



Disciplinary Orders and Regulatory Decisions

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. Mr Edward Charles Freeman BA [FCA] of
Sheffield, United Kingdom

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 13 February 2019

Type of Member Member

Terms of Complaint

1. On 4 November 2016, Mr Edward Freeman was convicted at a Crown Court of operating a regulated facility except under and in accordance with an environmental permit ('C').
2. On 4 November 2016, Mr Edward Freeman was convicted at a Crown Court of keeping controlled waste in a manner likely to cause pollution of the environment or harm to human health.
3. On 4 November 2016, Mr Edward Freeman was convicted at a Crown Court of operating a regulated facility except under and in accordance with an environmental permit ('D').

Mr Edward Charles Freeman is therefore liable to disciplinary action under Disciplinary Bye-law 4.1e and 4.2g on the basis that he has, in a court of competent jurisdiction, been convicted of an indictable offence.

Hearing dates 13 February 2019

Previous hearing dates N/A

Pre-hearing review or final hearing Final hearing

Heads of complaint found proved 1, 2 and 3 by admission

Heads of complaint found not proved None

Sentencing order Exclusion from membership
Costs of £4,537

Procedural matters and findings

Parties and representation The Investigation Committee ('IC') was represented by Miss Lauren Jennings
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 the documents submitted by the defendant.

The Investigation Committee's case

1. The defendant has been a member of the ICAEW since 2005. The complaints relate to his convictions in 2016 at a Crown Court for environmental offences.
2. At the relevant times the defendant was the Finance Director ('FD') of 'A' Ltd. The defendant and others who worked for 'A' Ltd were convicted of breaching environmental permits at its two sites, 'C' and 'D'. The prosecution's case was the company habitually operated outside of the terms of its environmental licences. The breaches included storing waste in large quantities outside of permitted areas and blending types of waste in order to disguise its content thus avoid higher landfill charges. It was said that the offences maximised 'A' Ltd's financial gain at the expense of the environment and led to a series of fires at the 'C' site in 2013 and 2014.
3. The defendant was appointed FD of 'A' Ltd on 9 December 2010. He was responsible for managing the finance team, reporting to the company's funder ('B') and liaising on the financial aspects of running the company's sites. He resigned as a director on 3 March 2014 and the company was placed in administration on 16 May 2014. He remained as an employee of the company, assisting the administration, until August 2014.
4. On 4 November 2016 the defendant appeared at a Crown Court and pleaded guilty to the following offences:
 - Count one: Operating a regulated facility ('C') except under and in accordance with an environmental permit, contrary to the Environmental Permitting (England and Wales) Regulations 2010
 - Count two: Keeping controlled waste in a manner likely to cause pollution of the environment or harm to human health, contrary to the Environmental Protection Act 1990.
 - Count three: Operating a regulated facility ('D') except under and in accordance with an environmental permit, contrary to the Environmental Permitting (England and Wales) Regulations 2010.
5. The defendant entered his pleas on the basis he was guilty of neglect. In respect of all three counts it was agreed that he neglected his duties as company director to take appropriate action to prevent the commission of the offences committed by the company.
6. He appeared for sentence on 30 October 2017. He was sentenced to four months' imprisonment on counts one and three. These sentences were consecutive, making a total of 8 months' imprisonment, which was suspended for two years. No separate penalty was imposed on count two. In addition the defendant was ordered to do 150 hours unpaid work to be completed by 29 October 2018. He was ordered to pay £5000 prosecution costs within 12 months.
7. In his sentencing remarks the judge, HH Judge Kelson QC, said that the repeated and deliberate defiance of restrictions on storage, movement and blending of waste was so serious that only custodial sentences could be justified. He said that the defendant played an important role in 'A' Ltd as FD and that 'A' Ltd's deliberate actions 'week after week, year after year, could not have occurred without his knowledge and support'. HH Judge Kelson

QC stated that whilst the defendant was not the 'prime mover,' he consented to and supported the repeated flaunting of the permits. He described the defendant as being 'wilfully blind, almost to the point of it being deliberate' and that 'his conduct is on the cusp between deliberate and reckless'. He gave the defendant full credit for his pleas of guilty.

8. Although the defendant tendered his plea on the basis of negligence the court found that the defendant's failings were reckless and he was sentenced on that basis.
9. The defendant self-reported his convictions to the ICAEW on 1 November 2017.
10. The defendant, having been convicted of an indictable offence, is liable to disciplinary action under DBL 4.2g.

The defendant's case

11. The defendant admitted the complaint.
12. The defendant relied on the following matters by way of mitigation:

He has no previous convictions.

His age (he was 30 at the time he was appointed as FD of 'A' Ltd) and he had no previous experience, expertise or knowledge of environmental regulations.

He was not directly involved in the day to day waste operations of 'A' Ltd and it was not his role to have a detailed oversight of operations. However he accepts there was a period in 2012 when he was particularly drawn into operational issues, following the resignation of the operations director and before the appointment of a new operations director.

