



DISCIPLINARY ORDERS AND REGULATORY DECISIONS

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Disciplinary orders

Disciplinary Committee tribunal orders

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mr Peter John Silver [FCA] of

The Hollies, 16 St. Johns Street, Bridgnorth, Shropshire, WV15 6AG.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 8 November 2016

Type of Member Member

Terms of complaint

1. In or around February 2014 Mr Peter Silver FCA accepted appointment as reporting accountant for 'A' but failed to apply customer due diligence measures as required by regulation 7 of The Money Laundering Regulations 2007.
2. On 25 March 2014 Mr Peter Silver FCA signed an accountant's report, which was submitted to the Solicitors Regulation Authority, in respect of 'A' for the period ended 30 September 2013 but failed to:
 - a. ensure that his rights and duties as the reporting accountant were set out in a letter of engagement to comply with Rule 35 of the Solicitors Accounts Rules.
 - b. examine the accounting records of the practice and ensure he directed the completion of the checks and tests required under Rule 39 of the Solicitors Accounts Rules.
 - c. examine the accounting records of the practice at the offices of 'A' when there were no exceptional circumstances to prevent this as required by Rule 37 of the Solicitors Accounts Rules.
3. On 21 June 2013 Mr Peter Silver FCA issued an audit report in the name of his firm, Silver & Co, on the financial statements of 'B' PLC for the year ended 31 December 2012 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland) including:
 - a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner.
 - b. 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
 - evidence that the audit was performed in accordance with International Standards on Auditing (UK and Ireland) and applicable legal and regulatory requirements.
 - c. 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.

- d. International Standard on Auditing (UK and Ireland) 600 'Special Considerations – Audit of Group Financial Statements (including the Work of Component Auditors)' in that the firm failed to:
 - assess the components auditors competence; and
 - ensure that the engagement team was involved in the work of the component auditor to the extent necessary to obtain sufficient appropriate audit evidence.
4. On 30 May 2014 Mr Peter Silver FCA issued an audit report in the name of his firm, Silver & Co, on the financial statements of 'B' PLC for the year ended 31 December 2013 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland) including:
 - a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner.
 - b. 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
 - evidence that the audit was performed in accordance with International Standards on Auditing (UK and Ireland) and applicable legal and regulatory requirements.
 - c. 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.
 - d. International Standard on Auditing (UK and Ireland) 600 'Special Considerations – Audit of Group Financial Statements (including the Work of Component Auditors)' in that the firm failed to:
 - assess the components auditors competence; and
 - ensure that the engagement team was involved in the work of the component auditor to the extent necessary to obtain sufficient appropriate audit evidence.
5. On 4 September 2013 Mr Peter Silver FCA issued an audit report in the name of his firm, Silver & Co, on the financial statements of 'C' PLC for the year ended 31 March 2013 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland) including:
 - a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner.
 - b. 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
 - evidence that the audit was performed in accordance with International Standards on Auditing (UK and Ireland) and applicable legal and regulatory requirements.

- c. 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.
6. On 2 September 2014 Mr Peter Silver FCA issued an audit report in the name of his firm, Silver & Co, on the financial statements of 'C' PLC for the year ended 31 March 2014 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland) including:
 - a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner.
 - b. 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
 - evidence that the audit was performed in accordance with International Standards on Auditing (UK and Ireland) and applicable legal and regulatory requirements.
 - c. 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.
7. On 2 September 2014 Mr Peter Silver FCA issued an audit report in the name of his firm, Silver & Co, on the financial statements of 'D' Ltd for the year ended 31 March 2014 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland) including:
 - a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner.
 - b. 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
 - evidence that the audit was performed in accordance with International Standards on Auditing (UK and Ireland) and applicable legal and regulatory requirements.
 - c. 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.
8. On 2 September 2014 Mr Peter Silver FCA issued an audit report in the name of his firm, Silver & Co, on the financial statements of 'E' Ltd for the year ended 31 March 2014 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland) including:
 - a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner.

- b. 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
 - evidence that the audit was performed in accordance with International Standards on Auditing (UK and Ireland) and applicable legal and regulatory requirements.
 - c. 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.
9. Mr Peter Silver FCA, following a QAD visit between 27 and 29 May 2014, signed the following audit reports in the name of his firm, Silver & Co, without taking into account the findings of the QAD Reviewer in respect of the prior year audit files:
- a. 'B' PLC, year ended 31 December 2013 – signed on 30 May 2014
 - b. 'C' PLC, year ended 31 March 2014 – signed on 2 September 2014

Peter John Silver is therefore liable to disciplinary action under:

Disciplinary Bye-law 4.1(b) for heads one to eight - "...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."

Disciplinary Bye-law 4.1(a) for head nine - "...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

8 November 2016

Previous hearing date

26 July 2016 (written directions issued)

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order Exclusion

Procedural matters and findings

Parties present Mr Peter Silver was present on 26 July 2016 but was not present on 8 November 2016

Represented Mr Peter Silver was not represented. The Investigation Committee (IC) was represented by Mr James Francis.

Hearing in public or private The hearing was in public.

Decision on service

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

Documents considered by the tribunal

The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle, the bundle of documents submitted by the defendant (entitled "defendant Representations"), the defendant's Regulation 13 Answers, the defendant's Statement of Means and correspondence from the defendant and Mr 'F' including a letter from the defendant's doctor.

