, a member, may have become liable to disciplinary action – Complaint 2.

The Investigation Committee's (IC's) case

9. The IC called no oral evidence but relied on the bundle of documents referred to above including the judgements of HHJ Pelling QC in the winding-up proceedings on 21 December 2011 and HHJ Hodge QC in the CDDA proceedings on 24 – 27 August 2015.
10. The Secretary of State for Business, Innovation and Skills petitioned the court for an order to wind-up the nine recovery companies, the grounds for which included:
 - 10.1 Lack of commercial benefit to be derived from the schemes operated by the companies – no plots had been acquired from the trustee, no professional planning advice had been obtained, no planning applications had been lodged and it was highly unlikely that any such applications if lodged would succeed, none of the companies had reached the critical mass of investment by plot owners required to stand even a theoretical chance of success;
 - 10.2 Alleged unsustainable business model without more funds from shareholders to finance the acquisition of plots from the trustee, and, more significantly, the costs of obtaining planning permission to attract the interest of a developer and which would be likely to be very expensive with no realistic prospect of success (the land was in the green belt and/or was a protected site);
 - 10.3 Alleged lack of commercial probity on the part of the Respondent.
11. On 7 February 2011 The Insolvency Service produced a report based on a witness statement of the investigating officer, Mr 'P'. Mr 'P' stated –

- 11.1 Potential shareholders were informed either by correspondence prior to subscription, or via the company websites, that the Respondent would receive a remuneration package, as advised by accountants 'O', of a retainer of £1,500 per month as salary. At the time of the investigation the Respondent was only drawing a salary of £750 per month and he was no longer drawing a salary from 'A' Ltd, 'D' Ltd and 'E' Ltd.
- 11.2 The Respondent did not have a contract of employment with each company confirming his remuneration.
- 11.3 The major expenses of the companies were directors' salaries which, for 'B' Ltd, 'C' Ltd, 'A' Ltd, 'D' Ltd and 'E' Ltd, totalled some £114,000, of which £113,000 had been received by the Respondent and just over £1,000 received by Mr 'Q'.
- 11.4 The other substantial expense was legal opinion fees which totalled £30,875. The Respondent raised invoices and charged each company a "legal research fee" for his time and level of work undertaken to devise a scheme which was compliant with the Financial Services and Marketing Act 2000.
- 11.5 No written legal opinion had been produced. When asked why he charged a legal opinion fee to each company, the Respondent said that the initial work was done for 'B' Ltd but charged to subsequent companies as that was how barristers work (they can charge a fee for advice irrespective of whether the advice is the same as provided previously to another client).
12. The matter was considered by H.H. Judge Pelling QC on 21 December 2011. The Judge's conclusion was that it was in the public interest for the companies to be wound up. The Judge highlighted the following in reaching that decision –
- 12.1 Shareholders' funds had been substantially exhausted by the payments of salary and legal fees to the Respondent;
- 12.2 There was no realistic prospect of the land owned by the trustee being acquired for the benefit of the companies. The Judge commented on the lack of progress made since the schemes started in 2007;
- 12.3 There was no means of financing the extensive planning professional fees, other than from funds from new or existing shareholders who, Mr 'Q' (a director of 'B' Ltd and 'C' Ltd.) told the Judge, had been alienated by the Respondent, and would not participate as long as the Respondent was actively involved. The Judge further commented that the structure implemented by the Respondent placed all voting rights in his hands, and severely limited the ability of investors to exercise oversight.
13. Winding up orders were made against all nine companies on 21 December 2011.

14. Following the winding-up of the companies, disqualification proceedings were brought by the Secretary of State under Section 8 of the Company Directors Disqualification Act 1986. The matter was considered at trial by HHJ Hodge QC on 24 – 27 August 2015.
15. The conclusions of the Judge included the following –
 - 15.1 The Respondent could not be trusted to put the interests of shareholders before his own personal interests.
 - 15.2 The Judge was prepared to accept that there was no breach of duty in adopting the remuneration package to the first recovery company ('B' Ltd), but it was seriously misleading to carry the advice given by 'O' in relation to this company over to the other recovery companies. "As each new company was incorporated, and the remuneration package was carried over, the breach of duty became clearer and more serious. ... An intelligent and honest man in the position of a director of the company concerned could not reasonably have believed that the transaction was for the benefit of the company".
 - 15.3 The Respondent's overriding concern was to maintain his level of remuneration and, indeed, in the early stages, to improve upon the level of remuneration he had been receiving at the time the recovery companies were established. The Respondent only reduced his remuneration due to the financial circumstances of the companies as they ran out of money.
16. Judge Hodge QC was satisfied that the Respondent was not fit to be a company director and was not a proper person to have the stewardship of shareholders' funds, or that he could be trusted to put the interests of shareholders above his own personal interests.
17. Judge Hodge QC found that it was wholly unacceptable for the Respondent to continue to charge the same legal opinion fee of £5,000 to each of the companies. It was particularly unacceptable for him to do so regarding the last of the companies, effectively doing so as soon as sufficient money had been received into the company from shareholders to enable him to do it.
18. Judge Hodge QC concluded that this was not just a case of incompetence to a high degree, but that it went beyond that and indicated a lack of probity and integrity on the part of the Respondent. Judge Hodge QC did not consider it honest of the Respondent to repeatedly charge legal opinion fees, or for him to charge each company the same amount on the basis of a letter from accountants which had clearly contemplated that only one company would be incorporated.
19. Judge Hodge QC concluded that the Respondent should be disqualified from being a director of a company for eight years.
20. The IC submitted that the key finding in the Judgment relates to the way in which shareholders were said to have been misled regarding the level of the Respondent's remuneration and the charging of six different companies for the same legal advice. The advice regarding the level of remuneration provided by 'O' was given in relation to one

company ('B' Ltd). Furthermore, the Respondent refused to disclose the letter when asked for a copy by one of the investors, Mr 'R', to whom the Respondent responded in a manner the Judge stated was 'arrogant and dismissive.'

