



# *Disciplinary Orders and Regulatory Decisions*

**DATE PUBLISHED: 02 JANUARY 2019**

## **Disciplinary orders**

Disciplinary Committee tribunal orders

1	Mr Reyss Cato (formerly known as Mr Reyss Albert)	2-5
2	Mr Ray Alan Davis ACA	6-8
3	Mr Martin Hurren FCA	9-18
4	Mr James Orr ACA	19-22
5	Mr Mahmoodur Imran	23-26
6	Mr Richard Rees	27-31

Appeal Committee Orders

7	Mr Terence Potter ACA	32-38
8	Mr Keith Hayley [FCA]	39-47

## **Regulatory orders**

Audit Registration Committee

9	McLintocks Limited	48
10	McLintocks Partnership Limited	48

**1 Mr Reyss Cato (formerly known as Mr Reyss Albert)** of  
London, United Kingdom

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 18 July 2018**

**Type of Member** Provisional Member

**Terms of complaint**

1. Mr Reyss Cato (formerly Mr Reyss Albert) dishonestly submitted to ICAEW a falsified transcript of results from 'A' University which stated that he had obtained 54% in a Management Accounting module when he knew that the original transcript stated that he had obtained 40% in the Management Accounting module.
2. In a conversation on 9 December 2016 Mr Reyss Cato (formerly Mr Reyss Albert) dishonestly told his training manager, Mr 'B', that he had passed the Accounting exam taken on 8 December 2016 when he knew he had failed the exam.
3. In an email dated 3 January 2017 Mr Reyss Cato (formerly Mr Reyss Albert) dishonestly told his line manager, Mr 'C', that he had passed the Accounting exam taken on 8 December 2016 when he knew that he had failed the exam.

4.

**Hearing date**

18 July 2018

**Previous hearing date(s)**

N/A

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes, on admission

**All heads of complaint proven** Yes, on admission

**Sentencing order** Declaration that Mr Cato is unfit to become a member of the ICAEW.

**Parties present** Mr Cato was not present.

**Represented** Mr Cato was not represented. The Investigation Committee (IC) was represented by Mrs Silpa Tozer.

**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 and decided to proceed in Mr Cato's absence.

**Documents considered by the tribunal** The tribunal considered the documents contained in the IC's bundle together with two emails from Mr Albert dated 10 and 11 July 2018.

### **The IC's case**

1. On 21 January 2013, the Defendant changed his surname from Albert to Cato by deed poll.
2. On 30 August 2016, using his former name Albert, the Defendant joined the firm 'D' on an ICAEW training contract. He applied to ICAEW to be a provisional member in the name of Albert as well. He told neither 'D' nor ICAEW that he had changed his name in 2013.
3. On 24 October 2016, as part of his training programme for Certificate Level, the Defendant applied for Credit for Prior Learning (CPL). This was because he had studied at 'A' University subjects which were similar to ones he had to study as part of his professional training. It was therefore possible that he might be exempt from sitting some of the Certificate Level examinations which the ICAEW would normally require of him.
4. As part of his CPL application, the Defendant submitted a copy of his university examination results. His application was partially successful and he was awarded CPL in four subjects. However, he was not awarded CPL for Accounting because his university results showed he had scored only 40% in his management Accounting module (a fail). This meant he was obliged to sit an Accounting examination as part of his professional training.
5. On 4 November 2016, the Defendant sat and failed the Accounting examination.
6. On 8 December 2016, the Defendant re-sat and failed the Accounting examination a second time.
7. On 9 December 2016, the Defendant told his department training manager that he had passed the examination. He knew this was not true because between 05.00 and 06.00hrs that morning he had learned officially of his examination result online and that he had failed it.
8. Also on 9 December 2016, the Defendant re-registered with ICAEW as a provisional member. This time he used the surname Cato rather than Albert. He also submitted a further application for CPL under this new registration and he purported to re-submit his university results. On this occasion, however, the results appeared to show that he had scored 54% in his Management Accounting module (a pass) and not the 40% which had appeared previously (a fail). As a result of this, he was awarded CPL for Accounting, Law and Management Information as well as the other four subjects he had obtained on the previous occasion. The significance for the Defendant was that while he was previously obliged to sit an Accounting examination (which he had failed twice), on the second occasion he was not.
9. This was a false application because the Defendant had scored 40% in his Management Accounting module and not 54%, and he knew that to be the case; his original application was true and the second one was false.
10. On 12 December 2016, Mr 'C', who was the Defendant's line manager, requested the Accounting examination result from the Defendant who informed him that he was still awaiting the result. This was untrue and the Defendant knew it was untrue because he had obtained the result on 9 December 2016.
- 11.

12. On 3 January 2017, on the subject of the Accounting examination that he took on 8 December 2016, the Defendant informed Mr 'C' in an email timed at 10.58 "Yeah, I've passed". This was untrue and the Defendant knew it was untrue because he knew he had failed the examination; he had found out the result between 05.00 and 06.00 in the morning of 9 December 2016.

13. The Defendant has admitted the complaint in email correspondence with the ICAEW.

### **Issues of fact and law**

14. Because the Defendant has admitted the complaint there are no issue of law or fact to determine.

15. The tribunal found the complaint proved.

### **Conclusions and reasons for decision**

16. The Defendant has admitted three allegations of dishonesty. The tribunal considers them to be serious allegations because the Defendant was seeking, by lying to his employer and the ICAEW, to obtain an exemption from his professional training which he was not entitled to have, he knew he was not entitled to have and by which he tried to sustain that deception. Had the deception worked, it would have meant that the Defendant would have improperly attained a level of professional training and to which he was not entitled.

17. This is entirely unacceptable behaviour, reveals a serious lack of professional and personal integrity, and the sanction must be appropriate to it.

### **Matters relevant to sentencing**

18. The tribunal considered the Guidance on Sanction and the Disciplinary Bye-laws and saw no reason to depart from them. It also was satisfied that no lesser penalty than the one imposed was appropriate.

19. A mitigating factor is that the Defendant's father was gravely ill at the end of 2016 and had died at the beginning of 2017. The Defendant also told his former employer that he was having difficulty balancing his work and personal life. The tribunal was not, however persuaded these events either explained or excused the Defendant's dishonesty. An aggravating factor is the repeated acts of dishonesty which comprise the complaint.

20. On the question of costs, the tribunal was not provided with evidence of the Defendant's means, but it has reduced the amount of costs sought by the IC.

### **Sentencing Order**

1. It is **declared** that Mr Reyss Cato who was formerly known as Mr Reyss Albert is unfit to become a member of ICAEW.

2. Costs are assessed and are to be paid in the amount of £3,000.

### **Decision on publicity**

Publication with name.

The tribunal **directs** that publication must ensure that the Defendant used to be called Albert and is now called Cato by a deed poll dated 21 January 2013.

**Non Accountant Chair**

Ms Mary Kelly

**Accountant Member**

Mr Jon Newell FCA

**Non Accountant Member**

Ms Martha Maher

**Legal Assessor**

Mr Dominic Spenser Underhill

---

**037719**

2 **Mr Ray Alan Davis ACA** of  
Chichester, United Kingdom

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

**Type of Member** Member

**Terms of Complaint**

Mr R A Davis ACA failed to provide by 19 March 2018 the information, explanations and documents requested in a letter dated 1 March 2018 issued under Disciplinary Bye-law 13.

Mr Ray Alan Davis is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.c.

Bye-law 4.1.c states 'he has committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them.'

**Hearing dates** 3 October 2018

**Previous hearing dates** N/A

**Pre-hearing review or final hearing** Final hearing

**Complaint found proved** Yes

**Sentencing order** Severe reprimand;  
Comply with the IC's requests for information by 17<sup>th</sup> October 2018;  
Costs of £2,000

**Procedural matters and findings**

**Parties and representation** The Investigation Committee was represented by Mrs Silpa Tozer  
Mr Ray Alan Davies ('the defendant') was present and was represented by Miss Gyane.

**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 a written witness statement from Mr Davis presented at the hearing.

## **The Investigation Committee's case**

1. The defendant has been a member of the ICAEW since 1998.
2. In 2017 the ICAEW received two separate complaints regarding the defendant. The first related to VAT, Self-Assessment and CT600 tax returns submitted on behalf of his clients. The second related to his conduct as a company director.
3. An initial letter was sent to the defendant informing him that an investigation had been commenced on 26 June 2017. The defendant was chased for a reply in a letter dated 11 July 2017 and by email on 26 July 2017. Responses were received from the defendant by email on 26 July 2017 and by letter on 7 August 2017.
4. On 12 December 2017, a formal request for information under Disciplinary Bye-law ('DBL') 13 was sent by post to the defendant. That letter was returned undelivered. On 17 January 2018 that letter was resent to the same address but with a slightly different postcode, to reflect the postcode the defendant had used in his letter of 7 August 2017.
5. A further formal request for information under DBL 13 was made by letter on 1 March 2018. Two copies of that letter were sent, one to the postcode which was on the register and one to the postcode the defendant had used in his letter of 7 August 2017. A copy of this letter was also sent by email on 6 March 2018. This letter required a response by 19 March 2018.
6. DBL 13 requires a Member to comply with any request for information served by the IC within 14 days. The defendant did not respond to the letter of 1 March 2018. The IC alleged that this failure rendered him liable to disciplinary action under DBL 4.1.c.

## **The defendant's case**

7. The defendant admitted the complaint. Miss Gyane relied in mitigation on a written witness statement made by the defendant dated 3 October 2018.
8. The defendant admitted that he had failed to respond to the letter of 1 March 2018. He said that the pressure of this and other investigations that he was involved in had got on top of him. He had felt overwhelmed and he ended up burying his head in the sand instead of dealing with matters as he should have done. It was only recently that, having taken advice from a friend, he had been able to face up to things.
9. Miss Gyane submitted that, in the last two weeks, the defendant had been able to locate the majority of documents required by the IC and had brought those with him to the hearing. He is, she said, willing to comply with the investigation and he now understands the importance of doing so.