Findings on Preliminary MattersThe Hearing of 26 July 2016

1. This complaint was originally going to be heard on 26 July 2016. On that day, the defendant appeared in person without legal representation, with his adult son Mr 'F' and a member who came to support him, who was also a member of ICAEW's Council. The complaint was read into the record and the defendant stated that he (strongly) denied the complaint. However, it soon became clear to the tribunal that the defendant was not adequately prepared to respond substantively to the complaint which was both lengthy and set out in considerable detail. Not only was there no written defence to the complaint for the IC or the tribunal to consider, but the defendant seemed unable to address each head of complaint precisely and adequately to explain to the tribunal why and how he denied it. The tribunal considered that it would not be fair or appropriate to continue with the hearing on that day. Instead, it took the opportunity to make directions and to adjourn the matter to 8 and 9 November 2016. The main purpose of the directions was to elicit precise reasons from the defendant why he was denying each head of the complaint, to enable (i) him to defend himself better and (ii) the IC and the tribunal to understand that defence.
2. Also at the hearing on 26 July 2016, the defendant complained about poor health and the tribunal made a direction about adducing evidence of that.
3. Head two of the complaint relates to an alleged defective report prepared by the defendant and sent to the Solicitors Regulation Authority ("the SRA") pursuant to the Solicitors Accounts Rules 2011. It was prepared on behalf of a client called 'A'. On 26 July 2016 the Chairman of the tribunal disclosed to the defendant and the IC that he had been the Chair of the SRA Board in the period 2005 – 2009. The Legal Assessor, who is a solicitor in private practice, disclosed that he was currently employed as an Adjudicator by the SRA, and had been so at the time of the events cited in head of complaint 2. Neither the Chairman nor the Legal Assessor considered that these facts presented them with a conflict of interest; in particular, neither person knew the defendant or 'A' or had had anything to do with the subject matter of head of complaint 2. The defendant and the IC did not raise any objections after these disclosures were made. Before the hearing on 26 July 2016, it had been disclosed to the defendant that the Accountant Member of the tribunal had a distant professional connection with PricewaterhouseCoopers. The defendant did not object to him being a member of the tribunal; he said he was "*happy to proceed*" with that person as a member.

4. The defendant has not complied with the directions which were made on 26 July 2016, except that he submitted a bundle of photocopied documents entitled “Defendant’s Representations” which included as document 40 an undated document entitled “Defence” and, on 4 November 2016, a letter from his doctor. In particular, and crucially, he has not explained in detail, and in the manner anticipated in the directions of 26 July 2016, why the heads of complaint were denied. He provided no witness statements.

Mr ‘F’s Undated Letter to the tribunal

5. After the hearing on 26 July 2016, Mr ‘F’ sent an undated letter to the tribunal in his stated capacities as (i) Managing Director of ‘G’ Ltd, (ii) the defendant’s employer; (iii) the “*controller of his professional activities*” and (iv) as his son.
6. Mr ‘F’ expressed his opinion (“*on [the] record*”) that he failed “*to see any justification for this whole situation*” for a number of reasons. Some of those reasons will be considered below as part of the substantive defence to the complaint; others should be considered at this juncture.
7. At paragraph (e) of his letter, Mr ‘F’ wrote “*The Chairman and Legal advisor [sic] of the hearing have had an intrinsic interest in the Solicitor’s Account rules [sic] and clearly feel its chapter and verse are extremely important despite the fact that this has recently been substantially reformatted by the industry itself due to its irrelevance.*” At paragraph (6) of his letter Mr Silver wrote “*He [the defendant] was then isolated from any support to face 3 solicitors all of whom relied on the ICAEW for their fees and allowances.*” At paragraph 13 of his letter he wrote “*By the Chairman’s insistence on considering each charge separately rather than considering the fundamental point of was [sic] the Institute brought into disrepute mean a conflict of interest has arisen with his former role in the solicitors’ regulation authority.*” At paragraph (15) he wrote about the hearing on 26 July 2016 “*The whole day can only be seen as a “show trial’ by the Institute (it could not be any further from a tribunal), going at great lengths to extract as much time and money as possible.*”
8. The tribunal and the Legal Assessor considered this letter before the hearing on 8 November took place and considered that there was nothing to prevent the Chairman and the Legal Assessor continuing to participate in the proceedings. In particular, there was no conflict of interest. (The reference to “3 solicitors” at paragraph 6 of Mr ‘F’s letter appears to be a reference to the Legal Assessor, the Chairman (who is a retired solicitor still on the Solicitors’ Roll) and the legal representative of the IC.)

Defendant’s letter dated 4 November 2016

9. By a letter to the Chairman of the tribunal dated 4 November 2016, the defendant explained that he had been advised by his doctor not to attend the hearing and supplied a copy of a letter from his doctor to that effect. The defendant offered his apologies for his non-attendance. He did not apply for an adjournment. He also offered his “*concluding remarks on this affair*”, which shall be considered below. He also stated that “*My attempts to present my case to the Tribunal on the 26th July 2016 when I had the support of my council member were frustrated and then timed out by legal argument.*”
10. The tribunal considered the above sentence before the hearing and found it to be incorrect. As mentioned above, the hearing on 26 July 2016 could not proceed as a hearing of the complaint because the defendant was unable properly to address the

relevant issues; for this reason, he was afforded a further opportunity and time to do so in an orderly way. The hearing was not “*timed out by legal argument*”. Rather, it was adjourned after case management directions were issued because, in fairness to the defendant, no further progress could be made on that day.