21. In his judgment, HHJ Hodge QC noted that the Respondent had said that his remuneration had taken into account the fact that he had been paid the £5,000 opinion fee. The Respondent referred to the legal opinion fees in his evidence before Judge Hodge as "part of the remuneration package" and felt that he was entitled to take it. He considered it reasonable and necessary to continue to pay his salary package. That was the case even though it was exhausting the companies' working capital. "His answer was 'So what?'" The Judge observed that the Respondent should have disclosed, if it was the case, that in addition to his £18,000 remuneration [from each of the recovery companies] he was also being remunerated by way of the £5,000 legal opinion fee.
22. As regards the legal fees, no actual opinion was disclosed to the investors. It appeared that the Respondent carried out research to ensure that the way the recovery companies were set up did not contravene the collective investment scheme regulations, and the Respondent's advice was shown to external legal advisers who concurred that the advice was correct. The serious concern is that the same fee was charged to six companies when it was only given in relation to one.
23. The judgment was clear that the recovery companies' accounts showed that the payments to the Respondent were the only significant outgoings of those companies, yet no commercial benefit was derived by the investors with no progress made in regard to either any planning application or to acquire any of the plots of land held by Mr 'L's trustee in bankruptcy.
24. The IC submitted that HHJ Hodge QC's judgment and his reasoning therein, was strong prima facie evidence that the complaint could be proved. The decision reached and analysis undertaken in the Judgment supports the fact that he properly assessed and considered the evidence before him, applied it correctly to the facts of the case and reached safe and proper conclusions.
25. In relation to Complaint 2, the IC submitted that the Respondent should have advised the ICAEW in or around November 2014 that CDDA proceedings had commenced against him. This was for several reasons –
 - Commencement of CDDA proceedings are serious in and of themselves; and/or
 - The Respondent was a director of all the companies in which investors had contributed financially and which had been subject to winding up proceedings; and/or
 - The winding up proceedings related to the companies that were to form the subject of CDDA proceedings; and/or
 - HHJ Pelling QC in the winding up proceedings had been very critical of Mr Pawson and his conduct and Mr Pawson knew this. HHJ Pelling QC had observed alongside those points set out in paragraphs 3.17 above, that –

“When indicating that he [Mr Pawson] was prepared to fund the acquisition of the assets held by the trustee, I asked him on what terms he would be prepared to do so. It was clear to me from the answers he gave that he had not given any or any serious thought to questions concerning interest, security or structure, particularly having regard to his duties as a director of the companies concerned. In my judgment, the reason for this in truth was that Mr Pawson had no personal intention or present intention of funding the companies and is likely to fund the acquisition of assets held by the trustee only if and to the extent that the assets acquired are held by him beneficially. That is likely to give rise to serious conflicts in the future and also involve probably a breach of duty by Mr Pawson in his capacity as a director of the companies concerned. The reality is that from the time when the investment was first sought, nothing of any practical utility has been achieved and the shareholders’ funds have been substantially exhausted by payments made to Mr Pawson. There is no evidence that the negotiations with the trustee have been conducted with any urgency....In truth had Mr Pawson been willing to progress matters then a transaction with the trustee....could have been completed quickly....thus as things stand, the current shareholders have received no benefits for their investments and are very unlikely to receive any in the future unless there is a profound change in the manner in which the affairs of the company are managed....”

26. Aware of the views of HHJ Pelling QC, especially the direct reference to the probability of a breach of directors’ duty, the IC submitted that the Respondent knew that when CDDA proceedings were initiated the public interest test would or would highly likely to have been engaged and that he may have become liable to disciplinary action. The IC submit that from the above listed criteria, it would have been apparent to the Respondent that the following were or were highly likely to be engaged –
- potential to have committed a serious breach of faith in a professional respect; and/or
 - a serious financial irregularity; and/or
 - performed his work as a director of the companies in a grossly incompetent manner.
27. The IC submitted that the test for when a member should self-report to the ICAEW is where it is in the public interest to do so where there are any facts or matters that indicate that a member and/or firm or provisional member may have become liable to disciplinary action. The Respondent did not inform the ICAEW of the winding-up proceedings or of the pending CDDA proceedings until a few days after the Directors Disqualification Order was made.
28. The IC contended that the serious nature of CDDA proceedings in and of themselves engaged the public interest and that the Respondent would have known that he may become liable to disciplinary action as a consequence of them.
29. The Respondent should have realised when he was served on 24 June 2014 with a “Section 16 Notice” of the CDDA proceedings or at the very least, on 17 November 2014, when the claim form was issued in those proceedings that that was a matter which would render him likely to become the subject of professional disciplinary proceedings. In the circumstances of this case there was a clear link between the winding up of companies in which the Respondent was a director, criticism of the Respondent as director and the

proceedings brought under the CDDA. The Respondent would have known therefore that the duty to self-report was engaged and he failed to exercise that duty.