## **Conclusions and reasons for decision**

### Matters proved by admission

10. The tribunal found the complaint proved by admission.

### **Matters relevant to sentencing**

11. There were no previous disciplinary matters recorded against the defendant. The defendant had responded to some of the previous requests for information made by the IC but his responses had by no means been complete and he had effectively ignored the letter of 1 March 2018.

12. The Tribunal had regard to ICAEW's Guidance on Sanctions ('the Guidance'). The Guidance says that the starting point for failing to respond to a letter sent in accordance with DBL 13 is a severe reprimand and a financial penalty.
13. A member must make responding to requests for information from the IC their main priority. It is of crucial importance that members to provide information to the ICAEW within the relevant timescale in order that it can carry out its regulatory functions. The Tribunal was satisfied that a severe reprimand was an appropriate and proportionate sanction. The Tribunal did not consider it was appropriate to additionally impose a financial penalty on the defendant in the light of the mitigation advanced.
14. Mrs Tozer applied for an order pursuant to DBL 24.1(c) requiring the defendant to comply with the requests made by the IC for information within 14 days. Miss Gyane did not oppose this application.
15. The IC applied for costs of £2,081.17. The Tribunal considered it was appropriate to make an award of costs in the sum of £2,000.

### **Sentencing order**

16. The Tribunal ordered that:
  - (i) the defendant be severely reprimanded;
  - (ii) the defendant comply with the requests made in the letter of 1 March 2018 by midnight on 17 October 2018;
  - (iii) the defendant pay costs of £2,000 within 28 days.

### **Decision on publicity.**

17. 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

### 3 **Mr Martin David Hurren** of

London, United Kingdom

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 31 October 2018**

**Type of Member:** Member

#### **Complaints**

1. Mr Martin David Hurren FCA, on behalf of his firm, issued unqualified audit reports in respect of the following financial statements

<b>Entity</b>	<b>Year ended</b>	<b>Date of audit report</b>
A Limited	31 January 2011	28 April 2011
C Limited	30 September 2010	10 June 2011
B Limited	31 January 2011	10 May 2011

when the audits had not been conducted in accordance with:

- a) International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the auditor failed to prepare, on a timely basis, audit documentation that provides a sufficient and appropriate record of the basis for the auditor's report

and/or

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

2. Mr Martin David Hurren FCA, on behalf of his firm, compiled the financial statements of 'C' Limited for the years ended 31 January 2012 and 2013, which incorrectly stated that the company satisfied the conditions for exemption from an audit under section 477 of the Companies Act 2006.

Mr Martin David Hurren is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b

4.1b states.....If he has performed his professional work or the duties of his employment, or conducted his practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, the Institute or the profession of accountancy

#### **Hearing date**

31 October 2018

<b>Pre-hearing review or final hearing</b>	Final Hearing
<b>Complaints found proved</b>	Yes, on admission
<b>All heads of complaint proven</b>	Yes, on admission

<b>Sentencing order</b>	<b>Severe reprimand and a fine of £10,000, reduced, in accordance with the Guidance of Sanctions, paragraph 3.5 by 10%, to £9,000</b>
	<b>Costs of £2,000 to be paid to ICAEW</b>
<b>Parties present</b>	Mr Martin David Hurren FCA, the Respondent was not present or represented.
	The Investigation Committee was represented by Ms Silpa Tozar.
	The Hearings Officer was Ms Diane Waller
<b>Hearing in public or private</b>	The hearing was in public
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, and having regard to the email from the Respondent to the institute of 24 October 2018, the Tribunal was satisfied to service.
<b>Documents considered by the tribunal</b>	The Tribunal considered the documents contained in the Investigation Committee's bundle, together with two tabled emails from the Respondent dated 24 October and 31 October 2018.

## **The Investigation Committee's (IC's) case**

### **Background**

1. At all material times, the Respondent was one of two partners in an accountancy firm, which, between October 2004 and December 2012 was registered with ACCA for audit purposes. During the period to which these complaints relate, the Respondent was the only partner responsible for audit work in the practice.
2. On 7 October 2004 the firm was issued with a Firm's Auditing Certificate ('FAC') by ACCA.
3.
  - (i) On 28 April 2011, the firm issued an audit report for client A Ltd for the year ended 31 January 2011.
  - (ii) On 10 May 2011, the firm issued an audit report for Client B Ltd for the year ended 31 January 2011.
  - (iii) On 10 June 2011, the firm issued an audit report for Client C Ltd for the year ended 30 September 2010.
  - (iv) On 14 June 2011, the accounts for C Ltd for the year ended 30 September 2010 were filed at Companies House.

- (v) On 30 June 2011, the accounts for B Ltd for the year ended 31 January 2011 were filed at Companies House
  - (vi) On 6 September 2011, accounts for A Ltd for the year ended 31 January 2011 were filed at Companies House
4. On 25 June 2012, an ACCA senior practice reviewer conducted a monitoring visit to the firm.
5.
  - (i) On 6 July 2012, the firm prepared the accounts and issued a report for B Ltd for the year ended 31 January 2012.
  - (ii) On 31 October 2012, the firm filed accounts for B Ltd at Companies House for the year ended 31 January 2012
6. On 31 December 2012, the firm's Auditing Certificate ceased as it was not renewed by the firm.
7. On 12 June 2013, ACCA wrote to the Respondent's partner, Mr H, an ACCA member, advising that the firm was ineligible to undertake audit work.
8.
  - (i) On 7 October 2013, the firm issued an accountant's report for B Ltd for the year ended 31 January 2013.
  - (ii) On 30 October 2013, the firm filed accounts for B Ltd at Companies House for the year ended 31 January 2013
  - (iii) On 6 February 2015, The Respondent wrote to ACCA stating he was responsible for the preparation of accounts for B Ltd for the years ended 31 January 2012 and 31 January 2013.
9. On 2 July 2014, The Respondent wrote to ACCA explaining that the firm had not conducted any audit work since the monitoring visit in June 2012.

#### Findings of ACCA monitoring visit

10. On 25 June 2012, an ACCA reviewer conducted a monitoring visit to the firm. He found that, in relation to all three of the following companies, the firm had not documented matters which were important in providing audit evidence to support the audit opinion as required by ISA 230<sup>1</sup>
  - A Ltd for the year ended 31 January 2011
  - C Ltd for the year ended 30 September 2010
  - B Ltd for the year ended 31 January 2011

11. The reviewer also found that -
- the firm had not used an audit programme to control and direct the audit work
  - the files consisted of accounting schedules and ledger print outs with no indication of any audit procedures that may have been undertaken
12. The reviewer also documented examples of a number of serious deficiencies in the extent and quality of audit evidence as required by ISA 500<sup>1</sup>. In respect of B Ltd , he highlighted -
- failure to record work to confirm validity of intangible fixed assets
  - no verification of ownership of freehold property
  - failure to record how existence of fixed assets was verified
  - no documentation of work to confirm validity of material prepayments
  - failure to obtain bank letters and no documentation of how existence and completeness of bank balances was verified
  - no documentation of evidence to support completeness of creditors and accruals
  - lack of evidence to support balances including PAYE, VAT and advance fees
  - failure to verify completeness of income
  - no analytical procedures to obtain an understanding of the entity and its environment and in the overall review at the end of the audit
  - lack of evidence to identify entity's related parties
  - lack of evidence to show that the firm had performed audit procedures designed to obtain sufficient appropriate audit evidence up to the date of the auditor's report
  - no record that the entity's ability to continue as a going concern had been considered
  - no record whether the firm had considered if it should obtain written representations from management on matters material to the accounts when sufficient appropriate audit evidence cannot reasonably be expected to exist.

<sup>1</sup> Paragraph 8 of International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' (ISA 230) states:

'The auditor shall prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:

- a) The nature, timing and extent of the audit procedures performed to comply with the ISAs (UK and Ireland) and applicable legal and regulatory requirements;
- b) The results of the audit procedures performed, and the audit evidence obtained; and
- c) Significant matters arising during the audit, the conclusions reached thereon, and significant professional judgements made in reaching those conclusions'.

<sup>2</sup> Paragraph 6 of International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' (ISA 500) states:

'The auditor shall design and perform audit procedures that are appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence.'

- 13 Examples of some of the above deficiencies also applied to the files of A Ltd and C Ltd.

14. On 12 October 2015 the ACCA Disciplinary Committee made adverse findings against the firm in relation to the following allegations, inter alia, that -

1. The firm issued audit reports in respect of any or all of the following companies which were not adequately supported by the work performed and recorded:

A Ltd for the year ended 31 January 2011

C Ltd for the year ended 30 September 2010

B Ltd for the year ended 31 January 2011.

Furthermore, that -

2. The firm prepared and filed unaudited accounts of B Ltd whose balance sheet exceeded the audit exemption threshold in respect of any or all of the following:

Year ended 31 January 2012

Year ended 31 January 2013

15. At the outset of the ACCA Disciplinary Hearing, the Respondent on behalf of the firm, admitted all of the facts giving rise to the allegations against the firm and further admitted that the conduct amounted to professional misconduct.

16. Based on the reviewer's findings, the ACCA Disciplinary Committee found that Allegation 1 (paragraph 14 above) concerned "*such a poor quality of professional practice that it was properly to be described as falling far below the standard expected of a competent accountant*". In making its decision, the ACCA Disciplinary Committee bore in mind the findings of the ACCA practice monitoring officer that "*the files were found to contain no evidence of any attempt to perform and record any audit work*".

17. Furthermore, the ACCA tribunal noted that the reviewer found that the files "*did not contain any lead schedules or indication of any audit procedures having been carried out*" and "*consequently in all three cases, the audit opinions issued by the firm were wholly unsupported by the work recorded*".