The Decision to Proceed in the defendant’s Absence

11. On 8 November 2016 the tribunal considered whether to proceed in the defendant’s absence, particularly when he was not represented. The IC opposed any further adjournment of the hearing of the complaint and the tribunal heard representations from the IC.
12. The tribunal carefully considered *R v John Hayward and others* [2001] EWCA Crim 168, noting in particular that it must balance the public interest with the interests of the Defendant, the facts that the defendant had been properly served with all relevant papers, knew that the hearing was due to commence on 8 November 2016, had recently offered his “*concluding remarks*” and had made no application for an adjournment. Moreover, the hearing of this matter had already been adjourned once before at considerable cost and the tribunal was entirely satisfied that the defendant had had a reasonable opportunity to put his case and deal with the case against him. The tribunal concluded that the hearing should properly continue in the absence of the defendant. During the hearing, the tribunal asked the IC’s legal representative to explain any matters which may assist the defendant, and was satisfied that the IC’s representative put the IC’s case in an even handed and fair manner.

The Investigation Committee’s (IC’s) case

13. At all material times, the defendant was the sole principal and responsible individual (RI) of Silver & Co. He was admitted to membership of ICAEW on 11 November 1972. On 1 October 2014, Silver & Co was transferred to a limited liability company called ‘G’ Ltd, of which the defendant is a director and in which he holds a 25% shareholding. Mr ‘F’ used to work at Silver & Co and is now the managing director of ‘G’ Ltd.
14. As the sole principal and RI, references to the defendant apply equally to Silver & Co (as it then was).
15. The over-arching submission is that the standard of the defendant’s professional work has been so poor on such a number of occasions, and is so far below the standards expected of a member of ICAEW, that it is serious and justifies disciplinary action under the Disciplinary Bye-Laws (DBL). Details of this submission are set out below.
16. Between 27 and 29 May 2014, ICAEW’s Quality Assurance Division (QAD) conducted an audit monitoring visit on the defendant. It raised concerns about two audit files and work which the defendant had completed on an assignment under the Solicitors Accounts Rules. Those concerns gave rise to the removal of the defendant’s audit registration and the matter was referred to ICAEW’s professional conduct department. As a result, this complaint has been preferred.

Background to Heads of complaint one to eight

17. These heads concern the defendant’s professional activity surrounding three clients (and in the case of ‘B’ PLC, their subsidiaries): (i) ‘A’, (ii) ‘B’ PLC and (iii) ‘C’ PLC.

18. 'A' is a firm which is authorised and regulated by the SRA. Under the Solicitors Accounts Rules 2011, it is required to produce an Accountant's Report each year.
19. 'B' PLC and 'C' PLC are connected because they have directors in common. 'B' PLC is listed on the Stuttgart and Berlin Stock Exchanges. 'C' PLC used to be listed on the Stuttgart Stock Exchange, then was transferred to the over-the-counter market in the UK but was then delisted in March 2014. Each company had subsidiary companies.
20. 'C' PLC's principle activity is as the holding company for a group of technology-based companies engaged in providing software and related services. It was listed on the Frankfurt Stock Exchange until 19 December 2012 when it was transferred to GXG OTC, which is a European Regulated Market.
21. The complaints concerning 'B' PLC and 'C' PLC involve the International Standards on Auditing (UK and Ireland) (in this record, "ISA"). These complaints involve four specific standards of the ISA which are ISA 230, ISA 300, ISA 500 and ISA 600. These are summarised below.
22. ISA 230 concerns audit documentation and imposes an obligation on the auditor to prepare documentation for an audit in such a way that an experienced auditor, with no previous connection with the audit, could understand the nature, timing and extent of the audit procedures, the result of them and any significant matters arising from the audit as well as any conclusions the auditor may have drawn or personal judgments he may have made.
23. ISA 300 concerns planning, and documenting, an audit of financial statements.
24. ISA 500 concerns the auditor's obligation to design and perform appropriate procedures in an audit to adduce appropriate audit evidence which would be used to formulate an auditor's opinion. The audit evidence must comprise information which is both relevant and reliable.
25. ISA 600 concerns special considerations, namely the audits of group financial statements, including the work of component auditors. Paragraph 8 of this ISA is relevant; it provides that an auditor of group financial statements must communicate clearly with the component auditors about the scope and timing of their work and obtain sufficient appropriate audit evidence.

Heads of complaint one and two – 'A'

26. In February 2014, a firm of accountants called 'H' approached the defendant and asked him to sign an Accountant's Report under the Solicitors Accounts Rules 2011 (SAR) for 'A'. The period of the report was for the year ended 30 September 2013. The reason 'H' did this was because it was not a registered auditor and, to be compliant, the report had to be signed by a registered auditor. The defendant submitted a quotation for the work on 25 February 2014 and signed the report on 25 March 2014.
27. The defendant failed, however, to conduct any customer due diligence when establishing his business relationship with 'A'. He did not verify the identity of the relevant parties through independent means. Instead, he apparently relied on 'H's own anti-money laundering checks and a connection with the principle of 'A' who happened to be a partner of another client of 'H'. This was inadequate in the circumstances and is a breach of Rule 7 of the Money Laundering Regulations 2007.