He pleaded guilty on the basis of neglect.

He accepts he was out of his depth, but should have done more to challenge what was happening, and regretted that he did not deal with matters better.

One of his fellow directors gave evidence at the criminal hearing highlighting his innocence in relation to operational issues.

He did not deliberately set out to be part of an illegal business, to deceive others or to create the kind of risks to persons and the environment that ultimately transpired.

He did not benefit financially from the activities of 'A' Ltd, save for being on the payroll.

The conviction had been devastating personally and financially.

He had completed his community order and had returned to work as a practising accountant as a sole practitioner. He had learned from this experience. He wished to remain a member of the Institute and would do his best in the future to uphold its values.

Conclusions and reasons for decision

Matters proved by admission

13. The Tribunal found complaints 1, 2 and 3 proved by admission.

Matters relevant to sentencing

14. There were no previous disciplinary matters recorded against the defendant. The Tribunal took into account the matters advanced by the defendant, as set out above.
15. The Tribunal had regard to ICAEW's *Guidance on Sanctions*. The starting point for sanction where a member has been convicted of an offence for which he receives a custodial sentence, whether suspended or not, is exclusion.
16. The Tribunal was referred by the legal assessor to *CHRE v GDC and Fleischmann* [2005] EWHC 87. As a general principle, where a practitioner has been convicted of a serious criminal offence or offences he should not be permitted to resume his practice until he has satisfactorily completed his sentence. The defendant's suspended sentence will not expire until October 2019.
17. The Tribunal accepted that there was substantial mitigation. Whilst it does not excuse his failings, the Tribunal accepted the defendant was young, inexperienced and had been somewhat naïve. The Tribunal gave him credit for his remorse and apology and his very positive attempts to rehabilitate himself. It accepted that the likelihood of any repetition was extremely low.
18. However there is a clear public interest in maintaining the integrity and reputation of the profession. The defendant himself accepted he had brought the Institute into disrepute. These were very serious matters, as demonstrated by the sentence passed by the court. The Tribunal noted in particular that the judge, after hearing evidence at a Newton hearing, stated that although the defendant was not the prime mover he nonetheless consented to and supported the repeated flaunting of the environmental permits. These were very serious departures from the standards required of him as a professional accountant.
19. The Tribunal determined that there was no good reason to depart from the starting point set out in the *Guidance on Sanctions*. These convictions were incompatible with membership of a professional organisation. The appropriate and proportionate sanction was exclusion.
20. The Tribunal was aware that it had the power to make a recommendation that no application by the defendant for readmission be entertained for a specified period. The Tribunal did not consider that it was necessary in this case to make such a recommendation.
21. The IC applied for costs in the sum of £4,537. The Tribunal took account of the information provided by the defendant as to his means. It considered that the amount claimed was reasonable and there were no grounds for reducing the amount awarded from that claimed. The Tribunal allowed these to be paid in instalments over a period of 12 months.

Sentencing order

22. Therefore in the Tribunal's view the appropriate and proportionate sanction was to exclude the defendant from membership of the ICAEW.
23. The Tribunal ordered the defendant to pay costs of £4,537. These may be paid by 11 monthly instalments of £380 and a final instalment of £357, with the first payment on 1st April 2019.

Decision on publicity

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

Chairman

Mr Ron Whitfield

Accountant Member

Mr Mike Ranson FCA

Non Accountant Member

Mrs Jane Rees

Legal Assessor

Mr Andrew Granville Stafford

041493

2. Mr Christopher James Lloyd FCA
of Tring, United Kingdom

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 27 February 2019

Type of Member Member

Terms of Complaint

Mr C J Lloyd FCA failed to provide by 8 May 2018 the information, explanations and documents requested in a letter dated 19 April 2018 issued under Disciplinary Bye-law 13.

Mr C J Lloyd FCA is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.c.

Hearing dates 27 February 2019

Previous hearing dates N/A

Pre-hearing review or final hearing Final hearing

Complaint found proved Yes

Sentencing order The defendant must comply with the PCD's request for information by 31 March 2019
No other sanction
Costs of £2,737

Procedural matters and findings

Parties and representation The Investigation Committee ('IC') was represented by Mrs Silpa Tozar
The defendant, Mr Christopher James Lloyd, 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 4 and 5 of the Disciplinary Committee Regulations

Documents considered by the Tribunal The Tribunal considered the documents contained in the Investigation Committee's bundle

Proceeding in absence

1. Notice of the hearing was sent by post to the defendant on 7 January 2019. The notice was sent to his registered address in Tring, Hertfordshire. The Tribunal was satisfied that service had been effected in accordance with Regulations 4 and 5 of the Disciplinary Committee Regulations.