#### The Respondent's Representations

18. In a letter to ACCA dated 10 September 2012 following the monitoring visit, the Respondent fully accepted the unsatisfactory nature of the audit work carried out under his control in the practice. In a further letter to ACCA dated 2 July 2014, the Respondent made it clear that the audit work undertaken in relation to the three Companies "*was entirely my responsibility and no action should be taken against my Partner [Mr H] in relation to the referral for Professional Conduct*". He accepted that no sampling audit work was carried out and the files were poorly collated and cross referenced to reflect that any audit work and supporting evidence did in fact exist.

19. However, in his letter dated 2 July 2014, he disagreed with the reviewer's conclusion that he issued opinions when the files contained no evidence of any attempt to perform and record any audit work. Furthermore, the Respondent maintained that there was never any risk to

- shareholders or creditors as a result of placing audit certificates on the files of the three audit clients in question. He did accept, however, that his procedures were totally incorrect.
20. The Respondent explained that, in each case, his firm prepared the accounts and therefore all verification work was undertaken by his practice. All three entities were owner managed businesses and he had known the shareholders' families for over twenty years.
21. In a letter dated 8 February 2016, the Respondent informed ICAEW that he was '*an advocate of the Andy Perkins School of Auditing (sic), whereby the balance sheet was audited, the client's actions were investigated and random sampling was kept to a minimum.*'
22. In any event, the Respondent said he considered that subsequent events proved that all three companies were '*Balance Sheet solid*' and there was never any risk to shareholders or creditors as a result of the audit opinions he issued.

In relation to Complaint 2, the IC's case is that:

23. The Respondent prepared the financial statements of B Ltd for the year ended 31 January 2012. The relevant legislation is section 477 Companies Act 2006, which states that a company can claim exemption from audit if each of the following conditions is met:
- It qualifies as a small company in relation to that year
  - Its turnover in that year is not more than £6.5m; and
  - Its gross assets for that year are not more than £3.26m
24. Turnover and gross assets for B Ltd for that period end were as follows:

Year	Turnover £	Gross assets £
2012	5,306,765	4,602,567

B Ltd had turnover below £6.5m, but the gross assets total exceeded the limit of £3.26m and the company was therefore ineligible for exemption from audit.

### **Financial statements for the year ended 31 January 2013**

25. The Respondent prepared the financial statements of B Ltd for the year ended 31 January 2013. Section 477 of the Companies Act 2006 (as amended) was subsequently updated for accounting periods ending on or after 1 October 2012 such that a company can claim exemption from audit if the following condition is met:
- It qualifies as a small company in relation to that year for the purposes of Part 15 relating to small companies.
26. A company can claim exemption as a small company if it meets two out of the three mandatory criteria:
- Its turnover in that year is not more than £6.5m;
  - Its gross assets for that year are not more than £3.26m;
  - Its employee numbers do not exceed 50.

27. For the year ended 30 April 2013, the company did not meet the small company criteria, as total gross assets exceeded the limit of £3.26m and employee numbers were greater than 50. Turnover, gross assets and employees for the company for that period end were as follows:

Year	Turnover £	Gross assets £	Average number of employees
2013	5,898,255	4,432,402	230

The company was therefore not entitled to exemption from audit.

28. The ACCA Disciplinary Committee was concerned that B Ltd had previously been part of the firm's audit regime for the year ended 31 January 2011 and the company had not qualified for audit exemption for the following two years. The ACCA tribunal committee was satisfied that the preparation and filing of unaudited accounts for B Ltd was *"a serious professional failing"*.
29. Furthermore, the ACCA tribunal committee was *"mindful that the statutory audit regime is in place in order to protect the public and was satisfied that the conduct giving rise to allegation 2 (paragraph 2.3 above) was sufficiently serious as to amount to professional misconduct"*.

#### The Respondent's Representations

30. By letter dated 10 September 2012 to ACCA, the Respondent claimed that none of the audits were statutory audits and were carried out at the request of the directors/participant shareholders.
31. In a letter dated 6 February 2015 to ACCA, the Respondent confirmed that he was responsible for the preparation and filing of the accounts for both years and that an audit exemption checklist was not prepared. He explained that he had taken the view that there were intercompany contra items between debtors and creditors that 'for clarity's sake were better left in debtor and creditors rather than being netted off.' These included prepaid insurance premiums in debtors with corresponding insurance liabilities in creditors.
- Were these balances netted, he comments that the company would not have exceeded the gross asset threshold. The Respondent said this approach was taken because full, rather than abbreviated accounts, were filed at Companies House. He sent ACCA a copy of the 2014 accounts in support of his explanation.
31. By letter dated 8 February 2016 to the Institute, the Respondent admitted that B Ltd required an audit certificate, but the accounts were filed without one. He said this was an oversight on his part, but explained that subsequent investigation into contras within debtors and creditors enabled amended accounts to be filed at Companies House which reduced gross assets below the audit threshold and were accepted by Companies House.

The IC submits that –

32. B Ltd was not entitled to audit exemption in respect of the years ended 31 January 2012 and 2013. The Respondent failed to inform his client that the company was not eligible to claim exemption from audit in two successive years.

33. The Respondent comments that the company would have been entitled to exemption from audit had the intercompany balances been netted off. While that may have been so, the accounts were not prepared on that basis, the intercompany balances were included gross and as a result the company did not meet the criteria for exemption from audit. It is submitted that this was a basic error, which coupled with the findings in relation to the audit work, raise serious concerns about the Respondent's competence.
34. In the light of the ACCA tribunal's findings and the Respondent's admission that audit certificates were required, it is submitted on behalf of the IC that the Respondent compiled the financial statements of B Ltd for years ended 31 January 2012 and 2013 incorrectly by stating that the company satisfied the conditions for exemption from an audit.

### **The Respondent's case**

35. The Respondent made a number of submissions to ACCA, which are referred to above, in essence admitting the facts alleged in ACCA's proceedings against the firm and his partner, an ACCA member. He also wrote to the Institute on 8 February 2016 (as referred to above, paragraph 31), saying, "I accept full personal responsibility on behalf of [the firm] for these minor breaches of professional conduct..." and on 25 October 2018, stating, "...having pleaded guilty under barrister instructions at the ACCA hearing, how could I possibly not accept the same position for the same offences at my own Institute hearing"; He also wrote to the Institute (email of 31st October 2018) attaching "Regulation 13" answers, in which he admitted all heads of the Complaints set out on page 1.

### **Issues of fact and law**

36. Under the Institute's Disciplinary Bye-law 7.3 (now DBL 7.4), the findings of fact by ACCA are prima facie evidence of the facts found.
37. By way of letter dated 18 April 2016, The Respondent was informed that the ACCA's findings of fact would be relied upon for the purposes of the investigation into his conduct, unless he challenged the findings. He has not challenged the findings.
38. ACCA has no jurisdiction over the Respondent as an Institute member and the firm is not regulated by the Institute. However, the Respondent admitted responsibility to ACCA for the underlying audit work, for which the firm was severely reprimanded by ACCA and the subject of a published order.
39. The ACCA disciplinary committee found that the Respondent, as the senior partner of the firm and responsible for audit work, had not demonstrated any meaningful insight into the importance of the statutory framework within which auditing is conducted and the regulatory framework that is designed to protect the public'. The Disciplinary Tribunal can properly take into account all the above matters, which are findings of fact, as prima facie evidence to support the IC's case.

### **Conclusions and reasons for decision**

40. The Disciplinary Tribunal found the facts alleged in the allegations, contained in Complaints 1(a), 1(b) and 2 above proved, on the basis of the unchallenged findings of the ACCA Disciplinary Committee and the Respondent's admissions.

41. The Tribunal found that the Respondent was responsible for the direction and supervision of the audit work performed by the firm, and as the engagement partner who signed the audit reports, and responsibility for the serious failings in the firm's audit work rests, primarily, with him.
42. The Tribunal found Complaints 1(a), 1(b) and 2 **PROVED**.

### **Matters relevant to sentencing**

43. The Tribunal considered the following mitigating factors –
- (i) There are no previous adverse findings against the Respondent.
  - (ii) The Respondent had made full admissions of the allegations and had accepted personal responsibility for the misconduct alleged against the firm at the ACCA disciplinary hearing.
  - (iii) The firm no longer holds an audit registration and the Respondent is no longer registered to conduct audits.
44. The Tribunal considered a number of aggravating factors –
- (i) Although the Respondent has accepted responsibility for the serious and numerous deficiencies in the quality of the audit work by his firm in relation to the three companies referred to above, the Tribunal considers that the Respondent lacks insight into the severity and consequences of his numerous failures to meet the standards required of him in carrying out statutory audits, describing them as “minor breaches of professional conduct” (his letter to the Institute of 8 February 2016).
  - (ii) The audit regime is in place to protect the public. The Respondent claimed that “there was never any risk to Shareholders or Creditors from the placing of the Audit Certificates on the above three companies at that time” (his letter to ACCA of 2 July 2014).
  - (iii) The Tribunal was able to consider abbreviated accounts only for the companies audited by the Respondent's firm, but nevertheless noted that B Ltd had been charged £7,500 for “Auditors' remuneration”, in the 2011 accounts, remuneration for work which was at best inadequate and at worst, and in the findings of the Tribunal, non-existent. Although it had not been shown the full accounts for A Ltd or C Ltd or B Ltd's accounts for any years other than 2011, the Tribunal had no reason to suppose that like charges for Auditors' remuneration had not been made in those cases.
  - (iv) The Respondent did not report the findings of the ACCA Disciplinary Committee to the Institute, which learned about the proceedings and the findings against the Respondent from ACCA.
  - (v) These complaints, which are very serious in nature, reflect adversely on the reputation of the Institute and on the profession in general.

### **Sentencing Order**

45. The Tribunal considered the Institute's Guidance on Sanctions and took the view that in this case the public interest would be served by a severe reprimand and a fine of £10,000.
46. The Tribunal had regard to 3.5 of the Guidance on Sanctions, which provides –
- 3.5 Discounts

The Conduct and Regulatory Committees should apply a discount to reduce any financial sanction (determined by adjusting the appropriate sanction starting point for aggravating and mitigating factors) where there has been a full and unequivocal admission by the respondent or respondent firm at the relevant time. Discounts are not applicable to any recommended non-financial sanction.

