



Disciplinary Orders and Regulatory Decisions

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Disciplinary orders

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mr Man Ghung Siman Ng ACA of

Room 1502, Double Building, 22 Stanley Street, Central, Hong Kong Island, Hong Kong SAR

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 29 November 2017

Type of Member Member

Terms of complaint

Mr Ng, on behalf of his firm 'A' Limited, issued an audit opinion in respect of the accounts of 'B' Limited for the following accounting periods when the audits were not conducted in accordance with the following Hong Kong Standards on Auditing (HKSA):

- (a) HKSA 500 Audit Evidence in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions regarding the existence of the exploration rights to the 'C' Mine.
 - (i) Year ended 31 December 2008, audit report signed 16 March 2009
- (b) HKSA 200 Objective and General Principles Governing an Audit of Financial Statements in that the auditor failed to plan and perform its audit with an attitude of professional scepticism regarding the fair values of the 'D' Mine and 'C' Mine.
 - (i) Year ended 31 December 2008, audit report signed 16 March 2009
 - (ii) Year ended 31 December 2009, audit report signed 29 March 2010
- (c) HKSA 315 Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement in that the auditor failed to properly assess whether the company's use of the revaluation model on the subsequent measurement of the 'D' Mine and 'C' Mine was appropriate to the company's business and/or consistent with the industry practice.
 - (i) Year ended 31 December 2008, audit report signed 16 March 2009
 - (ii) Year ended 31 December 2009, audit report signed 29 March 2010

Mr Man Chung Siman Ng is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b

Disciplinary Bye-law 4.1.b states that a member is liable to disciplinary action 'If he has performed his professional work or the duties of his employment, or conducted his practise, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, the Institute or the profession of accountancy'

Hearing dates 29th November 2017

Previous hearing dates N/A

Pre-hearing review or final hearing Final hearing

Complaint found proved Yes

9. The FRRC and the AIB prepared reports which were adopted by the FRC. Both these reports found that the firm's work on the 2008 and 2009 audits was in breach of the Hong Kong Standards on Auditing ('HKSA'). The breaches are set out in the complaint and are as follows.

Head of Complaint (a)

10. The exploration right to the 'C' mine had expired on 14 September 2008. The group had, on this basis, valued this right in the 2008 year end accounts as nil. However that failed to recognise the value of the option for renewal that the group had in respect of this exploration right. That value of that right was subsequently assessed, on the basis of an independent valuation in March 2010, as being in excess of HK\$2,000m.
11. HKSA 500 requires the auditor to obtain sufficient appropriate evidence to draw reasonable conclusions on which to base the audit opinion. The AIB found that the 2008 audit failed to obtain appropriate evidence as to the value of the group's right to renew its exploration right in the molybdenum mine.

Head of Complaint (b)

12. HKSA 200 requires the auditor to perform an audit with professional scepticism, critically assessing evidence which contradicts or brings in to question the validity of financial statements.
13. The exploration right to the 'D' mine was valued in the 2008 accounts at HK\$6.5m. This was based on a valuation made at the time the group acquired this right in October 2008.

However two months later the group appointed an independent valuer who assessed its value as at 31 December 2008 at HK\$880.7m. This appeared to demonstrate, in the AIB's view, that the right had been purchased significantly below its fair value. In the circumstances the firm should have made further enquiries to understand the circumstances of the acquisition and to ensure there was no material misstatement in the group's accounts. Failure to do so amounted to a breach of HKSA 200.

14. In respect of the 'C' mine rights, the AIB considered that a retrospective restatement should have been included in the 2009 accounts correcting the error in valuation in the 2008 accounts. Failure to recognise this in the audit amounted to a breach of HKSA 200.

Head of Complaint (c)

15. The group used a revaluation model rather than a cost model to record the subsequent measurement of the exploration rights to mines. The AIB and The FRRC did not agree with this approach and considered that the firm had failed to properly assess whether the model used was appropriate for the group's business and/or consistent with industry practice. The failure to do so constituted a breach of HKSA 315.

HKICPA proceedings

16. Proceedings were brought against the defendant and his firm by the Registrar of the HKICPA following the AIB and FRRC reports. The complaints alleged that the defendant had failed or neglected to observe, maintain or apply HKSA 500, 200, 315 and 700 in auditing the 2008 and/or 2009 group accounts. The defendant admitted the complaints. On 22 May 2015 a Disciplinary Committee of the HKICPA reprimanded him and ordered him to pay a penalty of HK\$100,000. The defendant and his firm were ordered to pay the costs of the proceedings of HK\$113,351.40.