28. In addition, the defendant breached SAR rule 35, which states that the Reporting Accountant must provide the solicitor with a letter of engagement which sets out obligatory terms and conditions. That letter must be signed by both parties who must each retain a copy. The defendant had no such letter and it appears this is because of a “*misunderstanding of the rules*”.
29. SAR rule 39 requires the Reporting Accountant to examine the solicitor’s books and conduct a series of tests on those books. SAR rule 37 provides that that has to be done at the solicitor’s office, unless there are exceptional circumstances. There is no evidence that the defendant examined or tested the books, and no evidence that he did so at the solicitor’s office. There was no evidence of any exceptional circumstances. On the contrary, ‘H’ had done the work, not the defendant. In addition, ICAEW’s case managers identified two errors in the signed Accountant’s Report.

Head of complaint three – ‘B’ PLC for the year ended 31 December 2012

30. ‘B’ PLC was, during the relevant period, a holding company for a group of companies which was involved in the production and distribution of drinks and the production of water purification products. It held investments in a number of companies one of which, in turn, owned a 50% stake in an Austrian company. That Austrian company appeared to be the main source of income and expense for the group, and it also appeared to own the majority of the group’s assets and liabilities. However, the defendant was not the Austrian company’s auditor. Nevertheless, the defendant signed an audit report for ‘B’ PLC for the year ended 31 December 2012 on 21 June 2013.
31. The defendant breached ISA 230 and 300 because there was no or insufficient audit documentation or evidence of planning of an audit of financial statements. In particular, there was no evidence of (i) any risk assessment procedures; (ii) the determination of the materiality level and; (iii) any understanding of the effect of ‘B’ PLC being listed on two continental stock exchanges. There was a “group planning checklist” on the file, but this was signed some six days before the audit report was signed, which was too late.
32. The defendant also breached ISA 600 for a number of reasons. (This ISA was engaged because the matter involved the audit of group financial statements.) The main reason is that the defendant did not obtain sufficient audit evidence in respect of subsidiary audits. Specifically: (i) the defendant had obtained a consolidated spreadsheet from ‘B’ PLC which appears to comprise data of the Austrian company and another subsidiary. The defendant also obtained the draft accounts for the Austrian company. However, the Austrian company’s accounts were in Euros whereas the consolidated spreadsheet was in British pounds. There was no evidence to explain how the draft accounts tallied with the consolidated spreadsheet and there also appeared to be discrepancies between them; (ii) the audit file contained no accounts for the other subsidiary companies. This meant that there was no evidence that the defendant had reconciled the consolidated spreadsheet with the accounts of those subsidiaries. In fact, once accounts of two of those subsidiaries had been located by ICAEW’s investigators, it transpired that they were not audited and did not reconcile with the consolidated spreadsheet; (iii) there was no evidence that the defendant considered the competence of the audits of two subsidiaries. He had sent to the auditor of one company a questionnaire to ascertain some information, but it had been returned blank.

33. The defendant breached ISA 500 because he failed to obtain and document sufficient audit evidence in relation to four key areas: (i) the ownership and carrying value of intangible fixed assets apparently valued at £14,000,000 including the absence of any evidence of (a) how the balance for those assets were calculated, (b) an impairment review or (c) forecasts; (ii) the absence of any calculation of, or understanding of, a deferred tax asset in the sum of £1,245,000; (iii) transfer of an investment valued at £303,390 and (iv) going concern. In that regard, there was an incomplete group going concern programme on the file and no schedules documenting the work required to make the audit opinion which was eventually given.
34. There was insufficient evidence on file to show that the defendant had actually overseen, directed or reviewed the audit of this group of companies.

Head of complaint four – 'B' PLC year ended 31 December 2013

35. On 31 May 2014, the defendant signed an audit report for the accounts of this company for the year ended 31 December 2013. At the time, it appears that this company held 20% or more in the share capital of thirteen subsidiary companies. The year ended 31 December 2013 was a year in which 'B' PLC was listed on the Stuttgart Stock Exchange. Three of 'B' PLC's subsidiaries companies are of relevance. Most of the turnover was generated by subsidiary company A (a German brewery), which, with another English subsidiary (M), contributed to most of the assets and liabilities of the group.
36. Subsidiary A was audited by the German office of a global firm of accountants. Company M went into liquidation on 28 October 2013, a fact which was not included in the financial statements.
37. In common with 'B' PLC for the year ended 31 December 2012, there were significant deficiencies on the audit file which amounted to breaches of ISA.
38. There was no evidence of any risk assessment procedure, no materiality level, no evidence of any understanding of the legal and regulatory framework of 'B' and questions posed to the component auditors remained unanswered. The group planning checklist which was on file had not been signed by the defendant.
39. As far as the component auditors were concerned, there was no communication with the auditors of one subsidiary at all and not even a copy of its accounts on file. There was no evidence that any audit work at all had been carried out on the material balance sheet of that company and there was no evidence to test the accuracy of the consolidated spreadsheet. The accounts prepared by the German office of the global firm were prepared in accordance with German, not British, accounting principles. There was no evidence that the defendant had considered whether any adjustment was required to ensure that British accounting principles had been complied with.
40. The group balance sheet contains intangible fixed assets of £18,814,852 but there was no evidence of how they had been calculated or of which entities to which they had been attributed. There were no copy accounts of the other subsidiary companies and so no evidence to show how the figures in the consolidated spreadsheet (provided by the client) could be reconciled to the original accounts.