A discount of up to 30% should be applied in cases where a full admission has been made after the respondent / respondent firm has received the final complaint wording and the draft report prepared for the Investigation Committee. The discount cannot be more than 30%. Earlier admissions and / or full cooperation may be considered as additional mitigating factors in the consideration of the appropriate financial and non-financial sanctions.

47. The Respondent made full admissions to the Institute in relation to the Complaints, although he sought to minimise their impact as “minor breaches of professional conduct”. Having regard to the aggravating and mitigating factors above, the Tribunal considered that a discount of 10% in relation to the fine should be applied and consequently this reduces the fine payable by the Respondent to £9,000.
48. The IC sought costs in the region of £7,000 in relation to the preparation and hearing of this case, although Ms Tozar properly made a number of adjustments downwards to reflect the brief duration of the hearing itself (one hour). The Tribunal considered that the amount of investigation that the Institute had had to conduct was minimal and that the time taken for the matter to reach a conclusion before the Tribunal was surprisingly long. In the circumstances, the Tribunal considered that costs of £2,000 should be awarded against the Respondent.

#### **Decision on publicity**

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

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

Ms Rosalind Wright QC  
Mr Michael Barton FCA  
Mr Ron Whitfield

---

**031129**

**4 Mr James Montrose Ronald Orr ACA** of  
Edinburgh, United Kingdom

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 30 October 2018**

**Type of Member** Member

**Terms of complaint**

1. On or around 29 January 2013 Mr James Montrose Ronald Orr MEng ACA in his capacity as a Councillor on the 'A' Council accepted a payment of £1,500 contrary to Section 100.5a of the Code of Ethics - Integrity.

Mr James Montrose Ronald Orr is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a.

4.1.a states.....A member or provisional member shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member or provisional member at the time of the occurrence giving rise to that liability: if in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy

**Hearing date**

30 October 2018

**Previous hearing date(s)**

None

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** (i) Severe Reprimand; (ii) The Respondent is to pay £6,000 towards the costs of the ICAEW, payable by 12 monthly instalments of £500 per month commencing 1 December 2018

**Procedural matters and findings** None

**Parties present** Mr Orr was present and represented himself

**Represented** The Investigation Committee was represented by Ms Sutherland-Mack

**Hearing in public or private** The hearing was in public

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

**Documents considered by the tribunal** The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle (together with two further documents provided by Mr Orr). There was evidence of Mr Orr's means.

### **The Investigation Committee's (IC's) case**

1. Mr Orr was at the relevant time an elected Councillor of the 'A' Council. In 2012 a decision was made whereby his remuneration as 'B' was to be reduced. This was done by the removal of a special remuneration allowance, and his income was reduced from £22,000 to £16,000. Mr Orr believed that he had been misled, and after making complaint, he was appointed vice-chair of the 'C'. There was still a shortfall of £3,000 in his salary. He was offered a personal payment of £1,500 (outside of the normal channels for receiving remuneration for his roles within the Council). On 29<sup>th</sup> January 2013 he was paid £1,500 in £20 notes, which he accepted.
2. He sent £200/300 to an East European family he considered deserving, and paid the balance into his bank account. On 6<sup>th</sup> February 2013 he transferred the balance of the received sum to the same family.
3. As a result of comments made by Mr Orr, the payment became public knowledge, and the sum of £1,500 was repaid to the payer by cheque which cleared on 30<sup>th</sup> May 2013.
4. Mr Orr self reported to the 'E' in late 2014, and there was a police investigation. The police concluded that it was not a criminal matter, and the Commissioner decided the payment was not covered in the articles of the Councillors' Code of Conduct. Mr Orr says he would have self reported to the ICAEW had the Commissioner censured him or taken other action.
5. Mr Orr referred to the payment in two internet blogs dated 31<sup>st</sup> May 2016 and 7<sup>th</sup> June 2016. The context of the blogs from his point of view was his discontent with the operation of the 'D' within 'A' Council.
6. The second blog made specific reference to the ICAEW's Code of Ethics, but focussed on the making of the payment to him rather than the acceptance by him of the payment.
7. The blog was referred to the ICAEW which commenced investigating. Mr Orr maintained that he had acted properly throughout, and that he had successfully rectified the consequences of accepting the money.
8. Mr Orr had apparently received a separate personal payment to his bank account of £1,500 in November 2012, which he had returned.
9. It is contended that the acceptance of £1,500 cash was a breach of the ICAEW code of conduct, and specifically a breach of the principle of integrity. While it appears the money was paid away to an East European family, and was subsequently repaid in full, the acceptance of the money at all was not straightforward, or transparent, and lacked integrity. There was no contemporaneous disclosure by Mr Orr, but rather an orchestration of colleagues' making further enquiries.

### **The Defence**

10. Mr Orr accepted that he had received the cash payment in the circumstances described above. The context of the receipt of the money was the reduction in his income, which he considered to have been brought about by underhand means. While he was a Councillor, and especially in December 2012 and thereafter, Mr Orr felt that he was subject to intimidation; that he was under constant pressure; that he had nobody to turn to, and no support.

11. That said, Mr Orr was in a position of trust and responsibility. Upon reflection, he fully accepted before us that he should not have accepted the cash payment, that the acceptance was inappropriate, and that publicising the receipt of such a payment could look very bad for him personally. While he was angry at the relevant time (and indeed he is obviously angry and passionate still about the circumstances giving rise to the payment) he accepts that he lost sight of professional standards. While he had considered declining the payment, he got worn down, so he said, by the constant pressure he felt under.

### **Issues of fact and law**

12. The issue for the tribunal, given that Mr Orr accepted receiving £1500 cash as described above, was whether such an act was likely to bring discredit on himself, the Institute, or the profession of accountancy.

13. We were referred to the ICAEW Code of Ethics. Section 110.1 provides that “The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.”

### **Conclusions and reasons for decision**

14. We unhesitatingly conclude that the acceptance of £1500 cash by Mr Orr was in breach of the obligation of integrity (as it could be seen as tantamount to a Chartered Accountant taking a bribe). He had every opportunity to decline such a payment, considered so doing, yet proceeded to take the cash in £20 notes. Although paid away to an East European family in two tranches, the sum was not repaid to the payer for some four months. Although Mr Orr professed to be acting as a whistle-blower, we were not satisfied that this was a fair or accurate description of his actions.

15. We accordingly conclude that acceptance of the cash was likely to bring discredit on himself, the Institute, or the profession of accountancy, and we find the complaint proved.

### **Matters relevant to sentencing**

16. The tribunal considered the Guidance on Sanctions. We concluded that the matter complained of was clearly serious. The mitigation was that rightly or wrongly Mr Orr believed himself to be the victim of inappropriate and intimidatory conduct; that the sum had been paid away and then repaid; the matter had come to light by reason of the blogs posted by Mr Orr; and the time that had passed since the commission of the act complained of, over five years.

17. There is no disciplinary record.

18. In the light of the mitigating factors, after some hesitation, we conclude that it would not be proportionate or fair to exclude Mr Orr. Our decision is that there should be a Severe Reprimand, but that there should be no other financial penalty having regard to the overall mitigation and personal circumstances of Mr Orr. We order that he should pay £6,000 towards the costs of the ICAEW, payable within 12 months from 1<sup>st</sup> December.

## **Sentencing Order**

- (i) Severe Reprimand
- (ii) Costs of £6,000.

## **Decision on publicity**

Publication with name.

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

Mr Richard Jones QC  
Mr Martin Ward FCA  
Mr Nigel Dodds

**034573**

---

5 **Mr MAHMOODUR IMRAN** of  
LUTON, UNITED KINGDOM

**A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 14<sup>th</sup> November 2018**

**Type of Member** Provisional Member

**Terms of Complaint**

Between 18 March 2013 and 3 May 2013, Mr Mahmoodur Imran dishonestly and intending thereby to make a gain for himself, made false representations by knowingly travelling on the train between St Albans and Farringdon without a valid ticket. As a consequence of this behaviour he was convicted of fraud contrary to sections 1 and 2 of the Fraud Act 2006.

Mr Mahmoodur Imran is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.a.

Disciplinary Bye-law 4.1.a renders a member liable to disciplinary action if, in the course of carrying out professional work or otherwise, he has committed any act or default likely to bring discredit on himself, the ICAEW or the profession of accountancy.

**Hearing dates** 14 November 2018

**Previous hearing dates** N/A

**Pre-hearing review or final hearing** Final hearing

**Complaint found proved** Yes, by admission

**Sentencing order** Cease to be a provisional member; no application for re-registration as a provisional member for two years; costs of £3,715.67

**Procedural matters and findings**

**Parties and representation** The Investigation Committee ('IC') was represented by Mrs Silpa Tozer  
Mr Mahmoodur Imran ('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, the defendant's Regulation 13 Answers and documents submitted by the defendant.

## **The Investigation Committee's case**

1. The defendant is a provisional member of the ICAEW. He was first admitted as a student member in September 2012.
2. On 26 September 2013 the defendant appeared at a Magistrates Court and pleaded guilty to the following offence:

‘On 03/05/2013 at Farringdon Railway Station committed fraud in that you dishonestly made a false representation, namely knowingly travelling between St Albans and Farringdon from 18/03/13 to 03/05/13 without a valid ticket for that part of the journey, intending to make a gain, namely avoid paying the relevant fare for that part of the journey, for yourself.’
3. The defendant was sentenced to a community order with a curfew requiring him to remain at his home address between the hours of 9pm and 7am for a period of 8 weeks. In addition he was ordered to compensation of £574 and costs of £85.
4. In September 2016 the defendant applied for full membership of the ICAEW. He declared that he had received a police caution for not paying his train fare in 2013. The IC's case was that the defendant was wrong to say that he had received a caution as in fact he had been convicted for the offence. The IC relied on a memorandum of conviction from a Magistrates Court.
5. The defendant's explanation for the offence was that he was using the train to travel from his home in Luton to work in London. He had become frustrated with the quality of the service and he also had some new financial responsibilities. He saw a way to resolve his financial constraints and his dissatisfaction with the train provider by not paying the full fare. Between 18 March and 3 May 2013 he travelled on a ticket which only covered him for the Luton to St Albans portion of the journey.
6. The offence to which the defendant pleaded guilty was charged under Sections 1 and 2 of the Fraud Act 2006 and is an indictable offence. Where a member has pleaded guilty to or been convicted of an indictable offence that, pursuant to Disciplinary Bye-law ('DBL') 7.1, is conclusive evidence of the commission of an act or default under DBL 4.1.a rendering him liable to disciplinary action.