2. No response has been received to the notice of hearing, and no request for an adjournment has been made. The Tribunal was referred to the Court of Appeal case of *GMC v Adeogba* [2016] and the principles set out there.
3. The Tribunal was satisfied that no useful purpose would be served in adjourning the hearing and that there was a clear public interest in proceeding in the defendant's absence.

The Investigation Committee's case

4. The defendant has been a member of the ICAEW since 1975. He does not currently hold a practising certificate.
5. The ICAEW received a letter of complaint dated 13 November 2015 from Mr 'A' alleging failures by the defendant in relation to the administration of two trusts. Mr 'A' also complained of a failure by the defendant to respond to correspondence.
6. An ICAEW case manager wrote to the defendant on 15 January 2016 requesting his response to Mr 'A's' complaint. There was no reply to this letter.
7. A chaser letter was sent on 29 January 2016. On 8 February 2016 the defendant telephoned the case manager and it was agreed that he could have until 19 February 2016 to provide a substantive response. That deadline was extended on two occasions at the defendant's request, firstly to 23 February 2016 and then to 17 March 2016.
8. On 14 April 2016 the case officer informed the defendant that, as no substantive response had been received, the matter had been transferred to an investigation.
9. At the request of the defendant, who had been suffering ill health, a further extension was agreed until 31 May 2016. On 31 May 2016 the defendant telephoned and asked for a further extension. The case manager said no further extension would be granted. The following day, on 1 June 2016, a formal notice under Disciplinary Bye-Law ('DBL') 13 was sent to the defendant, requiring him to provide information in relation to the complaint by 16 June 2016. No response was received.
10. On 19 April 2018 a further formal request under DBL 13, in the same terms as the June 2016 request, was sent to the defendant by post and email. A deadline of 8 May 2018 was given for a reply.
11. The defendant telephoned on 15 and 16 May 2018 to request an extension but the case officer was not available to take his call. She emailed the defendant on 18 May 2018 saying she was not able to provide a further extension and noting that the information required had been requested on a number of previous occasions dating back over two years.
12. There has been no further contact from the defendant since May 2018.
13. The IC's case was that, by failing to reply to the DBL 13 request sent on 19 April 2018, the defendant has breach an ICAEW bye-law. He is liable to disciplinary action under Disciplinary Bye-law 4.1.c.

Conclusions and reasons for decision

Decision on complaint

14. The Tribunal considered the documents relied on by the IC. It was clear that a formal request under DBL had been made to the defendant to provide information in relation to the complaint on 19 April 2018. This had been sent by both letter and email to the defendant's registered addresses. A response was required by 8 May 2018.

15. The defendant failed to comply with this request and therefore has failed to provide the information required to assist the ICAEW to deal with Mr 'A's' complaint. The Tribunal therefore found the complaint proved.

Matters relevant to sentencing

16. The Tribunal was informed that there was a previous disciplinary finding against the defendant which was made on 18 April 2018. That finding also related to the defendant's failure to comply with the PCD's request for information regarding Mr 'A's' complaint. The Disciplinary Committee on that occasion found that the defendant had failed to comply with a DBL 13 request for information which made on 1 June 2016 (referred to in paragraph 9 above).
17. The defendant was reprimanded, fined £2,500 and ordered to pay costs. He was directed to pay the fine and costs by instalments over a period of 25 months. The Tribunal was informed that the defendant is up-to-date with his instalment payments.
18. The Tribunal considered that it was very relevant that the defendant has already been disciplined for failing to provide the PCD with information regarding to Mr 'A's' complaint. At the previous hearing in April 2018 no order was made requiring the defendant to provide the information requested. The Tribunal considered that, whilst it was not necessary to impose a further sanction for what was effectively the same failing, it was important to ensure that the information requested was now provided.
19. The Tribunal therefore ordered that the defendant provide the information which has been previously requested of him so that the PCD can progress its investigation into Mr 'A's' complaint. This information must be provided in full by 31 March 2019.
20. The IC applied for costs in the sum of £2,737. The Tribunal was satisfied that these costs had been incurred due to the defendant's failure to comply with the PCD's request for information and therefore should be paid by the defendant in full.

Sentencing order

21. The Tribunal ordered the defendant to provide in full the information requested by the PCD in its letter to the defendant dated 19 April 2018 by no later than 31 March 2019. The Tribunal did not impose any additional sanction.
22. The Tribunal ordered the defendant to pay costs of £2,737.

Decision on publicity

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

Chairman

Mr Ron Whitfield

Accountant Member

Mr Michael Barton

Non Accountant Member

Ms Martha Maher

Legal Assessor

Mr Andrew Granville Stafford

044188

3. Mr Michael Raymond Watson FCA
of Lydney, Gloucestershire, United Kingdom

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 27 February 2019

Type of Member Member

Terms of Complaint

Mr M R Watson FCA failed to provide by 29 March 2018, the information, explanations and documents requested in a letter dated 18 January 2018 and re-served by e-mail on 8 February 2018, issued under Disciplinary Bye-law 13

Mr M R Watson FCA is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.c.