IC's submissions

17. The IC submitted that in light of these deficiencies in the audits in question, the defendant was liable to disciplinary action under Disciplinary Bye-law ('DBL') 4.1.b.

The defendant's case

18. On 14 August 2016 the defendant wrote to the ICAEW stating that he admitted the complaints and did not dispute the facts set out in the draft report to the IC.
19. He put forward the following matters in mitigation:
 - (i) there was no allegation of fraud, dishonesty or illegal or immoral conduct;
 - (ii) there was no allegation or finding of financial loss or prejudice suffered by any person;
 - (iii) these matters have been adequately dealt with by the HKICPA;
 - (iv) he has been cooperative with the ICAEW's investigation and has not previously been the subject of disciplinary action by the ICAEW;
 - (v) he is no longer managing director of the firm and has been re-designated a regular director.

Conclusions and reasons for decision

Decision on complaint

20. The Tribunal was satisfied that the facts alleged in the complaint had been proved, both on the basis of the admissions that the defendant had made to the HKICPA and those he had made in his letter to ICAEW on 14 August 2016. The Tribunal was satisfied that these were serious failings and amounted to a breach of DBL 4.1.b.
21. The Tribunal therefore found the complaint proved.

Matters relevant to sentencing

22. There were no previous disciplinary matters recorded against the defendant. The defendant had made admissions to the allegations, both in the proceedings brought by the HKICPA and in these proceedings.
23. The Tribunal had no information about the defendant's means.
24. The Tribunal noted that in the disciplinary proceedings in Hong Kong the HKICPA accepted as mitigation the defendant's representation that he intended to undergo a further 20 hours of training in the areas of audit and listing rules on top of his CPD requirements. The Tribunal was told that no enquiries had been made of the defendant to establish whether he had in fact undergone this further training.
25. The Tribunal had no doubt that the matters set out in the complaint were serious breaches of the defendant's obligations as an auditor. The Tribunal had regard to *ICAEW's Guidance on Sanctions*. The Guidance indicates that the starting point for sanction in respect of seriously defective audit work is an exclusion order and a financial penalty of £5,750 to £11,500.

26. The Tribunal considered that its sanction should take into account that imposed by the HKICPA. The Tribunal considered a severe reprimand was, in the light of the way the matter was dealt with in Hong Kong, the appropriate and proportionate sanction.
27. Given the sums involved, and the extent of the lapses in auditing judgement with regard to appropriate accounting methodologies, the Tribunal was of the view a fine above the starting point set out in the Guidance on Sanctions would normally be justified. However, it was appropriate to mitigate the fine in light of the financial penalties that had been imposed in Hong Kong. The Tribunal determined that the appropriate level of fine was £10,000.
28. The IC applied for costs in the sum of £8,287. This case relied almost exclusively on the documents produced for the Hong Kong investigation. In those circumstances the Tribunal was of the view that the sum claimed was too high. It also considered that some reduction should be made to reflect the fact that the hearing was concluded well within the time estimated on the costs schedule. It decided in all the circumstances that the appropriate figure for costs was £6,500.

Sentencing order

29. The Tribunal made the following order:

Mr Man Chung Siman Ng is severely reprimanded;

Mr Man Chung Siman Ng is fined £10,000;

Mr Man Chung Siman Ng is ordered to pay ICAEW's costs in the sum of £6,500.

Decision on publicity.

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

Chairman
Accountant Member
Non Accountant Member

Mr Peter Williamson
Mr Martin Ward FCA
Ms Martha Maher

Legal Assessor

Mr Andrew Granville Stafford

029661

2 Mr Paul Charles Singleton FCA of
Riverdale, 89 Graham Road, SHEFFIELD, S10 3GP

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 12th and 13th December 2017

Type of Member Member

Terms of complaint

Mr Paul Singleton FCA failed to act in a professional manner, in breach of s150.1 of the Code of Ethics, as a result of him using offensive language toward Mrs 'A' and Mr 'B' on the evening of 27 June 2015 outside a pub in Sheffield.