## **The defendant's case**

7. The defendant admitted the complaint.
8. The defendant stated when disclosing the offence to ICAEW that the action was uncharacteristic and is his only encounter with the law. He accepted his behaviour was unjustified and he regretted it. He said he had worked hard to attain the status of Chartered Accountant and asked that the matter, which he characterised as a silly mistake, be looked upon with leniency.
9. In his Regulation 13 Answers the defendant reiterated that the offence was uncharacteristic, had happened over 5 years ago and he was remorseful for it.

10. The defendant told the Tribunal in his submissions that he was still very young when the offence occurred. He has come a long way in the last five years or so. He has completed his ICAEW training and is now a family man with responsibilities of his own. He said the penalties he had paid had been a massive deterrent from ever doing anything similar again.
11. In answer to the Tribunal's questions he said he had not told his employer about the conviction.

### **Conclusions and reasons for decision**

#### Matters proved by admission

12. The tribunal found the complaint proved by admission.

### **Matters relevant to sentencing**

13. There were no previous disciplinary matters recorded against the defendant.
14. The Tribunal took into account the defendant's previous good character and the fact that this offence took place some years ago. It took into account the testimonials produced by the defendant which spoke positively as to his character and attributes.
15. However this was premeditated offending which was motivated by financial gain and which continued for a significant period of time. Furthermore it was an offence of dishonesty. The Tribunal were particularly concerned by the defendant's admission that he had not been open with his employer about his conviction. It also appears that he only told the Institute when he had to because of the application he had made for full membership.
16. The suggested starting point in ICAEW's *Guidance on Sanctions* for offences of dishonesty is exclusion. As the defendant is a provisional member the available sanctions are set out in DBL 22.7. Those sanctions include declaring the defendant unfit to become a full member or removing him from provisional membership.
17. The Tribunal decided it would not impose the most severe penalty, which would have been to declare the defendant unfit for membership of the Institute. It considered that the appropriate and proportionate sanction was to order that he cease to be a provisional member and that he be ineligible for re-registration as a provisional member for two years.
18. The IC applied for costs in the sum of £3,715.67. The Tribunal was of the view that there was no reason why the defendant should not bear the costs of the proceedings. The Tribunal allowed the defendant time to pay.

### **Sentencing order**

19. The Tribunal ordered, pursuant to DBL 22.7(b), that the defendant cease to be a provisional member of the ICAEW and that he be ineligible for re-registration as a provisional member for two years.
20. The Tribunal ordered the defendant to pay costs of £3,715.67. The first instalment of £415.67 is to be paid by 1 January 2019 and further instalments of £300 per month by the first of each month thereafter.

### **Decision on publicity.**

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

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

Ms Mary Kelly (Chairman)  
Mr Martin Ward (FCA)  
Mr Graham Humby

**Legal Assessor**

Mr Andrew Granville Stafford

6 **Mr RICHARD JONATHAN OWEN REES FCA** of  
CARDIFF, UNITED KINGDOM

**A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 14<sup>th</sup> November 2018**

**Type of Member** Member

**Terms of Complaint (as amended)**

Mr Richard Rees FCA, while a director of 'A' Ltd (formerly 'B' Ltd), 'B' Ltd, 'C' Ltd and 'D' Ltd, demonstrated by his behaviour that he was unfit to be a director of a company. Full particulars of the matters alleged to have rendered him unfit are set out in the 'matters of unfitness' in the schedule to the undertaking given by Mr Richard Rees FCA under the Company Directors Disqualification Act 1986 and signed by him on 28 June 2017.

Mr Richard Jonathan Owen Rees is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.a in that 'in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy.'

**Hearing dates** 14 November 2018

**Previous hearing dates** N/A

**Pre-hearing review or final hearing** Final hearing

**Complaint found proved** Yes, by admission

**Sentencing order** Reprimand; fine of £5,000; costs of £3,000

**Procedural matters and findings**

**Parties and representation** The Investigation Committee ('IC') was represented by Mrs Silpa Tozer  
Mr Richard Rees ('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, the defendant's Regulation 13 Answers and documents submitted by the defendant.

**Preliminary matters**

22. Mrs Tozer on behalf of the IC applied to Application to amend the complaint by correcting two minor typographical errors. There was no objection by the defendant and the Tribunal granted the application. The amended complaint is set out above.

## The Investigation Committee's case

23. The defendant has been a member of the ICAEW since 1996.
24. The defendant was director of four companies ('A' Ltd, 'B' Ltd, 'C' Ltd and 'D' Ltd) which went into liquidation in August 2013. The total deficiency to creditors of the four companies was, respectively, £271,579, £183,748, £6,255 and £453,728. The major creditor was HMRC.
25. Disqualification proceedings were brought against the defendant by the Secretary of State in relation to his actions whilst director of these companies. Proceedings were also brought against his co-director, Mr 'E'. The proceedings against the defendant concluded with him giving an undertaking on 28 June 2017 not to be a director of a company for a period of four years.
26. The schedule of unfit conduct attached to the disqualification undertaking signed by the defendant gave the following details of the defendant's actions.

### 'A' Ltd

- Between 1 February 2005 and 20 April 2006, the defendant allowed 'A' to fail to lodge a corporation tax return for the year ended 30 April 2004, which was due by 30 April 2005.
- Between 1 February 2005 and 20 April 2006, the defendant allowed 'A' Ltd to pay an assessed amount of £18,620 in respect of corporation tax when he knew or ought to have known that the true amount due by 31 January 2005 was £201,348. £202,224 including penalties was still due to HMRC in respect of this period, at the date the defendant signed the disqualification undertaking.
- The defendant caused or allowed 'A' Ltd to trade to the detriment of HMRC in respect of Pay As You Earn ('PAYE')/National Insurance Contributions ('NIC')/student loan deductions between at least 22 August 2011 and 6 September 2012 resulting in an estimated HMRC liability of £482,355 including interest.
- Between 22 August 2011 and 6 September 2012 'A' Ltd incurred PAYE/NIC/student loan obligations of £529,756 and paid £130,121 in respect of these liabilities.
- From 1 September 2012, 'A' Ltd made payments from its bank account of £489,660 of which £140,000 was paid to HMRC in respect of tax liabilities arising from periods before 6 April 2011.
- After the last payment to HMRC on 15 March 2013, bank payments of at least £154,879 were made, of which at least £20,000 was paid to Mr 'E'.

### 'B' Ltd

- The defendant caused or allowed 'B' Ltd to trade to the detriment of HMRC in respect of PAYE/NIC/student loan obligations between at least 22 August 2012 and 30 April 2013 resulting in an estimated HMRC liability of £238,648. No payments were made in respect of these liabilities.

### 'C' Ltd

- The defendant caused or allowed 'C' Ltd to trade to the detriment of HMRC in respect of PAYE/NIC/student loan obligations between at least 22 May 2012 and 5 January 2013 resulting in an estimated liability of £33,985. No payments were made in respect of these liabilities.
- After 26 April 2012, 'C' Ltd made payments totalling £110,468 of which £13,384 was paid to HMRC in respect of PAYE/NIC/student loan liabilities outstanding from periods prior to April 2012.

## 'D' Ltd

- The defendant caused or allowed 'D' Ltd to trade to the detriment of HMRC in respect of PAYE/NIC/student loan obligations from at least 22 May 2010 resulting in an estimated liability, including interest and penalties, of £523,628.
- Between 6 April 2010 and 30 October 2012, 'D' Ltd accrued PAYE/NIC/student loan obligations of £377,528 but paid only £1,200 in respect of these liabilities.
- Returns for 2010/11 and 2011/12 were filed 31 months and 15 months late respectively.

27. Subsequently the defendant applied for and was granted permission to be a director of two associated companies ('G' Ltd and 'G' Ltd) during the currency of his disqualification order subject to a number of conditions. The defendant said it was essential that he continued as the director of these companies to safeguard the jobs of around 70 workers.
28. The IC's case was that the behaviour which led to the defendant being disqualified as a director, rendered him liable to disciplinary action under Disciplinary Bye-law ('DBL') 4.1.a. DBL 7.2.b provides that disqualification as a company director is conclusive proof of misconduct under DBL 4.1.a.

### **The defendant's case**

29. The defendant admitted the complaint in his Regulation 13 Answers. He relied on the following as mitigation.
30. The defendant's case was that he had placed too much trust in his co-director Mr 'E', with whom he had worked for a number of years, and had allowed Mr 'E' to have too much control. Mr 'E' had dealt with all matters concerning HMRC. He (the defendant) never had any involvement in the submission of tax returns or managing tax liabilities. He said that Mr 'E' had concealed things from him and had deliberately sought to mislead him regarding the financial position of the companies.
31. The defendant produced an affidavit sworn by Mr 'E' in the disqualification proceedings and dated 6 June 2017 which supported the defendant's claim that Mr 'E' had concealed matters from him.
32. In respect of the disqualification undertaking the defendant said that he was unable to dispute the matter due to the costs involved. He pointed out that he agreed to the undertaking on the basis that he had 'allowed' the failings in question rather than 'caused' them.
33. In his oral submissions to the Tribunal the defendant said Mr 'E' had been the majority shareholder and had started the company. The defendant's role in the company was to look after a client portfolio, staff training and HR. He had not had access to the company's bank account. Mr 'E' was managing director and his role was management rather than fee earning. Although the defendant had had seen copies of the management accounts, Mr 'E' had disguised the true position of the company in those accounts.
34. Even after the disqualification proceedings commenced in 2015 the defendant said Mr 'E' continued to give assurances that there was no foundation to the proceedings and claims regarding debts to HMRC could be refuted. It was not until late 2016/early 2017 that it became clear this was not the case. The defendant had subsequently discovered that there were around 300 letters between the Revenue and Mr 'E', none of which had been copied to him.