Hearing date 27 February 2019

Previous hearing dates N/A

Pre-hearing review or final hearing Final hearing

Complaint found proved Yes

Sentencing order Severe reprimand
Fine £5,000
Order that the defendant provide the requested information by 31 March 2019, failing which his practising certificate will be withdrawn
Costs of £3,587

Procedural matters and findings

Parties and representation The Investigation Committee ('IC') was represented by Mrs Silpa Tozar
Mr Michael Raymond Watson ('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 4 and 5 of the Disciplinary Committee Regulations

Documents considered by the Tribunal The Tribunal considered the documents contained in the Investigation Committee's bundle

Proceeding in absence

24. Notice of the hearing was sent by post to the defendant on 2 January 2019. The notice was sent to his registered address. The Tribunal was satisfied that service had been effected in accordance with Regulations 4 and 5 of the Disciplinary Committee Regulations.

25. No response has been received to the notice of hearing. No application had been made for an adjournment. The Tribunal was satisfied that no useful purpose would be served in adjourning the hearing and that there was a clear public interest in proceeding in the defendant's absence.

The Investigation Committee's case

26. The defendant has been a member of the ICAEW since 1964.
27. On 11 August 2016, following a practice assurance visit, the Practice Assurance Committee (PAC) referred the defendant to the Professional Conduct Department. The referral related to potential breaches of the Clients' Money Regulations and the Money Laundering Regulations.
28. On 28 September 2016 a letter was sent to the defendant notifying him that the investigation had been commenced. The letter informed him that the matters under investigation related to the his compliance with the rules regarding the holding of client money, the administration of client and office accounts and whether customer due diligence and risk assessments were being carried out on clients.
29. There was correspondence between the ICAEW's Professional Conduct Department ('PCD') relating to these allegations between October 2016 and October 2017. During the course of that correspondence:
 - The defendant said he was not receiving letters sent by post. He was however receiving emails.
 - The defendant said he [PRIVATE]
 - The defendant said he had lost his laptop in or around November 2016 and had reported this to the police.
30. Further letters were sent by the PCD regarding the investigation on 24 October 2017 and 21 November 2017. There was no reply from the defendant.
31. On 6 December 2017 the PCD wrote to the defendant chasing a response to the earlier correspondence and warning him that that a failure to comply may lead to disciplinary action. A copy was also sent by email.
32. On 7 December 2017 the defendant replied saying there were difficulties with the post in the building he had his office in and the correspondence had only just come to his attention. He said he would respond as soon as he could.
33. The defendant emailed the PCD on 19 December 2017 [PRIVATE]
34. On 8 January 2018 the defendant emailed the PCD saying that he [PRIVATE] Mr Watson also said it looked like he would have to cease trading.
35. A formal request for information under DBL 13 was made by letter on 18 January 2018. A copy of that request was also sent by email on 8 February 2018.
36. On 11 February 2018 the defendant sent an email saying [PRIVATE] Mr Watson said he would respond to the queries as quickly as he could. He explained he had been busy preparing tax returns in January 2018 and accounts in February 2018.
37. The PCD received a further email from the defendant on 18 February 2018 [PRIVATE]
38. An email was sent by PCD on 23 February 2018 requesting an update [PRIVATE]
39. The defendant was notified by email on 29 March 2018 that, due to his failure to respond to either the e-mail dated 23 February 2018 or the letter dated 18 January 2018 he would be reported to the IC.

40. The IC's case was that, by failing to reply to provide the information required request sent by letter on 18 January 2018 and by email on 8 February 2018, the defendant had breached Disciplinary Bye-law ('DBL' 13). He is therefore liable to disciplinary action under DBL 4.1.c.

Conclusions and reasons for decision

Decision on complaint

41. The Tribunal considered the documents relied on by the IC. It was clear that a formal request under DBL 13 had been made to the defendant on 18 January 2018. That request was made again by email on 8 February 2018. The defendant had failed to provide information in relation to the matters under investigation by 29 March 2018. Indeed, the defendant had not responded at all to these requests.
42. The Tribunal therefore found the complaint proved.