41. ISA 600 had been breached because where there had been no audit work carried out into some material components by the various auditors, the defendant should have made that good, but did not. The work carried out by the global firm should have given the defendant some reassurance, but the evidence of that work on the file was inadequate.
42. ISA 500 had been breached again in the same four key areas referred to in head of complaint three and for the same reasons.

Heads of complaint five and six – ‘C’ years ended 31 March 2013 and 31 March 2014

43. The defendant signed the audit reports for this company for the year ended 31 March 2013 on 4 September 2013 and for the year ended 31 March 2014 on 2 September 2014.

Planning

44. For 2013 and 2014, the planning sections of the working papers contained insufficient information about group risk assessment, materiality levels and any understanding of the legal and regulatory framework with applied to each entity.
45. For 2013, many of the standard documents on file were simply blank. The group planning checklist was unsigned and so unapproved.

Audit Documentation

46. There was insufficient evidence of audit documentation required by ISA 500 in three key areas for both 2013 and 2014: (i) ownership and carrying value of intangible fixed assets of over £21,000,000 in each year; (ii) recognition of a deferred tax asset valued at £4,200,000 in 2013 but then inexplicably reduced to £1,858,961 in 2014; (iii) inadequate documentation about going concern.
47. For 2013, there was a further key area: an inadequate explanation of the transfer value of an investment.

Heads of complaint seven and eight – ‘D’ Ltd (year ended 31 March 2014) and ‘E’ Ltd (year ended 31 March 2014)

48. Both these companies are subsidiaries of ‘C’. For each set of accounts of these two subsidiaries, the defendant signed an audit report dated 2 September 2014. However, no documentation whatsoever about the purported audits could be located within the ‘C’ working papers which constitutes a clear breach of ISAs 300 and 230.

Head of complaint nine – Failure to consider the findings of QAD

49. After the QAD inspection visit on 27 to 29 May 2014, and on 29 May 2014, a meeting took place between the QAD representative and the defendant. The defendant was handed a copy of a report prepared by QAD for the Audit Registration Committee and he was invited to comment upon it. It expressed the concerns set out above.
50. However, notwithstanding those concerns, on 31 May 2014, the defendant signed the audit report for the accounts of ‘B’ for the year ended 31 December 2013 (which is the subject of head of complaint four). He had not taken into account any of the

concerns expressed by QAD some two days earlier. Neither had he followed any of QAD's recommendations set out in the report.

51. Furthermore, he signed the audit report for 'C' for the year ended 31 March 2014 on 2 September 2014 (which is the subject of head of complaint six). He did so without taking into account QAD's concerns and implementing any of its recommendations.
52. For all these reasons, the IC submitted that the defendant is liable to disciplinary action as described in the complaint.

The Defence

53. The defendant did not particularise his defence to each allegation set out in the defence as he was directed to do by the tribunal in July 2016. However, he and his son have made several diverse comments and assertions about this matter after the complaint was preferred, and the tribunal accepted these as part of a general defence. This is a summary.
54. In his undated letter written after 26 July 2016, Mr 'F' (who wanted to speak "on the record") stated at paragraph (a) that there is *"no evidence to justify that the institute has in any way been brought into disrepute."* He stated at paragraph (b) *"after the QAD visit and subsequent follow up response it was recognised that Silver & Co would need substantial means and resources to be able to exceed the standards required by the New ISAS and Audit work was ceased – this would surely form the end of the process without the following 2 years of bullying and intimidation";* At paragraph (c): *"The Institute have involved substantial resources from all parties in unnecessary and unjustified processes despite acceptance from the QAD that the files were not to standard (however substantial work has been done – as recognised by the QAD at the time and files were improving)."* Paragraph (d) states: *"We are not aware of any claim against the work done except the ICAEW internal control standards which clearly need to present cases to the FRC to maintain its regulatory position. Evidence shows that the clients in question are all very happy with the work performed."* He said at paragraph (f): *"The efforts wasted by ICAEW in this whole process can be seen as obsessed on incriminating a retired accountant who is clearly easy prey and who dared to attempt to take some work from the Big 4 who ICAEW have yet to challenge or criticise in any significant form as they are the wage payers of the ICAEW."*
55. In his Regulation 13 Answers dated 30 June 2016, the defendant denied the complaint. He said that he had *"never denied that the printed file content is inadequate"* but gave as the reasons why he denied the complaint as the *"supporting information and work has been dismissed out of hand"* and that he had not *"brought either myself or the institute into disrepute"*.
56. In the defendant's Defence document, he denies that he acted deficiently regarding 'A'. He admits that he mistakenly relied on the Anti-Money laundering checks carried out by 'H'. Regarding 'A', the defence is that he tested 'H's work against "working checklists" and found it to be sound.
57. In his letter dated 4 November 2016, the defendant made further *"concluding remarks"*. In summary, the relevant ones are as follows.
58. First, the defendant no longer undertakes audit work. Secondly, no complaint has been received from a member of the public. Thirdly, *"From 30 September 2014 I have acted purely as instructed by my son having concluded that I was no longer*

capable of running a practice and only maintaining a practicing certificate to meet the requirements of the Institute...I therefore do not consider that I have brought disrepute to myself or [ICAEW] and the practice.”