The Respondent's Case

30. The Respondent chose not to give evidence on which he could be cross-examined, but instead made submissions.
31. The Respondent explained that Mr 'L' had been running an unlawful collective investment scheme and that he, the Respondent, determined that he could make a success of recovering the losses made by people who had bought plots of land in the original scheme and do so lawfully and in accordance with the Financial Services and Markets Act, 2000.
32. He referred to the winding up proceedings before HHJ Pelling QC at which he was present and represented the nine companies he had formed. Those who owned plots of land in the original scheme (a "defined interest group") were invited to invest in the newly formed companies on the basis of a share allocation of 5% of their original investment.
33. He contended that the companies were not struggling financially as had been alleged in the winding up proceedings, and indeed when they were wound up not a penny was owed to a single creditor. He maintained that he has never known the reason for the companies being wound up. The companies were trading legally.
34. Turning to the matter of the legal opinion, he explained that the £5,000 charged for the opinion in fact covered legal research he had carried out to ensure that the companies complied with the law relating to collective investment schemes and his legal opinion in that regard; it included the business plan for the companies (which was not in evidence) and included searching the Land Registry for the owners of the plots of land in the original scheme so that he could create a database of plot-holders for Mr Pawson to invite to acquire shares in each company.
35. He maintained that shareholders were informed of his remuneration. He explained that he prepared financial statements for each company which he said disclosed the £5,000 in addition to his other remuneration. He was not able to make those financial statements available for the Tribunal to examine. He maintained he had posted the financial statements on the respective company websites to make them available to shareholders and had sent the accounts to older shareholders who might have had difficulty accessing them otherwise. He conceded that the accounts were prepared "after the event", that is, after the legal opinion fee had been paid out, and were thus not "germane to the Complaints" as to whether shareholders had been misled at the time of subscribing for their shares.
36. The Respondent referred the Tribunal to the "legal opinion" - in fact a one-page email dated 18 January 2010, addressed to Mr 'Q', his co-director in the first two of the companies, who had invested heavily in plots of land. The email begins, "The following is my advice on the FSMA 2000. I hope that you will agree with me that with a little thought we will not breach the main provisions and we are not too hampered in what we want to do". The email refers to one company only, 'B' Ltd, and states "this letter is

directed at people who bought land at 'S' and nobody else outside this common interest group" and he explained that he hoped it would be used as a basis for directors in each of the other companies in due course for them to use to answer any questions from shareholders/plot-holders in those companies. In the event he explained, he did not adapt it for other companies. He drew attention to a letter from Mr 'L' of 27 July 2009, supporting his, the Respondent's "intellectual capital investment" and his desire to protect it.

37. The Respondent relied on a schedule he had prepared which purported to show that, far from taking the full £1500 a month of his remuneration, he had, between the date of incorporation of the first company, 'B' Ltd, in October 2007 and the latest, 'I' Ltd, in October 2010, never taken, on average more than, at its highest, £1078 a month from each company, that figure he said, included, where appropriate, the £5,000 for the legal opinion charged to six of the companies. He totalled his remuneration in the three-year period from all nine companies at £159,250.
38. The Respondent referred to his charging for legal advice and asserted that the IC had not explained why it was wrong for him to do so. He claimed that he was entitled to charge for pre-incorporation work, done speculatively at a time when he did not know whether there would be sufficient take-up or that sufficient capital would be raised in order to operate.
39. As to Complaint 2, the Respondent said that within two working days of being disqualified as a director, he had informed the ICAEW and that discharged his duty to self-report. He had not thought it appropriate to report the outcome of the winding-up as he did not "respect" the decision of HHJ Pelling QC, which he described as "outrageous" nor was he a party to the proceedings, although he was present at the court hearing on behalf of the companies. He considered that the matter had been thoroughly investigated by the ICAEW and he had received the letters he had referred to in his preliminary applications confirming that they had closed the case in 2012. He believed he had done nothing wrong. "I reported [to the ICAEW] when I had something to report".
40. He pointed out that there was an element of confidentiality at the beginning of the CDDA proceedings and, had he reported to the ICAEW at that time, "What could ICAEW do? Nothing".
41. The Respondent summed up the case against him and admitted that maybe he had shown "poor judgment", but questioned how that could bring ICAEW or the profession into disrepute.

Issues of fact and law

42. The relevant disciplinary bye-laws relating to the liability of the Respondent in relation to Complaint 1 are 7.2(b) and 7.3 of the 2013 disciplinary bye-laws, in addition to Disciplinary Bye-law 4(1)(a) as above.
43. Disciplinary bye-law 7.2(b) states:
"The fact that a member, member firm or provisional member
(a)...

(b) has had a disqualification order made against him or has given a disqualification undertaking which has been accepted by the Secretary of State under the Company Directors Disqualification Act 1986, shall for the purposes of these bye-laws, be conclusive evidence of the commission by him of such an act or default as is mentioned in bye-law 4.1(a) or 5.1(a), as the case may be...”