Matters relevant to sentencing

43. The Tribunal was informed that there were previous disciplinary matters recorded against the defendant.
44. On 9 December 2014 the Disciplinary Committee found a complaint that the defendant failed to co-operate with the ICAEW by failing to allow a quality assurance visit proved. He was severely reprimanded, fined £1,000 and ordered to pay costs. The Tribunal considered that this previous finding was an aggravating feature as it also related to a failure by the defendant to comply with his obligations as a member of the Institute.
45. The Tribunal was also informed that a finding had been made against the defendant by the Disciplinary Committee in 2006. It considered that, given the age of this finding, it was not relevant to sentencing.
46. The Tribunal had regard to ICAEW's *Guidance on Sanctions* ('GDS').
47. Section 10(a) of the GDS covers cases where a member has failed to comply with a DBL 13 request. Where there has been no response at all the starting point is a severe reprimand and a fine of £5,000. Where there has been some response but not all information has been provided the starting point is a severe reprimand and a fine of £3,000.
48. In the Tribunal's view the appropriate and proportionate sanction was to severely reprimand the defendant and in addition to impose a fine. It considered the appropriate amount for the fine was £5,000, bearing in mind that no information had at all had been provided in response to the request and that the investigation concerned potentially serious allegations relating to the holding and management of client money.
49. The Tribunal further ordered that the defendant must comply in full with request for information that has been made by the Professional Conduct Department by no later than 31 March 2019.
50. The Tribunal has the power under DBL 22.4 and 22.10 to order that a member's practising certificate be withdrawn either permanently or for a specified period and subject to such terms and conditions as it considers appropriate. Given the serious nature of the defendant's failing the Tribunal determined that, should the defendant fail to provide the information requested by the date ordered, his practising certificate will be withdrawn.
51. The IC applied for costs in the sum of £3,587. The Tribunal considered that there was no reason why the defendant should not pay the costs in full.

Sentencing order

52. The Tribunal ordered that the defendant be severely reprimanded and fined £5,000.
53. The Tribunal ordered that defendant must comply in full with the request made by the Professional Conduct Department in its letter to the defendant dated 18 January 2018 by no later than 31 March 2019.
54. The Tribunal further ordered that unless the defendant complies in full with the request to the satisfaction of the Head of Investigations of the Professional Conduct Department by 31 March 2019 his practising certificate will be permanently withdrawn with immediate effect.
55. The Tribunal ordered the defendant to pay costs to the ICAEW of £3,587.

Decision on publicity

56. The Tribunal directed that a record of this decision shall be published and the defendant shall be named in that record. The Tribunal [PRIVATE]

Chairman

Mr Ron Whitfield

Accountant Member

Mr Michael Barton

Non Accountant Member

Ms Martha Maher

Legal Assessor

Mr Andrew Granville Stafford

042800

APPEAL COMMITTEE ORDERS

4. Miss Deborah Annells BSc [ACA] of Maidstone, United Kingdom

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 22 January 2019 and 25 March 2019

Type of Member	Member
Date of Disciplinary Tribunal Hearing	16 May 2018
Dates of Appeal Panel Hearing	22 January 2019 and 25 March 2019

Terms of complaint found proven before the Disciplinary Tribunal

Complaint

1. On dates between 2009 and 2013 Ms Deborah Annells BSc ACA:
 - a. stole various 'choses in action' in various sums of US and UK currency;
 - b. made false representations with an intent to defraud 'A' by inducing him to believe that two sums of £500,500.00 had been transferred from a Bank Account in the name of 'B' Ltd's Client's account to a bank account in the name of 'C' Ltd Client Hub Account and thereby not take prompt action against her for recovery of these sums and
 - c. possessed a bank statement dated 23 July 2011 in relation to bank account 'G' which she knew or believed to be false with the intention that she or another use it to induce somebody to accept it as genuine, and by reason of so accepting it to act or omit to act to his or any other persons prejudice.

As a consequence of this behaviour she was subsequently convicted on 4 July 2016 in the High Court of the Hong Kong Special Administrative Region Court of First Instance of:

- a. forty five counts of theft contrary to section 9 of the Theft Ordinance Cap 210 Hong Kong;
 - b. one count of fraud contrary to section 16a of the Theft Ordinance Cap 210 Hong Kong and
 - c. one count of possessing a false instrument contrary to section 75(1) of the Crimes Ordinance Cap 200 Hong Kong.
2. On dates in April 2014 Ms Deborah Annells BSc ACA:
 - a. falsely represented to an agent of 'D', in a Memorandum of Understanding, that the aggregate consideration for purchase of 90% of 'E' Limited's issued and paid up capital would be \$1m US dollars and that the Memorandum was initialled by 'F';
 - b. Produced to a court, in an application for bail, a Memorandum of Understanding dated 24 March 2014 which falsely represented that the aggregate consideration for purchase of 90% of 'E' Limited's issued and paid up capital would be \$1m US dollars and that it was initialled by 'F'; and

c. Possessed a Memorandum of Understanding dated 24 March 2014 which she knew or believed to be false with the intention that she or another use it to induce somebody to accept it as genuine, and by reason of so accepting it to act or omit to act to his or any other persons prejudice.

As a consequence of this behaviour she was subsequently convicted on the 9 October 2015 in the District Court of the Hong Kong Special Administrative Region of:

a. attempted fraud contrary to section 16a of the Theft Ordinance Cap 210 and sections 159g and 159j of the Crimes Ordinance Cap 200;

b. doing an act tending and intended to pervert the course of public justice contrary to common law and punishable upon section 1011(5) of the Criminal Procedure Ordinance Cap 221 and

Miss Deborah Annells is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a

4.1.a 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.