Issues of fact and law

59. Because the complaint was denied and the defendant was neither present nor represented at the hearing, the IC was put to proof of the claim and was reminded to put any point which would have assisted the defendant.
60. The relevant standard of proof was the balance of probabilities.
61. The tribunal found the complaint proved.

Conclusions and reasons for decision

62. The defendant was the sole principal of a firm of accountants and its RI. He agreed to accept some audit work from two different sources: (i) another firm of accountants in order to certify an Accountant's Report under the Solicitors Accounts Rules 2011 and (ii) an audit of two companies, listed on foreign stock exchanges with extensive corporate structures. His decision to accept this work turned out to be a very poor one because, as events proved, he was wholly ill-equipped and lacked the expertise, experience and resources to carry out that work.
63. The tribunal gives the word “discredit” its ordinary meaning and applies an objective test as to whether any matter complained of brings discredit. When assessing whether work brings discredit, it requires evidence of not just incompetent work, but work which is so poor as to be considered deplorable.

The Accountant's Report for the SRA (Heads of complaint one and two)

64. The defendant was not justified in signing the Accountant's Report for submission to the SRA. The defendant did not actually do the work he was certifying as correct and had no way of knowing that it was correct because he did not check properly. It is not sufficient to check another firm's work against “working checklists”. The work has to be performed by the firm itself; not adopted by a third party. To illustrate the importance of this, two errors were found by QAD in the report submitted to the SRA, which the defendant did not spot and of course did not know because he had not done the work. He adopted, it appears, the errors of others. This was a reckless thing to do and was a serious mistake. Accountant's Reports have an important role in the regulation of solicitors who handle client money. The purpose of that regulation is, above all, to protect clients and the broader public, as well as the reputation of the solicitors' profession; the SRA relies on ICAEW and its members to carry out this important function properly. It does not expect members of ICAEW to certify as theirs work they have not done.
65. The defendant also carried out inadequate anti-money laundering checks for his new client. British professions, especially those which deal in the financial affairs of others, are expected to be bulwarks against certain criminal activity, including money laundering. Each member of ICAEW is expected to know and uphold the law (in this case, the Anti Money Laundering Regulations) in order to maintain the rule of law and the integrity of the profession. To that extent, they act in the public interest.
66. The general defence does not specify these heads of claim and the tribunal can identify no defence to them.

67. In the tribunal's opinion, this is the performance of professional work and the conduct of a practice which is inefficient and incompetent enough to bring discredit on himself, the ICAEW and the profession of accountancy.

'B' and 'C' – Heads of complaint three to eight

68. The defendant was not in a position to take on the audit work for the 'B' companies referred to in these heads of complaint. He did not have the experience, expertise or resources to carry out work of that complexity and scope. The fundamental error in this case was agreeing to take on the work in the first place. The numerous subsequent errors which comprise the subject matter of the complaint, most of which surrounded the need to plan, make proper and extensive enquiry and document properly, demonstrated someone who was totally out of his depth and ill-equipped to recover from that as the work continued into the next financial year. The picture that has emerged is not one of an experienced auditor who made a mistake, or lost concentration on a file; rather, it is of an accountant who simply did not understand, and could not cope with, the amount and depth of work required under ISA, who has decided to audit foreign listed group companies.

69. This had serious consequences. Both 'B' and 'C' were listed on German stock exchanges. They had substantial interests in foreign subsidiaries. To perform an audit of these companies was not an academic exercise, but to perform a public function, or at least a function for the public benefit. In fact, the work which was done was very poor indeed, for all the reasons set out in the complaint.

70. The tribunal has given weight to the fact that the defendant declined, in spite of an invitation in the clearest terms, to explain in detail why his work was not as poor as was alleged. The obvious inference to draw is that he was unable, rather than unwilling, to do so. In this respect, the tribunal has noted the defendant's admission in the Regulation 13 Answers that the contents of the file were inadequate. As to his reference to "supporting documentation" this is not fully understood; the tribunal has considered all the documentation before it, including the defendant's own bundle.

71. Turning to Mr 'F's comments in his undated letter. It appears to the tribunal that the distillation of his points is that the ICAEW has brought these proceedings in such a way as to be disproportionate to the matters in issue. Mr 'F' compares and contrasts his father, who appears to be in poor health and coming to the end of his long career and the fact that no client has complained with ICAEW's regulatory functions. Such a comparison, he seems to suggest, demonstrates that these proceedings are not fair.

72. The tribunal disagrees. The matters complained of are serious for the reasons already given, and the defendant must answer that complaint. He chose to defend the complaint and it is reasonable for the IC to proceed with the matter accordingly. The tribunal gives no weight to the fact that the defendant's clients may have either expressed satisfaction with the work or not complained about it. The auditor's primary function is not to please a client, but objectively and with professional scepticism to audit a client's business in accordance with ISA in order to safeguard both the client and the public. In this case, the defendant has failed to achieve the latter.

73. The tribunal rejects the assertion made in the defendant's Defence document that since his insurers were "*happy we could undertake this work outside our everyday experience*" he could "*receive comfort that we could proceed*". This is to miss the point. The fact that professional indemnity insurers agree to cover the risk does not

mean that the defendant was wise to undertake, or should have undertaken, the risk in the first place. The point is irrelevant.