35. The defendant accepted in his submissions that he should have been more proactive, in order to discover the true position and that he was therefore culpable. He had accepted the director's disqualification on the basis that he had allowed things to happen rather than caused them. He applied for and was granted interim permission to continue running the business. By this stage, Mr 'E' had been excluded from any involvement in it. It was only when he and the new directors undertook a thorough review of the company accounts that the extent of the unauthorised withdrawals by Mr 'E' from company funds had become apparent.
36. The defendant said he had made sure that, once he took over the running of the business, its liabilities to the Revenue were met. He had even had to loan the company a large sum of his own money to ensure this. After running the company on an interim basis, the court granted his application to be a director on a permanent basis. The judge accepted that he had demonstrated he was capable of acting responsibly and that the public would be adequately protected. The application had not been opposed by the Secretary of State.
37. The defendant told the Tribunal he had invested a considerably amount of time and effort in restoring the fortunes of the business. He had personally spoken to every member of staff and had spent a lot of time re-assuring clients. All jobs had been safeguarded and all tax liabilities had been met on time. The company had even been able to recruit additional staff since he took over management of the business.

## **Conclusions and reasons for decision**

### Matters proved by admission

38. The tribunal found the complaint proved by admission.

## **Matters relevant to sentencing**

39. There were no previous disciplinary matters recorded against the defendant.
40. The Tribunal accepted that there had been a division of roles between the defendant and his co-director Mr 'E'. Mr 'E' was the senior partner and the defendant had been given no responsibility in relation to the management and financial affairs of the company. The Tribunal accepted that the defendant's culpability should be assessed in that light. The Tribunal considered it noteworthy that the Court had been persuaded to allow Mr Rees to continue to act as director of 'F' Ltd and 'G' Ltd and that by accepting the disqualification Mr Rees had saved court time and costs.
41. The Tribunal had regard to ICAEW's *Guidance on Sanctions*. The starting point for sanction where a member has been disqualified as a company for a period between two and five years is an exclusion order or severe reprimand and a category D financial penalty.
42. The aggravating factor in this case is the scale of detriment to the Revenue. However, given the large degree of mitigation in this case, the Tribunal was satisfied that the appropriate and proportionate sanction was to reprimand the defendant. Additionally, the Tribunal imposed a fine of £5,000.
43. The IC applied for costs in the sum of £4,099.00. The Tribunal considered it was appropriate to reduce this amount to reflect the fact that the investigation of this matter was relatively straightforward and also the amount of time taken to hear the case compared to the time estimate in the costs schedule.

## **Sentencing order**

44. Therefore, the Tribunal reprimanded the defendant and in addition imposed a fine of £5,000.

45. The Tribunal ordered the defendant to pay costs of £3,000.

**Decision on publicity**

46. 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 (Chairman)

**Accountant Member**

Mr Martin Ward (FCA)

**Non Accountant Member**

Mr Graham Humby

**Legal Assessor**

Mr Andrew Granville Stafford

**041810**

---

7 **Mr Terence Sefton Potter** of  
MONACO, and of the UNITED KINGDOM

**A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 27 June 2018.**

**Type of Member** Member

**Terms of Complaint**

1. On dates between 1 January 2007 and 8 February 2012, Mr Terence Potter ACA, with intent to defraud HMRC, conspired with others to cheat the public revenue, as described in the indictment.

Mr Terence Sefton Potter is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.a

**Hearing dates** 27 June 2018

**Previous hearing dates** 13 February 2018 (hearing postponed)

**Pre-hearing review or final hearing** Final hearing

**Complaint found proved** Yes

**Sentencing order** Exclusion order  
Costs of £3,374

**Procedural matters and findings**

**Parties and representation** The Investigation Committee ('IC') was represented by Mrs Silpa Tozar  
Mr Terence Sefton Potter ('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, the defendant's Regulation 13 answers and letters from the defendant dated 6 December 2017 (with attachments) 14 May 2018, 1 June 2018 and 25 June 2018

**Proceeding in absence**

1. This complaint was previously listed to be heard on 13 February 2018. Notice of that hearing was sent by post to the defendant on 1 December 2017. The notice was sent to his registered address and also to the prison where the defendant was serving a sentence of imprisonment.
2. In his Regulation 13 Answers the defendant said he wanted to attend the hearing but was not able to, given he is a serving prisoner. In a letter dated 6 December 2017 to the Institute's

Professional Conduct Department ('PCD') the defendant said he was appealing the conviction to which this complaint relates. He asked that the hearing be deferred until the outcome of his appeal was known.

3. In light of that letter the hearing listed for 13 February 2018 was postponed.
4. The PCD was informed that the defendant's application for permission to appeal had been refused by the Court of Appeal on 28 February 2018. In light of that a new notice of hearing was sent to the defendant on 2 May 2018 listing the hearing for today's date (27 June 2018).
5. The defendant replied to that notice by letters dated 14 May and 1 June 2018. He said his application for permission to appeal his sentence had been refused by the Court of Appeal but that his appeal against conviction was ongoing.
6. However, the Criminal Appeal office confirmed by an email on 11 June 2018 that the defendant's appeals against both conviction and sentence had been disposed of. The email said that the defendant's conviction appeal was abandoned in January 2018. His renewed application for permission to appeal sentence was heard by the full court on 28 February 2018 and refused.
7. The Tribunal was provided with a statement as to service exhibiting a copy of the notice of today's hearing. The Tribunal was satisfied that service had been effected in accordance with Regulations 3 and 5 of the Disciplinary Committee Regulations ('DCR'). The Tribunal went on to consider whether it should proceed in the defendant's absence.
8. The Tribunal did not consider that it was in the interests of justice to further postpone this hearing. The Tribunal was satisfied that the defendant's appeals against conviction and sentence had been unsuccessful. The complaint against him was a serious one and there was a clear public interest in dealing with that allegation expeditiously.
9. The Tribunal therefore determined to proceed in the absence of the defendant.

### **The Investigation Committee's case**

10. The Defendant was admitted as a member of the ICAEW on 23 October 1985. At the relevant time he was working as an accountant and tax adviser and he was also a member of the Chartered Institute of Taxation.
11. The IC's case was based on the defendant's conviction on an indictment containing four counts of conspiracy to cheat the public revenue. The convictions relate to film investment schemes. The basis of these schemes was that wealthy individuals would invest in companies who were making films. The losses made by those companies would result in the investors obtaining sideways loss tax relief.
12. Between 2007 and 2012 the defendant created two film investment schemes. These were then sold by a financial adviser to high net worth clients. One scheme was through a limited liability partnership, 'AB LLP', to make a film called 'X'. This film was never actually produced. The other was through 'BC LLP' to make a film called 'Y'. This film was made in 2009 although 'BC LLP' only became linked with the film after HMRC commenced its investigation.

13. The Defendant was aware that the requirements of the schemes would not be met. Only part of the money put up by the investors was used for the film projects. The Defendant's motive was to create substantial tax relief for his clients and make money for himself. To that end he created documents which falsely recorded the investors' involvement in the film productions and he produced false accounts to exaggerate the losses made by 'AB LLP' and 'BC LLP'.
14. In order to mislead the HMRC enquiry into the schemes he created false diaries and gave dishonest accounts to the Revenue in correspondence.
15. On 18 September 2015, following a trial at Southwark Crown Court, the defendant was convicted of one count of conspiracy to cheat the Revenue. The particulars of the offence were that he conspired with others to cheat the HMRC by falsely claiming sideways loss relief for members of 'BC LLP'.
16. Following his conviction on this count, the defendant pleaded guilty to three further counts of conspiracy to cheat the Revenue. Count one related to falsely claiming 'AB LLP' had made trading losses of £4m. Count two related to falsely claiming 'BC LLP' had made trading losses of £1.7m. Count three related to falsely claiming sideways loss relief for members of 'AB LLP'.
17. The defendant was sentenced on 18 December 2015. In his sentencing remarks, HH Judge Baddoe said that the defendant was the creator of the frauds and the conductor of their orchestration. He described the defendant and his co-defendant, the financial adviser, as deeply dishonest individuals closely involved with each other for mutual financial advantage. The schemes involved highly sophisticated offending and very significant planning. The defendant's culpability in them was greater than anyone else's. He had played on his qualification as a Chartered Accountant and a former partner in a leading accountancy practice to bolster his plausibility and credibility.
18. Between 2009 and 2012 he created a raft of false material to submit to the Revenue. In relation to counts one and two he conspired to create annual accounts in what the judge described as a carefully orchestrated, contrived and fictitious merry-go-round of money and false accounting.
19. The judge said the dishonest enterprise began in 2007 and spanned a period of nearly five years during which time the defendant had made a profit of £1.1m from the scheme. The potential loss to the Revenue was £2.2m, although such losses as it had incurred before the scheme had been uncovered had been repaid.
20. The judge took into account the defendant's previous good character and a recent personal tragedy he had suffered but considered these amounted to only limited mitigation. He found no evidence that the defendant was remorseful for his actions. He described the defendant as a calculating and manipulative individual.
21. The defendant was sentenced to 8 years imprisonment concurrently on each count, and therefore a total term of 8 years. The sentence took into account his pleas of guilty to three out of the four counts on the indictment. He was subsequently ordered to pay £1.8m in confiscation proceedings.
22. Following the convictions the Chartered Institute of Taxation took disciplinary proceedings against the defendant which resulted in him being expelled from membership at a hearing in his absence on 17 June 2016.
23. Disciplinary Bye-law ('DBL') 7.1 provides that a conviction is conclusive evidence of the commission of an act, likely to bring discredit on the member, the profession and the Institute. The IC therefore submitted that the defendant was liable to disciplinary under DBL 4.1.a.