Sentencing Order of the tribunal of the Disciplinary Committee

Complaint found proved

Miss Annells be excluded from Membership

Appeal against finding?	Yes
Appeal against Sentencing order?	Yes
Appeal against Costs	N/A
Decision of Appeal Panel	Appeal allowed in part

Procedural matters and findings

- 1 The Appellant represented herself. Ms Silpa Tozer appeared on behalf of the Investigation Committee.
- 2 The hearing was in public.
- 3 The Appellant had made an application prior to the hearing on 22 January 2019 for permission to adduce documentary evidence and materials which were not before the Disciplinary Committee. This application was granted and the relevant materials were produced by the Appellant to the Appeal Committee.

Grounds of appeal

- 4 The Disciplinary Committee was wrong to refuse to allow a further adjournment and to proceed in the Appellant's absence.
- 5 The Disciplinary Committee was wrong to find all of the heads of complaint proved.

- 6 The courts of Hong Kong are not to be regarded as a court of competent jurisdiction and therefore the Appellant's convictions cannot be regarded as conclusive evidence of an act or default for the purposes of Disciplinary Bye-Law 4.1.
- 7 The sanction of exclusion was excessive. Any exclusion from membership should have been for a temporary period only.

Decision

- 8 The Appeal Committee considered the reasons advanced by the Disciplinary Committee for proceeding in the Appellant's absence were not sufficient to displace the Appellant's right to be present and to make representations.
- 9 The conviction included at paragraph 1(c) of the complaint did not directly correspond to an indictable offence in England and Wales and therefore did not fall within the scope of Disciplinary Bye Law 4.2.
- 10 The Disciplinary Committee was correct to find that the Hong Kong courts were courts of competent jurisdiction.
- 11 Exclusion from membership was the appropriate sanction.

Reasons for decision

- 12 The Appellant had been convicted of the offences following a trial in relation to the offences specified in paragraph 2 of the complaint and by her pleas of guilty to the offences referred to in paragraph 1 of the complaint. The decisions of the two courts in Hong Kong resulted in the Appellant being sentenced to a total term of imprisonment of 10 years 6 months.
- 13 As a result an agreement between the United Kingdom Government and the Hong Kong Special Administrative Region of the People's Republic of China, the Appellant was entitled to be transferred to the United Kingdom to complete her sentence. She returned to the United Kingdom on 11 May 2018, five days prior to the date set for the Disciplinary Committee hearing. She requested an adjournment in the hope that this would enable her to attend a subsequent hearing in person, if the terms of her custodial sentence allowed, or to seek representation if not.
- 14 The Disciplinary Committee refused the request because it considered that the matter had been adjourned once before (at a time when the Appellant was in Hong Kong awaiting transfer), that there was no reasonable prospect of her attending a subsequent hearing because of the length of her custodial sentence, that she had the opportunity to seek legal representation and to present all of the written material she wished and that it was in the public interest that the matter was heard without undue or unreasonable delay.
- 15 The Appeal Committee, whilst recognising the wide discretion afforded to a Disciplinary Committee in determining whether it should proceed in a member's absence, considered that on this occasion the discretion had not been exercised correctly. The Appeal Committee noted that this was not a situation where the Appellant could be said to have waived her right to attend. It was plain from the correspondence that she wished to attend or be represented and the Appeal Committee considered that there was no risk to the public in a short, further delay to make the necessary arrangements to enable her case to be presented at a hearing, given that the Appellant was subject to a term of imprisonment. Given the overriding requirement for fairness, the Appeal Committee considered that the Appellant's request for an adjournment ought to have been allowed.