44. Disciplinary bye-law 7.3 states
“A finding of fact:
(a)...
(b) in any civil or criminal proceedings before a court of competent jurisdiction in the United Kingdom or elsewhere,
(c)...
(d)...
shall for the purposes of these bye-laws be prima facie evidence of the fact found...”
45. The IC referred the Tribunal to the case of *R. (on the application of Coke-Wallis) v Institute of Chartered Accountants in England and Wales* [2011] UKSC 1. Applying the rationale in that case to DBL 7.2(b) and Disciplinary Bye-Law 4 as a whole, the IC submitted that the Directors Disqualification Order is conclusive evidence of the fact that a Disqualification Order was made and that it amounted to conclusive evidence of proof of the commission of such an act or default as is mentioned in bye-law 4(1)(a).
46. However, the Disqualification Order in and of itself does not amount to the act or default as set out in bye-law 4(1)(a). Rather, the Order is conclusive proof of discreditable conduct *per se*. Further, the findings by HHJ Hodge QC as pleaded are captured under bye-law 7.3(b) (above) and therefore amount to prima facie evidence of the facts found.
47. Notwithstanding the fact that *Coke-Wallis* concerned the criminal conviction of a member, the wording of the bye-laws under consideration by the court in that case and the latter’s analysis therein, was on all fours with the wording of 7.2(b) regarding Directors’ Disqualification Orders. The Tribunal concluded that that authority was directly relevant to its approach to Complaint 1.
48. Drawing on and elaborating on the above reasoning, it is therefore right, as the IC argued, that bye-laws 4.1, 4.1(a), 4.2 and 7.2(b) of the 2013 bye-laws do not provide that a Directors Disqualification Order in its own right amounts to the discreditable conduct or act which gives rise to the liability set down in 4.1(a); bye-law 4.1 identifies the “occurrence giving rise to the liability.” Applying 4.1 to 4.1(a), the relevant “occurrence” is that the Respondent “committed [an] act or default likely to bring discredit on himself, the Institute or the profession of accountancy.” However, only bye-law 4.2 identifies expressly what these occurrences are and it does not include a Directors’ Disqualification Order.
49. In the matter before this tribunal, the “occurrences” and, therefore, the acts in 4.1(a) are asserted by the IC to be the findings of HHJ Hodge QC as pleaded. The IC contend that these occurrences (among others) are what led to the Disqualification Order being made. As set out above, findings of fact in a civil court constitute prima facie evidence of the facts so found.

Conclusions and reasons for decision

50. The Tribunal had regard to all the documentary evidence submitted by the IC and by the Respondent and had taken very careful note of the submissions made by the Respondent. As far as Complaint 1 was concerned the IC had made out its case on a balance of probabilities that the Respondent had misled shareholders in the nine companies of which he was a director as to the level of his remuneration.
51. The only information that investors and would-be investors in those companies received about the Respondent's level of remuneration was contained in the websites he had written for each company. The wording in relation to his remuneration was identical on each website, and stated –

“How much will Philip Pawson receive from the company?”

A Leeds based firm of Chartered Accountants have advised that Philip Pawson's remuneration package should be largely performance based. To this end the firm have proposed that a retainer of £1500 a month should be paid as salary and the capital structure of the company should be such that Mr Pawson will receive 30% of the revenue from the sales of the land”.

52. No mention was made of the £5,000 “fee” that the Respondent invoiced six of the companies to pay himself for “legal research necessary to forming the business plan for the recovery of the plot holders at”
53. Concealment of a substantial portion of the Respondent's remuneration from shareholders demonstrates a lack of transparency and straightforwardness that should have been expected of the Respondent. Such concealment was a key factor in the disqualification proceedings and HHJ Hodge QC, whose decision was not appealed by the Respondent, regarded it as a very serious element in determining that the Respondent was not fit and proper to be the director of a company.
54. The Tribunal found that the Respondent had not rebutted the evidence of the facts found in relation to the misleading of shareholders and it was therefore entitled to accept the evidence, as set out in HHJ Hodge's judgment in relation to this allegation. The Tribunal therefore found that by his behaviour, in particular, among other things, in misleading shareholders as to his level of remuneration, the Respondent had demonstrated that he was unfit to be a director of a company was proved and that it was an act likely to have brought discredit on himself, the Institute and the profession of accountancy, as set out in Disciplinary Bye-law 4.1.a. The Tribunal therefore found the allegation in Complaint 1(i) proved.
55. HHJ Hodge QC found that the Respondent was wrong to charge repeatedly for the same “advice” and this forms the basis of the allegation in Complaint 1(ii). The Tribunal considered that the “advice” included some legal research to ensure that the activities of the companies formed by the Respondent did not fall foul of the Financial Services and Markets Act, but also covered his enquiries at the Land Registry to discover the identities of the plot-holders in each of the original schemes which would have entailed a separate exercise for each company so researched. The fact that he charged six companies the same amount, in the view of the Tribunal, did not necessarily impugn the integrity of the Respondent. The Tribunal had had experience of circumstances in which the same advice was given to

different, unconnected parties seeking assistance with a common problem – in this case, compliance with the law relating to collective investment schemes – and a fee properly charged to each. In relation to this allegation, the Tribunal accepted that the Respondent had been able to rebut the evidence that he had wrongly charged for legal advice, contained in the judgment of HHJ Hodge QC and found that part of Complaint 1 not proved.

56. The Tribunal had some difficulty with Complaint 2. The relevant test, as outlined by the IC is that the duty on members to report to ICAEW is where it is in the public interest to do so and where there are any facts or matters that indicate that a member ... **may have become** [our emphasis] liable to disciplinary action. The Tribunal accepted that the indications from the judgement of HHJ Pelling QC in 2011, which was very critical of his actions, could have reasonably been expected by the Respondent to lead to further proceedings, in particular, disciplinary proceedings by his professional regulator. But it acknowledged that the Respondent had been reassured by letters he had received from the ICAEW, as referred to in his preliminary applications, which had led him to believe that the case against him had been closed by ICAEW (“without reference to a committee”) in 2012.
57. In any case, the Respondent had taken the view that he had done nothing wrong (he refused to accept the decision of HHJ Pelling QC and denounced his findings) and therefore considered that he had no reason to report to the ICAEW at or before the commencement of the CDDA proceedings, but he did so very soon after his disqualification. The Tribunal considered that the wording of the regulation, “may have become liable to disciplinary action” connoted a degree of subjective judgment on the part of the member. The Respondent did not believe that the facts and matters before the commencement of the CDDA proceedings meant that he “*may have become* liable to disciplinary action”. In the circumstances the Tribunal was not satisfied on a balance of probabilities that the IC had discharged the burden of proof in relation to Complaint 2 and found that Complaint not proved.