74. For all these reasons, the tribunal finds that heads three to eight demonstrate that the defendant has performed his professional work inefficiently and/or incompetently to such an extent and on such a number of occasions as to bring discredit on himself, the ICAEW and the profession of accountancy.

Failure to act upon QAD Recommendations – Head Nine

75. The defendant signed two audit reports (one for 'B' and the other for 'C') after he was made fully aware of QAD's concerns about the standards of his auditing to which the reports related. The defendant has not explained why he did this to any satisfactory extent. In his Defence document, the defendant asserts that the earlier of the two reports was "*altered*" on the recommendation of the QAD reviewer and was "*issued whilst she was still present with us although not signed until later*". The tribunal rejects this assertion as unlikely; furthermore, no evidence has been adduced to corroborate it. The tribunal finds it unlikely that a QAD reviewer would spend an inordinate amount of time highlighting seriously defective audit work and then somehow condone the issuing of reports made as a result of that work. It was irresponsible of him because it demonstrated a lack of understanding not only of the gravity of the matters raised by QAD, but a lack of respect for what QAD was trying to achieve.
76. The tribunal finds that by not paying proper heed to the findings and recommendations of QAD, and signing the two audit reports regardless of those warnings while carrying out professional work, the defendant has committed an act or default likely to bring discredit on himself, the ICAEW or the profession of accountancy.
77. For the avoidance of doubt, the tribunal finds no evidence that the defendant has been bullied or intimidated by the IC in the prosecution of this complaint.

Matters relevant to sentencing

78. The tribunal considered the *Guidance on Sanction* and saw no reason to depart from that. It was satisfied that no lesser sanction than the one imposed was appropriate.
79. Mitigating factors were (i) the defendant's long membership (43 years) of ICAEW with an unblemished record; (ii) the fact that he is no longer carrying out audit work and is not practising and (iii) his financial means.
80. Aggravating factors were (i) the repeated acts of serious discreditable conduct over a period of time; (ii) the detrimental effect which that conduct could have had on the regulatory authorities and the public which are entitled to rely on all the audit reports and (iii) the failure to pay any heed to QAD which, in the case of head nine, would have prevented two audit reports from being signed. The tribunal also took into account the apparent absence of any insight into the defendant's professional conduct (apart from admitting the fact that the paper files were inadequate) and to show any remorse or regret.

Sentencing Order

Exclusion

Costs in the sum of £ 14,632.00

Decision on publicity

Publication with name

Non Accountant Chairman
Accountant Member
Non Accountant Member

Mr Peter Williamson
Mr Martin Ward FCA
Mrs Jane Rees

Legal Assessor

Mr Dominic Spenser Underhill

024986

INVESTIGATION COMMITTEE CONSENT ORDERS

2 Jaffer & Co

Consent order made on 29 December 2016

With the agreement of Jaffer & Co of 32 Woodstock Grove, Shepherds Bush, London, W12 8LE, the Investigation Committee made an order that the firm be severely reprimanded, fined £10,000 and pay costs of £1,780 with respect to a complaint that:

1. From 3 December 2014 to 2 March 2016, Jaffer & Co failed to provide the information requested in a professional clearance letter from Mr X in respect of Y Ltd contrary to Section 210 of the Code of Ethics.
2. On 9 December 2014, Jaffer & Co asked for a payment of £750 plus VAT to provide information requested by Mr X in respect of Y Ltd contrary to Section 210 of the Code of Ethics.

031107

3 Shipleys LLP

Consent order made on 29 December 2016

With the agreement of Shipleys LLP of 10 Orange Street, Haymarket, London, WC2H 7DQ, the Investigation Committee made an order that the firm be severely reprimanded, fined £12,000 and pay costs of £4,030 with respect to a complaint that:

1. On 15 December 2010 Shipleys LLP issued an unqualified audit report on the financial statements of X Ltd for the year ended 30 June 2010, in breach of Audit Regulation 3.08, in that the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 570 'Going concern' in that the firm failed to obtain sufficient appropriate audit evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial statements.
2. On 15 December 2010 Shipleys LLP issued an unqualified audit report on the financial statements of Y plc for the year ended 30 June 2010, in breach of Audit Regulation 3.08, in that 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:
 - the recoverability of the debt due from X Ltd; and
 - whether an impairment review was required in respect of the investment in X Ltd.

032681

4 Mr David Frederick Wilson

Consent order made on 29 December 2016

With the agreement of Mr David Frederick Wilson of 29 Park Square West, Leeds, LS1 2PQ, the Investigation Committee made an order that he be reprimanded, fined £3,000 and pay costs of £2,367 with respect to a complaint that:

On 10 September 2015 Mr Wilson, in his capacity as joint administrator of X Limited, sent to creditors his first notification of the pre-packaged sale he completed which did not comply with Statement of Insolvency Practice 16 in that it failed to disclose:

1. Any reference to the statutory purpose of the administration being pursued or a statement confirming how the statutory purpose has been achieved by the pre-packaged sale;
2. The charges granted by the company;
3. Sufficient information regarding the valuation of the company's assets, in that it did not state or confirm:
 - which assets were valued;
 - details of their valuation;
 - any rationale applied to the valuation or an explanation of sale values compared to that valuation; and
 - the independence and professional qualifications of the agent.
4. The names of the common directors involved with the company and the purchaser, with regard to whom the sale was a connected party transaction;
5. The terms of payment of the sale consideration and any condition of the contract that could materially affect the consideration; and
6. Any options, buy-back agreements, deferred consideration or other conditions attached to the contract of sale.