- 16 As the Appellant had fully presented her case before it, including adducing additional documentary materials which had not been before the Disciplinary Committee, the Appeal Committee considered that it was able to consider the merits of her other grounds of appeal and the case generally.
- 17 The Appeal Committee accepted that the offence referred to in paragraph 1(c) of the complaint did not directly correspond to an indictable offence in England and Wales. Whilst there is an offence of possessing a false instrument by virtue of s.5 of the Forgery and Counterfeiting Act 1981, the definition of a false instrument in the Act appears to be narrower than that specified under Hong Kong law. In the circumstances, the Appeal Committee determined that the offence in paragraph 1(c) of the complaint should not be regarded as conclusive evidence of an act or default for the purposes of Disciplinary Bye-Law 4.2(g). This head of complaint was therefore not proved. The Appeal Committee was satisfied that the other offences included as part of the complaint did correspond to indictable offences in England and Wales.
- 18 Although the Appeal Committee accepted that the Appellant's personal perception of the Hong Kong court process was genuinely held, it was entirely satisfied that the Disciplinary Committee had been correct in finding that the Hong Kong courts were to be regarded as courts of competent jurisdiction for the reasons it gave. In addition, the fact of the agreement whereby the UK Government respect and enforce the sentencing decisions of the Hong Kong courts demonstrates that the latter must be regarded as being of competent jurisdiction. Paragraphs 1(a) and (b) and paragraph 2 of the complaint were therefore proved.
- 19 In considering sanction, the Appeal Committee noted that the ICAEW's Guidance on Sanctions had been amended since the hearing before the Disciplinary Committee. The Appeal Committee considered that it ought to apply the Guidance on Sanctions effective from 1 July 2018, as it considered that this would have been the applicable Guidance if the Disciplinary Committee had permitted an adjournment of its hearing. It was noted by the Appeal Committee that there was a material change in the terms of the Guidance as the previous paragraph 24, whereby a Committee imposing an exclusion order was permitted to make recommendations as to the circumstances in which any application for readmission might be made, has now been removed.
- 20 In the circumstances, the Appeal Committee determined that it would be appropriate to set aside the Disciplinary Committee's decision as to sanction (including its recommendations as to readmission) and to consider the matter afresh in accordance with the terms of the Guidance effective from 1 July 2018.
- 21 For a conviction involving dishonesty/breach of trust/money laundering, the starting point specified in the updated Guidance is exclusion. The Appeal Committee considered that aggravating factors were the amounts involved and that the Appellant had been in a position of trust. It accepted that the offences in paragraph 1 of the complaint had involved guilty pleas, which was to be regarded as a mitigating factor. Applying the relevant factors of the sanctions policy and taking into account the serious nature of the offences as well as the Appellant's evidence and her personal circumstances, the Appeal Committee determined that exclusion was the only appropriate sanction which could be imposed.

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

Mr Angus Withington
Mrs Sandra Mundy FCA
Mr Richard Lea FCA
Mrs Maureen Brennan
Ms Ruth Todd

004801

INVESTIGATION COMMITTEE CONSENT ORDERS

5. HJS Accountants Limited

Consent order made on 1 April 2019

With the agreement of HJS Accountants Limited of SOUTHAMPTON, UNITED KINGDOM the Investigation Committee made an order that the firm be reprimanded, fined £5,250 and pay costs of £3,655 with respect to complaints that:

1. On 21 December 2011, Hunt Johnston Stokes Limited (now known as HJS Accountants Limited) issued an unqualified audit report in the name of HJS on the financial statements of 'X' for the year ended 31 March 2011, when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:

- (a) the recognition of expenditure in the correct financial period, and/or
 - (b) the accuracy, existence and completeness of donations income, and/or
 - (c) the recognition of events income in the correct financial period
- to be able to draw reasonable conclusions on which to base the audit opinion.

2. On 21 December 2012, Hunt Johnston Stokes Limited (now known as HJS Accountants Limited) issued an unqualified audit report in the name of HJS on the financial statements of 'X' for the year ended 31 March 2012, when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:

- (a) the accuracy, existence and completeness of donations income, and/or
 - (b) the recognition of donations and events income in the correct financial period
- to be able to draw reasonable conclusions on which to base the audit opinion.

3. On 5 September 2013, Hunt Johnston Stokes Limited (now known as HJS Accountants Limited) issued an unqualified audit report in the name of HJS on the financial statements of 'X' for the year ended 31 March 2013, when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:

- (a) the accuracy, existence and completeness of events income, and/or
 - (b) the recognition of donations and events income in the correct financial period
- to be able to draw reasonable conclusions on which to base the audit opinion.

4. On 3 September 2014, Hunt Johnston Stokes Limited (now known as HJS Accountants Limited) issued an unqualified audit report on the financial statements of 'X' for the year ended 31 March 2014, when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:

- (a) the recognition of donations and events income in the correct financial period,
- and/or

- (b) the recognition of expenditure in the correct financial period
- to be able to draw reasonable conclusions on which to base the audit opinion'.

034637

6. Mrs Helen Martin ACA

Consent order made on 1 April 2019

With the agreement of Mrs Helen Martin of WARRINGTON, UNITED KINGDOM the Investigation Committee made an order that she be severely reprimanded, fined £4,200 and pay costs of £2,024 with respect to complaints that:

1. Mrs Helen Martin ACA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51a as follows:

- a. Between 6 April 2010 until 7 April 2013 as a principal of the 'X';
- b. Between 8 April 2013 and 30 March 2018 as director of 'Y';
- c. Between 30 November 2016 to 19 September 2018 as sole director and principal of 'Z'.

2. Between 5 December 2016 and 16 April 2018 Mrs Helen Martin ACA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations”.