Matters relevant to sanction

58. The Tribunal considered mitigating and aggravating factors in this case. In mitigation, the Respondent submitted he had had a long and distinguished career as a chartered accountant, was a Fellow member and had been a member since 1981. He was a former President of the West Yorkshire Society of Chartered Accountants, had served on the ICAEW Council and had been a member of its business crime and ethics advisory committees. He had no previous disciplinary record with the ICAEW.
59. Aggravating factors which the Tribunal took into account were as follows –
- The Respondent was disqualified as a director of a company for eight years, which indicates a serious falling short of the standard expected of a company director.
 - The Respondent demonstrated no remorse for his actions and showed no insight into the seriousness of his conduct.
 - The Tribunal took into account the remarks of HHJ Hodge QC that “Mr Pawson cannot be trusted to put the interests of shareholders above his own personal interests. ... His overriding concern was to maintain his level of remuneration and, indeed, in the early stages, to improve upon the level of remuneration which he had been receiving at the time the recovery companies were established”. HHJ Hodge went on to say, “I am not satisfied that he is a proper person to have the stewardship of shareholders’ funds ...Nor do I consider that it was honest, at least in the commercial context, for Mr

Pawson to be charging each of the companies the same amount on the basis of a letter from accountants which had clearly contemplated that only one company would be incorporated”.

Sanction Order

60. The Tribunal had regard to the *Guidance on Sanctions* (effective from 1 July 2018). It concluded that the only sanction which sufficiently reflected the seriousness of the Respondent’s conduct and protected the public was exclusion. In addition, the Tribunal imposed a fine of £5,000. The IC made an application for the costs of the proceedings which were set out in a detailed schedule and amounted, after some concessions, to just over £12,000. The Respondent made no submission in relation to costs and did not make any submission with regard to his means to pay a fine or costs. The Tribunal ordered him to pay a contribution towards the costs of the proceedings of £3,000.

Chairman
Accountant Member
Non Accountant Member

Mrs Rosalind Wright CB QC
Mr Philip Coleman FCA
Mr Graham Humby

006861

INVESTIGATION COMMITTEE CONSENT ORDERS

3. Mr Brian William Curran BSc ACA

Consent order made on 13 September 2019

With the agreement of Mr Brian William Curran BSc ACA of New York, United States, the Investigation Committee made an order that he be severely reprimanded, fined £5,000 and pay costs of £1,268 with respect to a complaint that:

Between 29 March 2018 and 2 January 2019 Mr Brian William Curran ACA failed to submit his CPD records for the year ended 31 October 2017 contrary to Principal Bye-law 56c.

044165

4. Mr Peter Wilson FCA

Consent order made on 13 September 2019

With the agreement of Mr Peter Wilson FCA of Bolton, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £1,000 and pay costs of £2,693 with respect to a complaint that:

1. Mr Peter Wilson FCA, following a QAD visit to his firm, 'X' Ltd, on 21 November 2013, confirmed that:

a. In respect of completing ongoing client due diligence on all clients:

“We have completed a risk assessment and client due diligence on 100% of our client base”;

And/or

b. In respect of disclosing PII details to new clients as required by the Services Regulation 2009:

“Our new website is currently in progress which will display the required information”

but at a subsequent QAD visit on 31 July 2017, it was found that the assurances had not been complied with.

043189

5. Mr John Stuart Danson FCA

Consent order made on 13 September 2019

With the agreement of Mr John Stuart Danson FCA of Dronfield, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £700 and pay costs of £1,755 with respect to a complaint that:

1. Mr John Stuart Danson FCA, following a QAD visit in August 2009, confirmed:
 - a. In respect of notifying clients of the basis of charging fees and complaints procedure:

‘...on the basis of these help sheets I have prepared draft Engagement Letters which are presently being finalised. These Engagement Letters will now be issued to all new clients and also to existing clients over a staggered six month period with a view to covering all clients by 31 March 2010.

And/or

- b. In respect of performing anti money laundering risk assessments, due diligence and identity confirmation for all clients:

‘...as Engagement Letters are issued I shall complete a Client Identification Record and also a Client Risk Assessment Form.’

And/or

- c. In respect of ensuring that his firm performed periodic reviews of his firm’s compliance with the Money Laundering Regulations 2007:

‘These forms will be reviewed on a regular basis together with the review of general compliance with all aspects of the requirements of the regulations. The forms and details of the reviews will also be brought to the attention of all staff and subcontractors.’

but at a subsequent QAD desktop review carried out in July 2017, it was found that these matters had not been addressed.

043931

6. Mr David William Roper FCA

Consent order made on 13 September 2019

With the agreement of Mr David William Roper FCA of Cheltenham, United Kingdom, the Investigation Committee made an order that he be reprimanded and pay costs of £1,230 with respect to a complaint that:

On 19 January 2018 Mr David William Roper FCA failed to stop following a road accident whereby personal injury was caused to another person.