## **The Defendant's case**

24. In his letter to the ICAEW dated 6 December 2017 the defendant said he was in the process of appealing against his conviction and that it would be inappropriate for him to accept the complaint until the outcome of that process. He accepted that, in the event that the Court of Appeal did not uphold his appeal, the complaint against him was validly made.
25. He added that, regardless of the outcome, he was extremely sorry for the damage his conduct had caused to the reputation of the ICAEW.

## **Conclusions and reasons for decision**

### Decision on complaint

26. The tribunal found the complaint proved.
27. The certificate of conviction proved that the defendant had committed the offence alleged in the complaint. Moreover, the defendant did not dispute that he had been convicted of this offence.
28. The conviction is conclusive evidence of conduct rendering the defendant liable to disciplinary action under DBL 4.1.a.

## **Matters relevant to sentencing**

29. There were no previous disciplinary matters recorded against the defendant.
30. The Tribunal took into account the defendant's previous good character and the personal mitigation contained in the documents submitted by the defendant.
31. The Tribunal had regard to ICAEW's Guidance on Sanctions. The starting point for offence which result in a conviction for dishonesty or which result in a prison sentence is exclusion from membership. The Committee saw no reason to depart from that starting point.
32. The defendant conspired with others to commit a carefully planned and large scale fraud on the Revenue which was carried out over a number of years. He was the orchestrator of the fraud. His conduct was fundamentally incompatible with being a member of a professional association. No sanction other than exclusion would adequately meet the public interest.
33. The Tribunal did not consider it either necessary or appropriate to make a recommendation under DBL 22(8) specifying a period in which no application for readmission may be entertained.
34. The Guidance on Sanctions states that an additional financial penalty is not appropriate in a case where a Proceeds of Crime Act confiscation order has been made. The Tribunal therefore determined it was not appropriate to fine the defendant.
35. The IC applied for costs in the sum of £3,574. The application was supported by a breakdown of costs set out in a schedule prepared by the IC. It was appropriate to make a small reduction to reflect the actual as opposed to the estimated length of hearing. That reduced the figure for costs to £3,374.
36. The Tribunal had regard to the statement of financial circumstances prepared by the defendant on 17 December 2017. The Tribunal was not satisfied that the defendant was totally without means. In any event it considered in principle that the defendant should meet the costs of these proceedings.

37. The Tribunal considered it was appropriate to allow the defendant a reasonable time from his release from custody to meet the costs order.

### **Sentencing order**

38. Therefore in the Tribunal's view the appropriate and proportionate sanction was to exclude the defendant from membership of the ICAEW.

39. The Tribunal ordered the defendant to pay costs of £3,374 within 12 months of his release from prison.

### **Decision on publicity**

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

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

Mr Ron Whitfield  
Mr Michael Ranson FCA  
Miss Jane Rees

**Legal Assessor**

Mr Andrew Granville Stafford

(7) **Mr Terence Sefton Potter** of  
Woodbridge, United Kingdom

**A panel of the Appeal Committee made the decision recorded below having heard an appeal on 21 November 2018**

<b>Type of Member</b>	Member
<b>Date of Disciplinary Tribunal Hearing</b>	26 June 2018
<b>Date of Appeal Panel Hearing</b>	21 November 2018

**Terms of complaint found proven before the Disciplinary Tribunal**

On dates between 1 January 2007 and 8 February 2012, Mr Terence Potter ACA, with intent to defraud HMRC, conspired with others to cheat the public revenue, as described in the indictment. Mr Terence Sefton Potter is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.a

**Sentencing Order of Disciplinary Tribunal**

Complaint found proved  
Exclusion  
Costs of £3,374

<b>Appeal against finding?</b>	No
<b>Appeal against Sentencing order?</b>	No
<b>Appeal against Costs</b>	Yes
<b>Decision of Appeal Panel</b>	Appeal dismissed

**Procedural matters and findings**

- 1 Neither party appeared or was represented.
- 2 Public.
- 3 No preliminary application was made.

## Grounds of appeal

- 4 The Appellant is serving a lengthy prison sentence and has no money to pay the costs.

## Decision

- 5 The appeal is dismissed.

## Reasons for decision

- 6 The appeal was entirely without merit. The costs order was properly made and took into account the fact that the Appellant was serving a prison sentence and was subject to financial orders in the criminal proceedings. Impecuniosity is no ground for resisting an order for costs.

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

Mr Richard Mawrey QC  
Mrs Sandra Mundy FCA  
Mr Richard Lea FCA  
Mr Geoff Baines  
Mrs Maureen Brennan

8 **Mr Keith Hayley [FCA]** of  
Stradishall, United Kingdom

**A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 31 July 2018**

**Type of Member** Member

**Terms of complaint**

Between 1 January 2002 and 31 August 2009 Mr Keith Hayley FCA (“the Defendant”) conspired with others to cheat the public revenue.

Mr Keith Hayley is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a.

4.1a states ... If in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy.

**Hearing date** 31 July 2018

**Previous hearing date(s)** None

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** Expulsion

**Procedural matters and findings**

**Parties present** The Investigations Committee was represented by  
Mrs Silpa Tozer

ICAEW Tribunal Administrator Diane Waller was  
present

The Defendant was not present or represented

**Hearing in public or private** The hearing was in public

## **Decision on service**

The Tribunal found that Notice of the hearing was sent by post to the Defendant on 4th June, 2018 at his registered address and to his last known prison address, at Stradishall. The Defendant responded to the letter enclosing the Notice of hearing and the accompanying documents and the Tribunal was satisfied that service had been effected in accordance with regulations 3-5 of The Disciplinary Committee Regulations,

## **Documents considered by the Tribunal**

The Tribunal considered the documents contained in the Investigation Committee's (IC's) bundle and additional correspondence in relation to the Defendant's application for an adjournment of the proceedings.

## **Findings on preliminary matters**

The Tribunal considered an application by the Defendant to adjourn the proceedings.

The Defendant sought an adjournment of the proceedings in the interests of justice, because he wished to be represented or appear before the Tribunal. Furthermore, he intended to appeal against his conviction. He is currently serving a nine-year prison sentence. He has not applied for leave to appeal against his conviction in May 2016. He is unable to take part in the proceedings by telephone from the prison and says he does not have the financial means to instruct a legal representative.

It is well-established that a Panel's discretion to proceed in the absence of a Registrant is "severely constrained" (Tait v The Royal College of Veterinary Surgeons [2003] UKPC 34).

Furthermore it is a discretion which a Tribunal should exercise with the utmost care and caution. The factors which a Tribunal must bear in mind when deciding whether to exercise their discretion to proceed in the absence of the Registrant are those as set out in the criminal case of R v Jones (Anthony) [2003] AC 1, HL. These include:

- The nature and circumstances of the Registrant's behaviour in absenting themselves from the hearing;
- Whether an adjournment would resolve the Registrant's absence;
- The likely length of any such adjournment;
- Whether the Registrant has voluntarily absented themselves from the proceedings; and
- The disadvantage to the Registrant in not being able to present their case.

In the case of Adeogba v GMC [2016] EWCA 216 Sir Brian Leveson first looked at the statutory regime and the law regarding proceeding in absence. It is accepted that a Tribunal can proceed to consider and determine an allegation in a Registrant's absence if they are satisfied that all reasonable efforts have been made to effect service of the notice of hearing in accordance with the Rules.

He then looked at the decision in R v Jones, (above) by reference to the principles developed by criminal law in relation to trial in absence:

"... The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representative. That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.

In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case..." but acknowledged that the main statutory objective of the Regulator must also be considered in such circumstances, meaning that the fair, economical, expeditious and efficient disposal of allegations made against (in the case of Adeogba, a medical) practitioners is of very real importance.

The Tribunal gave very careful consideration to the Defendant's application, which had already been refused by the Committee Secretary.

The Tribunal considered that it was in the public interest for this complaint to be determined within a reasonable timescale. The Tribunal did not consider that if this matter was adjourned the Defendant would be likely to attend within such reasonable timescale. The Tribunal considered that any injustice caused to the Defendant by proceeding today in his absence was outweighed by the public interest in hearing the case without undue delay.

As far as the Defendant's intention to apply for leave to appeal was concerned, the Tribunal had not seen any evidence that he had made an application, albeit out of time, for leave to appeal.

Consequently, the Tribunal refused the application to adjourn and ruled that it should proceed in the Defendant's absence.

### **The Investigation Committee's case**

1. On 12 May 2016, the Defendant was tried and convicted of conspiracy to cheat the public revenue at a Crown Court.
2. On 24 June 2016, the Defendant was given a prison sentence of nine years. The Defendant was one of five defendants sentenced at the same time.
3. Prior to his conviction, the Defendant worked in the film industry, and owned and ran 'A' which was a film finance and production company.
4. The facts leading to the Defendant's conviction are set out in His Honour Judge Drew's (the "Judge") sentencing comments.
5. The conviction of conspiracy to cheat the public revenue relates to an investment scheme centred on the film industry. The scheme was set up to raise money from high net worth individuals, who were keen to take advantage of the tax breaks offered by the government to investors in the film industry. In particular, the investors invested in a series of limited liability partnerships ("LLPs") which enabled them to substantially reduce their personal tax liabilities. The Judge commented that the defendants originally intended to set up a legitimate scheme and there was no intention at the outset to cheat the revenue.