043512

7. Riley & Co Limited

Consent order made on 1 April 2019

With the agreement of Riley & Co Limited of HALIFAX, UNITED KINGDOM the Investigation Committee made an order that the firm be reprimanded, fined £7,000 and pay costs of £5,048.75 with respect to complaints that:

1. In the period to 25 November 2010 Riley & Co Limited assisted with the preparation and compilation of the financial statements of 'X' Limited for the year ended 31 August 2010 which failed to comply with the methods and principles of the Accounting and Reporting by Charities: Statement of Recommended Practice ('SORP') in that the financial statements failed to:
 - i) include details of a property gifted to the company which resulted in the company incorrectly claiming exemption from audit, and / or
 - ii) disclose sufficient details of charitable expenditure to provide an understanding of the nature of activities undertaken and the resources expended on those activities to comply with paragraphs 191-194 of the SORP.
2. On 16 February 2012 Riley & Co Limited issued an unqualified audit report on the financial statements of 'X' Limited for the year ended 31 August 2011 when:
 - i) the financial statements had not been properly prepared in accordance with the SORP in relation to the accounting of treatment of a property gifted to the company, and/or
 - ii) the audit was not conducted in accordance with ISA 500 'Audit Evidence' in that the firm failed to obtain sufficient and/or appropriate audit evidence to confirm the accounting treatment of capital build costs included in revenue expenditure was appropriate, and/or
 - iii) the financial statements failed to disclose sufficient details of charitable expenditure to provide an understanding of the nature of activities undertaken and the resources expended on those activities to comply with paragraphs 191-194 of the SORP.
3. On 27 March 2013 Riley & Co Limited issued an unqualified audit report on the financial statements of 'X' Limited for the year ended 31 August 2012 when the financial statements failed to disclose sufficient details of charitable expenditure to provide an understanding of the nature of activities undertaken and the resources expended on those activities to comply with paragraphs 191-194 of the SORP.
4. On 28 May 2014 Riley & Co Limited issued an unqualified audit report on the financial statements of 'X' Limited for the year ended 31 August 2013 when the financial statements failed to disclose sufficient details of charitable expenditure to provide an understanding of the nature of activities undertaken and the resources expended on those activities to comply with paragraphs 191-194 of the SORP.
5. On 5 May 2015 Riley & Co Limited issued an unqualified audit report on the financial statements of 'X' Limited for the year ended 31 August 2014 when the financial statements failed to disclose sufficient details of charitable expenditure to provide an understanding of the nature of activities undertaken and the resources expended on those activities to comply with paragraphs 191-194 of the SORP.

036240

INVESTIGATION COMMITTEE FIXED PENALTY ORDERS

8. Mr John Whitehead ACA

Penalty order made on 6 February 2019

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

With the agreement of Mr John Whitehead ACA, the Investigation Committee ordered that Mr John Whitehead ACA, of Gwynedd, UNITED KINGDOM be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

Mr John Whitehead ACA, when advised at a QAD visit on 12 August 2009 that his firm was not registered with the Information Commissioner as required by the Data Protection Act 1998, confirmed on behalf of his firm JRW that:

'I will deal with this immediately'

but at a QAD telephone visit on 20 December 2017, it was found that the assurance had not been complied with.

046123

AUDIT REGISTRATION COMMITTEE

ORDER – 13 FEBRUARY 2019

9. Publicity Statement

Edwards Veeder (UK) Limited of Ground Floor, 4 Broadgate, Broadway Business Park, Chadderton, Greater Manchester, OL9 9XA, has agreed to pay a regulatory penalty of £5,600, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.01, in that a spouse of a director in the firm held a financial interest in an audit client.

026133

ORDER – 13 FEBRUARY 2019

10. Publicity Statement

Ridgefield Consulting Ltd, 2 Hinksey Court, Church Way, Oxford, OX2 9SX, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 6.06 and 3.20 for failing to comply with an undertaking to arrange and submit the results of external cold file reviews of its audits.

045708

ORDER – 16 JANUARY 2019

11. Publicity Statement

N.S. Amin & Co, 334-336 Goswell Road, London, EC1V 7RP, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 6.06 for failing to comply with an undertaking to engage a training organisation to conduct one of its external cold file reviews.

009276

PROBATE COMMITTEE

ORDER – 28 FEBRUARY 2019

12. Publicity Statement

Fairman Harris, Third Floor North, 224-236 Walworth Road, London, SE17 1JE to pay a regulatory penalty of £1,000 for breach of Regulations 2.7b, 2.7f, 2.7g and 2.7j of the *Probate Regulations*.

ORDER – 28 FEBRUARY 2019

13. Publicity Statement

Price Pearson Limited, Finch House, 28-30 Wolverhampton Street, Dudley, DY1 1DB to pay a regulatory penalty of £1,000 for failing to ensure that the relevant principals held affiliate status in breach of Regulation 2.4f of the *Probate Regulations*.

ORDER – 28 FEBRUARY 2019

14. Publicity Statement

Alliotts, Friary Court, 13-21 High Street, Guildford, Surrey, GU1 3DL to pay a regulatory penalty of £1,500 for the firm's failure to notify ICAEW within 10 business days of changes to the structure of the firm that affected non-authorized owner requirements under regulations 6.2 and 2.71 of the *Probate Regulations*.

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