046076

7. Mr Richard Hilton Savage

Consent order made on 3 October 2019

With the agreement of Mr Richard Hilton Savage of Manchester, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £500 and pay costs of £500 with respect to a complaint that:

Between 11 November 2014 and 22 April 2016 Mr Richard Savage as Supervisor of the Individual Voluntary Arrangement of Mr 'X' failed to terminate the Individual Voluntary Arrangement in a timely manner.

032217

8. Mr Phil Richards

Consent order made on 3 October 2019

With the agreement of Mr Phil Richards of Gravesend, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £3,500 and pay costs of £1,743 with respect to a complaint that:

Mr Richards issued a reference dated 10 November 2014 to 'A' which confirmed the following regarding the income of Mr 'B' without performing sufficient procedures to support the information provided:

1. Mr 'B's income to October 2014 was £24,000
2. Mr 'B's estimated income for 2014/15 was £48,000.

035706

9. MSR Partners LLP (formerly Moore Stephens LLP)

Consent order made on 3 October 2019

With the agreement of MSR Partners LLP (formerly Moore Stephens LLP) of London, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £21,000 and pay costs of £9,693 with respect to a complaint that:

1. MSR Partners LLP (formerly Moore Stephens LLP), following a QAD visit in September 2011 confirmed that:

- a. In respect of ensuring funds of over £10,000 for over 30 days were paid into a designated client bank account:

"We will continue to ensure that if an amount is held in excess of £10,000 for over thirty days, it is held in a designated account".

and/or

- b. In respect of unclaimed client monies:

"where we have not been able to trace the client for 5 or more years, such monies will be paid to a registered charity".

but at a subsequent QAD visit between July and September 2016 it was found that the assurances had not been complied with.

2. Between 6 June 2011 and 23 June 2016, MSR Partners LLP (formerly Moore Stephens LLP) failed to comply with regulation 21 of the Clients' Money Regulations as they caused or permitted funds to be withdrawn from the client bank account on 24 occasions for 16 clients, which were greater than the credit balance held for those clients. The detail is set out in Appendix 1.
3. Between 1 January 2011 and 19 January 2017 MSR Partners LLP (formerly Moore Stephens LLP) failed to comply with regulation 13 of the Clients' Money Regulations as on 96 occasions for 30 clients the firm held funds in excess of £10,000 for more than 30 days and failed to pay the money into a client bank account designated by the name of the client or by a number or letters allocated to that account. The detail is set out in Appendix 2.
4. Between 1 January 2011 and 31 August 2017, MSR Partners LLP (formerly Moore Stephens LLP) failed to comply with Regulation 25a of the Clients' Money Regulations as they failed to reconcile, at least once every five weeks, the total balances of all its client bank accounts with the total corresponding credit balances in respect of its clients.
5. Between 3 August 2007 and 16 September 2016, MSR Partners LLP (formerly Moore Stephens LLP) failed to comply with Regulation 25b of the Clients' Money Regulations as they failed to immediately correct a reconciling difference of \$54,375 on the US dollar client bank account and the UK sterling client bank account.

039605

10. Mr Andrew Subramaniam FCA

Consent order made on 3 October 2019

With the agreement of Mr Andrew Subramaniam FCA of London, United Kingdom, the Investigation Committee made an order that he be reprimanded and fined £5,000 with respect to a complaint that:

1. On or around 16 September 2015, Mr Andrew Subramaniam FCA, on behalf of 'A', accepted the appointment of auditor of 'B' Limited when he had failed to identify and assess a threat to the firm's independence, or perceived loss of independence, arising from partners of the firm holding financial interests and making loans to affiliates of 'B' Limited, in breach of APB Ethical Standard 1.
2. On 23 December 2015, Mr Andrew Subramaniam FCA, on behalf of 'A', issued an unqualified audit report on the financial statements of 'B' Limited for the year ended 31 March 2015 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland), when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 230 'Audit documentation' in that he failed to prepare, on a timely basis, audit documentation that provided a sufficient and appropriate record of the basis for the auditor's report; and evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements in respect of:
 - a) the relationship between 'B' Limited and LLPs in which it held an interest and the assessment of whether 'B' Limited controlled the LLPs; and/or
 - b) the basis of the auditor's conclusion that consolidated financial statements were not required.

039664

11. Mr Michael Barry Davis FCA

Consent order made on 3 October 2019

With the agreement of Mr Michael Barry Davis FCA of Radlett, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £3,500 and pay costs of £955 with respect to a complaint that:

- 1a. Between on or around 16 September 2015 and on or around May 2016, Mr Michael Davis FCA was reckless in that he failed to inform his firm/Ethics Partner (through his annual declarations or otherwise) of circumstances that could adversely affect the firm's objectivity and independence in acting as the auditor of 'B' Limited, causing his firm to be in breach of APB Ethical Standard 1.

And/or

- 1b. Between on or around 16 September 2015 and on or around May 2016, Mr Michael Davis FCA failed to inform his firm/Ethics Partner (through his annual declarations or otherwise) of circumstances that could adversely affect the firm's objectivity and independence in acting as the auditor of 'B' Limited, causing his firm to be in breach of APB Ethical Standard 1.

041545

12. Mr Anthony Julian Bernstein FCA

Consent order made on 3 October 2019

With the agreement of Mr Anthony Julian Bernstein FCA of London, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £3,500 and pay costs of £930 with respect to a complaint that:

- 1a. Between on or around 16 September 2015 and on or around May 2016, Mr Anthony Bernstein FCA was reckless in that he failed to inform his firm/Ethics Partner (through his annual declarations or otherwise) of circumstances that could adversely affect the firm's objectivity and independence in acting as the auditor of 'B' Limited, causing his firm to be in breach of APB Ethical Standard 1.