6. The Defendant's company, 'A', advised the LLPs to enter into ten year agreements with film producers to provide development and pre-production services to them. The LLPs entered in to an agreement to purchase those services from another company called 'B'. Although the agreements between the LLPs and 'B' were for the provision of services over a ten year period, the payment was made up front for over three hundred films, which meant that in their first accounting years, the LLPs spent over £256 million. The Judge commented that this indicated that the scheme was 'not all it appeared to be' and that the money was unlikely to ever be recovered.
7. The Judge stated that 'B' were in no better position than the LLPs to provide the development and pre-production services and it too also outsourced the film production work to another company, 'C', and paid £234 million to them. However, there is no evidence that 'C' provided any film production services. The only activity identified was that 'A' made producer's packs which contained background and development information for the film producers to use to further their projects. The cost of these producer packs was £3.9 million and was paid for by 'B'. The Judge commented that 'B' would never have been called upon, let alone been able to provide, the quarter of a billion pounds worth of services that the LLPs had paid them for.
8. The money that 'C' received from 'B' was then lent on to a series of other companies, before being invested back into the LLPs. The funds that had been invested into the LLPs were approximately one quarter from individual investors, and three quarters from corporate investors (e.g. 'C'). Once the money was received back into the LLPs, a further round of investments in films took place. This meant that in their first year, the LLPs spent nearly all of the money that had been invested in them, and 93.18% of this had been on services from 'B'.
9. Although only one quarter of the LLPs funds had come from individual investors, the LLP agreements allocated 90% of the LLPs losses to the individuals in the first year, which meant the that individual investors were able to claim losses on their tax returns far in excess of the monies they had invested into the LLPs.
10. The Judge commented that the 'cheat' in this case was submitting tax returns which contained false statements about the LLPs allowable losses. They were false because the jury found as a fact either that the expenditure was not wholly and exclusively for the purposes of the LLPs trade, or the trade was not carried out on a commercial basis, because it was not used to pay for development and pre-production services, but was instead diverted and repeatedly circulated around other companies, as outlined above.
11. The Judge commented that this was a complex and sophisticated tax evasion scheme which had it succeeded would have deprived HMRC of £98 million in revenue. The Judge commented that the defendants relied on the fact that the investors did not really expect to get their money back, and that it was evidenced by the spreadsheets recovered that they planned on extracting approximately one-third (£25 million) for their own benefit. Once HMRC began to investigate the LLPs returns in 2004, the defendants manufactured documents to fill in the gaps of missing documentation and to give the impression that various companies involved in the scheme were dealing with another at arm's length when in fact they were not. The Judge commented that seeking to cover up their activities by manufacturing documentation was a seriously aggravating feature of the case.

12. In determining sentence for the Defendant, the Judge referred to him having received individual benefit in the region of £7.6 million, and his partner benefitted in the sum of £902,000. The Judge placed the Defendant in Category A in terms of culpability, the highest level of culpability. The Judge commented that the Defendant was one of three defendants who had played a leading role, had encouraged others to participate, and the offence had occurred over a sustained period of time. The Judge placed the defendants in Category 1 in terms of harm, which is the highest degree of harm. This was based on the intended losses of the scheme being over £50 million, with a starting point of £80 million. The starting point for the sentence was a custodial sentence of twelve years, with a range of ten to seventeen years.
13. The Judge commented that bearing in mind the length of time the Defendant was likely to spend in custody, and the appropriate period of disqualification, it was neither necessary nor proportionate for him to be disqualified under the Director Disqualifications Act.

### **Issues of facts and law**

14. The Tribunal had regard to the Certificate of Conviction which recorded that the Defendant was tried and convicted on indictment of conspiracy to cheat the public Revenue on 12th May 2016. The Tribunal had regard to ICAEW Bye-law 7, which is entitled “Proof of certain matters”, and provides, so far as relevant:

“(1) The fact that a member ... has, before a court of competent jurisdiction, pleaded guilty to or been found guilty of an indictable offence (or has, before such a court, outside England and Wales, pleaded guilty to or been found guilty of an offence corresponding to one which is indictable in England and Wales) 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) (applies to firms), as the case may be.

...

(3) A finding of fact

...

(b) in any civil or criminal proceedings before a court of competent jurisdiction in the United Kingdom or elsewhere;

...

shall for the purposes of these bye-laws be prima facie evidence of the facts found.”

15. The conviction was recorded against the Defendant at a Crown Court, a court of competent jurisdiction and the supporting facts set out in detail in the sentencing remarks of the judge.

### **Defence case**

16. The Defendant did not admit the complaint but sought to rely on draft Grounds of Appeal against his criminal conviction in which he contended that he was wrongly convicted.

### **Conclusions and reasons for decision**

17. The Tribunal found, applying the civil standard of proof, that is, the balance of probabilities, that the complaint was proved. Under the provision of bye-law 4.1a. by committing the criminal offence of conspiracy to cheat the public revenue, the Defendant has committed an act likely to bring discredit on himself, ICAEW or the profession of accountancy.

The Tribunal found that he had, in a court of competent jurisdiction, been convicted of this indictable offence and had the benefit of the evidence of the supporting facts from the judge's sentencing remarks which were unchallenged.

### **Matters relevant to sentencing**

18. The Tribunal had regard to the sentencing remarks of His Honour Judge Drew recorded at a Crown Court on 24<sup>th</sup> June, 2016 in which he said, addressing the Defendant, having regard to the Sentencing Guidelines in relation to revenue fraud, "In my judgement, your culpability falls within the highest category, Category A. Each of you [the Defendant and two other men convicted of conspiracy] played a leading role in a group activity. You involved others and you acted in a conspiracy which was sophisticated in nature and involved significant planning. The activity was conducted over a sustained period of time. ....The intended loss [to the Revenue] was in the order of £98 million." The judge noted that the Defendant's individual benefit from the fraudulent scheme was "something in the region of £7.6 million". The judge sentenced him to a term of nine years' imprisonment.
19. The Tribunal bore in mind factors in mitigation which the Defendant had put forward at the trial. In particular, the Tribunal had regard to the Defendant's previously good character, the effect that the criminal proceedings were likely to have on his family and his marriage and the numerous letters and testimonials in support which he had submitted to the Crown Court.
20. The Tribunal noted that the Defendant, neither at the Crown Court nor in his communications with the Institute, expressed any remorse or even regret for his part in the conspiracy in which he was a leading player.
21. The Tribunal had regard to the institute's Sentencing Guidelines which indicate that where a Defendant has been convicted of an offence involving dishonesty, the starting point as far as sanction is concerned is exclusion.

### **Sentencing Order**

22. The Tribunal found that the criminal offence in which the Defendant played a major part was a very serious one, doubly so for a professional accountant: namely, conspiracy to cheat the public revenue. The sums involved were very large and the Defendant had made a very considerable sum of money in return for his involvement. His actions brought discredit on himself, the Institute and the accountancy profession.
23. The Tribunal excluded him from membership of the Institute.

### **Costs**

24. The Tribunal had regard to a costs schedule submitted by the case presenter, and to the Defendant's statement of means. The Tribunal ordered the defendant to pay £4,000 towards the costs of these proceedings.

**Non Accountant Chair**  
**Accountant Member**  
**Non Accountant Member**

Mrs Ros Wright CB QC  
Mr Mike Ranson FCA  
Mr Nigel Dodds

(8) **Mr Keith Hayley [FCA]** of  
Stradishall, United Kingdom

**A panel of the Appeal Committee made the decision recorded below having heard an appeal on 21 November of hearing**

<b>Type of Member</b>	Member
<b>Date of Disciplinary Tribunal Hearing</b>	31 July 2018
<b>Date of Appeal Panel Hearing</b>	21 November 2018

**Terms of complaint found proven before the Disciplinary Tribunal**

Between 1 January 2002 and 31 August 2009 Mr Keith Hayley FCA (“the Defendant”) conspired with others to cheat the public revenue.

Mr Keith Hayley is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a.

**Sentencing Order of the tribunal of the Disciplinary Committee**

Complaint found proved  
Exclusion  
Costs of £4,000

<b>Appeal against finding?</b>	No
<b>Appeal against Sentencing order?</b>	No
<b>Appeal against Costs</b>	Yes
<b>Decision of Appeal Panel</b>	Appeal dismissed

## Procedural matters and findings

- 7 Neither party appeared or was represented.
- 8 Public.
- 9 No preliminary application was made.

## Grounds of appeal

- 10 The Appellant is serving a lengthy prison sentence and has no money to pay the costs.

## Decision

- 11 The appeal is dismissed.

## Reasons for decision

- 12 The appeal was entirely without merit. The costs order was properly made and took into account the fact that the Appellant was serving a prison sentence and was subject to financial orders in the criminal proceedings. Impecuniosity is no ground for resisting an order for costs.

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

Mr Richard Mawrey QC  
Mrs Sandra Mundy FCA  
Mr Richard Lea FCA  
Mr Geoff Baines  
Mrs Maureen Brennan

## ORDER – AUDIT REGISTRATION COMMITTEE

### ORDER – 10 OCTOBER 2018

#### 9 Publicity Statement

**McLintocks Ltd**, 46 Hamilton Square, Birkenhead, CH41 5AR, and **McLintocks Partnership Limited**, 2 Hilliards Court, Chester Business Park, Chester, CH4 9PX (the firms), have agreed to pay a regulatory penalty of £15,000 which was decided by the Audit Registration Committee. This was in view of the firms' admitted breaches of Audit Regulation 3.01, in that:

- a former director of the firms acted as company secretary to an audit client for four years; and
- a non-trading company connected to the firms acted as company secretary to two audit clients for thirteen and seven years respectively.

---

045210

### ORDER – 10 OCTOBER 2018

#### 1 Publicity statement

**McLintocks Ltd**, 46 Hamilton Square, Birkenhead, CH41 5AR, and **McLintocks Partnership Limited**, 2 Hilliards Court, Chester Business Park, Chester, CH4 9PX (the firms), have agreed to pay a regulatory penalty of £15,000 which was decided by the Audit Registration Committee. This was in view of the firms' admitted breaches of Audit Regulation 3.01, in that:

- a former director of the firms acted as company secretary to an audit client for four years; and
- a non-trading company connected to the firms acted as company secretary to two audit clients for thirteen and seven years respectively.

---

045193

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

---