032678

5 Mr Hammad Farooqi

Consent order made on 29 December 2016

With the agreement of Mr Hammad Farooqi of 40 Gracechurch Street, London, EC3V 0BT, the Investigation Committee made an order that he be severely reprimanded, fined £5,000 and pay costs of £3,343 with respect to a complaint that:

1. Between 26 August 2014 and 5 January 2016 Mr Hammad Farooqi FCA failed to respond to 11 professional clearance requests relating to his former clients.
2. Between 20 August 2014 and 5 January 2016 Mr Hammad Farooqi FCA failed to return documents to former clients, or failed to return them in a reasonable period of time.

025146

6 Mrs Samantha Jane Dalton

Consent order made on 4 January 2017

With the agreement of Mrs Samantha Jane Dalton of 58 Shirley Road, Dudley, West Midlands, DY2 7HZ, the Investigation Committee made an order that she be reprimanded, fined £500 and pay costs of £1,018 with respect to a complaint that:

1. Between 4 October 2011 and 9 August 2016 Mrs Samantha Jane Dalton FCA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51a.
2. Between 4 October 2011 and 9 May 2016 Mrs Samantha Jane Dalton FCA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.

033163

7 No publication of name

Consent order made on 6 January 2017

With the agreement of a member the Investigation Committee ordered that the member pay costs of £1,355 with respect to a complaint that:

On 11 June 2014 a member entered into an individual voluntary arrangement under the provisions of the Insolvency Act 1986.

The Committee directed that the member should not be identified by name when the order is publicised.

033397

8 Mr David Michael Reid

Consent order made on 20 January 2017

With the agreement of Mr David Michael Reid of Unit 4, The Bardfield Centre, Braintree Road, Great Bardfield, Braintree, Essex, CM7 4SL, the Investigation Committee made an order that he be severely reprimanded, fined £5,000 and pay costs of £4,393 with respect to a complaint that:

Mr D M Reid FCA failed to revisit the accounts for X & Co Limited for the period ended 30 November 2009 in that he did not accrue for or include all transactions from the Sage bookkeeping system with transaction references higher than 6254 for the period ended 30 November 2009 and in doing so the accounts were materially incorrect.

006055

9 Mr Homiar Erach Mehta

Consent order made on 20 January 2017

With the agreement of Mr Homiar Erach Mehta of 37 Warren Street, London, W1T 6AD, the Investigation Committee made an order that he be severely reprimanded, fined £8,000 and pay costs of £3,843 with respect to a complaint that:

1. Mr H E Mehta FCA failed to act in accordance with paragraph 140.7 of The Code of Ethics in that he failed to disclose the following information of X Ltd to a director of X Ltd, having been requested to do so in emails dated 1 September 2015 and 2 September 2015:
 - Confirmation of the balance of funds his firm was holding;
 - A listing of all transactions;
 - A copy of the trial balance as at 31 August 2015.
2. Between 2 April 2015 and 6 February 2016 Mr H E Mehta FCA, on behalf of his firm, permitted a breach of Regulation 13 of the Clients' Money Regulations by failing to pay a sum in excess of £10,000 into a designated client account.
3. Mr H E Mehta FCA, on behalf of his firm 'Z' LLP, failed to comply with regulation 20(h) of the Clients' Money Regulations as he failed to obtain authority from both directors of X Ltd which he was aware was required before the following transactions were made from funds he was holding on behalf of the company:
 - 14 May 2015 – £1,200 paid to settle an invoice requested to be paid by 'A' without 'B's agreement;
 - 22 September 2015 – £1,500 paid at the request of 'A' without 'B's agreement.

031497

10 Myers Clark

Consent order made on 20 January 2017

With the agreement of Myers Clark Limited of Egale 1, 80 St Albans Road, Watford, WD17 1DL, the Investigation Committee made an order that the firm be reprimanded, fined £3,250 and pay costs of £2,730 with respect to a complaint that:

1. Myers Clark Ltd prepared dormant statutory accounts for X Limited for the year ended 31 March 2015 in which the directors claimed exemption from audit, when the company's Articles of Association required that the accounts of the company be examined and the correctness of the Income and Expenditure Account and Balance Sheet ascertained by one or more properly qualified Auditor or Auditors.
2. Myers Clark Ltd prepared dormant statutory accounts for X Limited for the year ended 31 March 2015 which do not comply with The Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 in that the accounts do not:
 - a. consistently apply the accounting policies previously adopted by the company and do not disclose the reasons and effect of the change in accounting policies:
 - b. show the corresponding amounts for the immediate preceding financial year or contain any disclosures in the notes as to the reason for any adjustments: and
 - c. disclose the fact that the company has acted as an agent for any person during the financial year.

031561

INVESTMENT BUSINESS COMMITTEE

ORDER – 11 OCTOBER 2016

11 Publicity Statement

Frost & Company, Redcotts House, 1 Redcotts Lane, Wimbourne, Dorset BH21 1JX, has agreed to pay a regulatory charge of £3,208, which was decided by the Investment Business Committee. This was in view of the firm's admitted breach of DPB Handbook Regulations 2.03b and 4.04 for not applying for DPB affiliate status for a corporate principal and for not recording its DPB annual compliance review.'

035164

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