And/or

- 1b. Between on or around 16 September 2015 and on or around May 2016, Mr Anthony Bernstein FCA failed to inform his firm/Ethics Partner (through his annual declarations or otherwise) of circumstances that could adversely affect the firm's objectivity and independence in acting as the auditor of 'B' Limited, causing his firm to be in breach of APB Ethical Standard 1.

041544

13. Mr James Bruce Cusworth FCA

Consent order made on 3 October 2019

With the agreement of Mr James Bruce Cusworth FCA of Newcastle upon Tyne, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £3,500 and pay costs of £1,683 with respect to a complaint that:

1. Between 2 February 2009 and 13 December 2018 Mr James Bruce Cusworth FCA, engaged in public practice without holding a practising certificate contrary to Principal Byelaw 51a.
2. Between 2 February 2009 and 25 June 2017, Mr James Bruce Cusworth FCA failed to ensure that 'X' Ltd was registered with an Anti-Money Laundering Supervisor as required by the Money Laundering Regulations 2007.
3. Between 26 June 2017 and 13 December 2018, Mr James Bruce Cusworth FCA failed to ensure that 'X' Ltd was registered with an Anti-Money Laundering Supervisor as required by the Money Laundering Regulations 2017.

046568

14. Mr Leigh John Goodwin ACA

Consent order made on 3 October 2019

With the agreement of Mr Leigh John Goodwin ACA of Lichfield, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £17,500 and pay costs of £5,049 with respect to a complaint that:

1. On 28 September 2016, Mr Leigh John Goodwin ACA issued an audit report on behalf of 'A' Limited, trading as 'B' Chartered Accountants, on the consolidated financial statements of 'C' Limited for the year ended 31 December 2015 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland) when the audit was not conducted in accordance with:
 - a) International Standard on Auditing (UK and Ireland) 570 'Going concern' in that he failed to obtain sufficient appropriate audit evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial statements; and/or
 - b) International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that he failed to obtain sufficient appropriate audit evidence in respect of the group's transition to FRS 102; and/or
 - c) International Standard on Auditing (UK and Ireland) 600 'Special considerations – audits of group financial statements' in that he failed to obtain sufficient appropriate audit evidence in respect of the appropriateness, completeness and accuracy of consolidation adjustments.

040161

15. Mr Douglas John Wadkin FCA

Consent order made on 3 October 2019

With the agreement of Mr Douglas John Wadkin FCA of London, United Kingdom, the Investigation Committee made an order that he be reprimanded fined £700 and pay costs of £1,380 with respect to a complaint that:

Mr Douglas John Wadkin FCA, following a QAD visit to his firm in August 2009, confirmed:

- a. In respect of notifying clients, in writing, of the basis of charging fees and the firm's complaints procedure:

'I will certainly ensure that clients are informed about complaints procedures and the basis of fees. I will look at using a short engagement letter or an attachment showing terms of business'.

- b. In respect of performing anti money laundering client identity confirmation, due diligence and risk assessments:

'I will ensure full notes are added to files as and when I access them and would hope to complete by 31 January 2010'.

but a subsequent QAD review, carried out in May 2017, it was found that these matters had not been addressed.

044589

16. Mr David Costa FCA

Consent order made on 3 October 2019

With the agreement of Mr David Costa FCA of Littleborough, United Kingdom, the Investigation Committee made an order that he be reprimanded fined £700 and pay costs of £1,280 with respect to a complaint that:

1. Mr David Costa FCA, following a QAD visit in August 2010, confirmed:

- a. In respect of notifying clients of the basis of charging fees and complaints procedure:

'over the coming production cycle the two requirements identified... are formally put on record with each client'.

And/or

- b. In respect of performing anti money laundering client due diligence and identity confirmation for all clients:

'over the coming production cycle the requirements identified... are implemented, recorded and filed'.

but a subsequent QAD review carried out in September 2017, it was found that these matters had not been addressed.

044595

INVESTIGATION COMMITTEE FIXED PENALTY ORDERS

17. Mr Nicolas Daniel Owen FCA

Penalty order made on 19 July 2019

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

With the agreement of Mr Nicolas Daniel Owen FCA, the Investigation Committee ordered that Mr Nicolas Daniel Owen FCA, of London, United Kingdom be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

Between 1 April 2017 and 29 May 2019, Mr Nicolas Daniel Owen FCA engaged in public practice, without holding a practising certificate contrary to Principle Bye-law 51a.

049507

18. Mrs Helen Victoria Shaw FCA

Penalty order made on 23 July 2019

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

With the agreement of Mrs Helen Victoria Shaw, the Investigation Committee ordered that Mrs Helen Victoria Shaw, of Cheshire, United Kingdom be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

Between 16 January 2016 and 12 May 2019, Mrs Helen Victoria Shaw FCA engaged in public practice, without holding a practising certificate contrary to Principle Bye-law 51a.

048848

19. Mr David Linell FCA

Penalty order made on 24 July 2019

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

With the agreement of Mr David Linell FCA, the Investigation Committee ordered that Mr David Linell FCA, of Derbyshire, United Kingdom 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:

Mr David Linell FCA, following a QAD desktop review on 17 August 2015, confirmed on behalf of his firm that:

“A CDD data collection form and checklist to be produced by 30/09/2015, produced in line with guidance from the Anti-Money Laundering guidance.

The procedure will be to check CDD with each client at the point of contact of collecting information for preparation of annual accounts

This is unless there is a material change to a clients circumstances in which case a further check will be conducted.

All current clients to be reviewed by 31/12/2015

We confirm that should a request be made we will submit an example of a completed CDD review. “

but at a QAD visit on 17 March 2017, it was found that the assurances had not been complied with.

037191

20. Meacher-Jones & Company Ltd

Penalty order made on 23 August 2019

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 Meacher-Jones & Company Ltd, the Investigation Committee ordered that Meacher-Jones & Company Ltd, of Chester, United Kingdom be reprimanded, and a fixed penalty of £1,409 representing a financial penalty of £2,013 to which a discount of 30% has been applied with respect to a complaint that:

Between 1 April 2012 and 21 November 2013 and 8 January 2014 and 30 March 2016 Meacher-Jones & Company Ltd failed to comply with regulation 6 of the Regulations governing the use of Chartered Accountants and ICAEW general affiliates as the firm used the description ‘Chartered Accountants’ when it was not entitled as a director of the firm was not an ICAEW member or affiliate.

049852

21. Miss Annabel Kay Kerley ACA

Penalty order made on 20 August 2019

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 Miss Annabel Kay Kerley ACA, the Investigation Committee ordered that Miss Annabel Kay Kerley ACA, of Surrey, United Kingdom, be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

Between 5 March 2018 and 13 May 2019, Miss Annabel Kay Kerley ACA engaged in public practice, without holding a practising certificate contrary to Principal Bye-law 51a.

048878

22. Mr Daniel Chapman ACA

Penalty order made on 22 August 2019

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

With the agreement of Mr Daniel Chapman ACA, the Investigation Committee ordered that Mr Daniel Chapman ACA, of Cornwall, United Kingdom be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

Between 1 May 2018 and 7 June 2019 Mr Daniel Edward Chapman ACA engaged in public practice without a practising certificate, contrary to Principal Bye-law 51a.

049057

23. Mrs Rachel Goel ACA

Penalty order made on 22 August 2019

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

With the agreement of Mrs Rachel Goel ACA, the Investigation Committee ordered that Mrs Rachel Goel ACA, of Norwich, United Kingdom be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

Between 13 August 2015 and 31 May 2019 Mrs R A Goel has been engaging in public practice without a practising certificate, contrary to Principal Bye-law 51a.

048968

24. Mr Andrew Lancaster ACA

Penalty order made on 28 August 2019

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

With the agreement of Mr Andrew Lancaster ACA, the Investigation Committee ordered that Mr Andrew Lancaster ACA, of West Yorkshire, United Kingdom be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

Between 27 February 2015 and 25 June 2019 Mr Andrew James Lancaster ACA had been engaging in public practice without holding a practising certificate contrary to Principal Bye-law 51a.

048966

25. Miss Hannah-Jade Murphy

Penalty order made on 25 September 2019

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 Miss Hannah-Jade Murphy, the Investigation Committee ordered that Miss Hannah-Jade Murphy of Surrey, United Kingdom, be reprimanded with respect to a complaint that:

On 25 July 2018 Miss Hannah-Jade Murphy was convicted of driving a motor vehicle with an alcohol level above the legal limit.

050793

AUDIT REGISTRATION COMMITTEE

ORDER – 21 AUGUST 2019

26. Publicity Statement

Povey Little Limited, Sidcup, United Kingdom, has agreed to pay a regulatory penalty of £10,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.01 for the firm's director, acting as company secretary to an audit client between 1999 and 2019.

050063

ORDER – 21 AUGUST 2019

27. Publicity Statement

Buckle Barton Limited, Horsforth, United Kingdom, 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 3.11 for failing to keep audit working papers for a period of at least six years.

050364

ORDER – 21 AUGUST 2019

28. Publicity Statement

Connolly Jones Audit LLP, Milton Keynes, United Kingdom, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 3.20 and 6.06 for failing to comply with an undertaking to arrange and submit the results of external cold file reviews of audits undertaken by the firm in 2013, 2015 and 2017 and for failing to disclose to the ICAEW that it had performed these audits.

050166

ORDER – 21 AUGUST 2019

29. Publicity Statement

The registration as company auditor of Burton Accountancy Services Limited, Burton-on-Trent United Kingdom, was withdrawn on 19 September 2019 under audit regulation 7.03a of the *Audit Regulations and Guidance* on the basis that the firm has ceased to exist (audit regulation 2.21).

051870

ORDER – 21 AUGUST 2019

30. Publicity Statement

Latham Costa Limited, Littleborough, United Kingdom, 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 breach of audit regulations 7.01 and 3.01, in that the firm:

- failed to comply with a condition previously imposed by failing to ensure that an external hot file review was carried out; and
- continued to act as auditor of a client despite the existence of an insurmountable fee dependency threat.

037588

ORDER – 21 AUGUST 2019

31. Publicity Statement

J P Walters & Co Ltd, Darlington, United Kingdom, has agreed to pay a regulatory penalty of £5,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.11 for failing to keep audit working papers for a period of at least six years and audit regulations 3.20 and 6.06 in that the firm failed to have cold file reviews carried out since 2012 and for incorrectly completing its 2013, 2014 and 2016 annual returns.

048528

CESSATION OF MEMBERSHIP

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

32. Miss Susan Barnwell of Ledbury

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

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