Mr Paul Singleton is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.a:

'A member . . . shall be liable to disciplinary action under these bye-laws . . . if in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy'

Hearing dates 12th and 13th December 2017

Previous hearing dates N/A

Pre-hearing review or final hearing Final hearing

Complaint found proved Yes

Sentencing order Reprimand
Fine £1,500
Costs £8,000

Procedural matters and findings

Parties and representation The Investigation Committee ('IC') was represented by Mr Ian Graham

The defendant was present and was represented by Mr David Bradly of Counsel instructed by Mr Christopher Cope of ANCS Ltd

Hearing in public or private The hearing was in public

Decision on service The tribunal was satisfied that service was in accordance with regulations 3 and 5 of the Disciplinary Committee Regulations

Documents considered by the tribunal The tribunal considered the documents contained in the Investigation Committee's bundle, the defendant's Regulation 13 Answers and documents produced by the defendant

The Investigation Committee's case

1. Mr Singleton ('the defendant') was admitted as a member of ICAEW in 1976. The complaint arose out of an incident outside a public house in Sheffield on 27 June 2015 when the defendant used offensive language to Mr 'B' and his partner Mrs 'A'.
2. The defendant had previously undertaken accountancy work for Mr 'B'. He had also acted as an expert witness in proceedings in the family court between Mrs 'A' and her ex-husband. The fees charged by the defendant for acting as an expert witness had become the subject of a dispute between himself and the solicitors acting for Mrs 'A'.
3. On the evening of 27 June 2015 Mrs 'A' and Mr 'B' were standing outside a public house in Sheffield having a drink with friends. The defendant, who by coincidence was at the same pub, approached Mr 'B'. A conversation ensued during which the defendant said to Mr 'B' 'I am going to f***** have you with what I know about you'. The defendant pointed at Mrs 'A' and said 'and you can f*** off and all' and he also said 'I am also suing that f***** solicitor in Chesterfield'.
4. Mrs 'A' made a complaint to ICAEW about the defendant's behaviour on 3 September 2015.
5. The IC alleged that the defendant had breached Section 150.1 of the Code of Ethics ('the Code') which imposes an obligation on a member to avoid any action which he knows or should know may discredit the profession. The IC's case was that the defendant's actions rendered him liable to disciplinary action under Disciplinary Bye-law ('DBL') 4.1.a.

The defendant's case

6. The defendant denied the complaint.
7. The defendant admitted using bad language to Mr 'B' and to Mrs 'A'. It was accepted on his behalf that he said to Mr 'B' 'I'm going to f***** have you' and 'I'm f***** suing that solicitor in Chesterfield' and that he said to Mrs 'A' 'You can f*** off as well'.
8. The defendant denied however that his conduct was in breach of Section 150.1 of the Code or that it could amount to professional misconduct rendering him liable to disciplinary action under DBL 4.1.a.
9. The defendant submitted that the context in which the incident occurred was highly relevant. He had been instructed as a single joint expert in litigation involving Mrs 'A' and her ex-husband. After preparing his report he was instructed by Mrs 'A's solicitors to do further work, which he agreed to do on an hourly rate basis.
10. More than six months after the submission of the defendant's invoice for this further work, Mrs 'A's solicitors challenged his fees alleging they were very high and requested a detailed breakdown. Then on 10 April 2015 the defendant received a telephone call from Mr 'B'. He asserts that during that call Mr 'B' alleged that the original report was incorrect and accused the defendant of overstating his time on the additional invoice. The defendant says he was utterly incensed by Mr 'B's attitude and the serious allegations that were being made against him.
11. On the night in question he had been having dinner at a pub to celebrate his birthday. He accepted that, having seen Mr 'B', he went to speak to him and admitted swearing at him. He accepted he swore at Mrs 'A'.

12. The defendant subsequently brought proceedings in the small claims jurisdiction of the county court to recover his outstanding fees from Mrs 'A's solicitor. The judge found there was no evidence at all to suggest he had inflated his fees and, as well as allowing his claim in full, also awarded him costs on the grounds that Mrs 'A's solicitors had behaved unreasonably.
13. The defendant's case was that the complaint could only be proved if it was established that he failed to avoid action which he knew or should have known may discredit the profession. The defendant disputed this was the case.

Conclusions and reasons for decision

Decision on complaint

14. The Tribunal heard oral evidence from Mr 'B', Mrs 'A', the defendant and Mr 'C', a witness called by the defendant. It took account of the submissions of both parties and bore in mind that the burden of proving the complaint lay on the IC.
15. There was little dispute about the language the defendant had used during the incident. He accepted he had sworn twice at Mr 'B' and he had sworn once at Mrs 'A'. The Tribunal was satisfied that the defendant had used offensive language towards both Mr 'B' and Mrs 'A'.
16. In the Tribunal's opinion Mrs 'A' and Mr 'B' gave clear evidence which was not shaken in cross-examination. The Tribunal considered them both to be credible witnesses and, in so far as there were differences between their accounts and that of the defendant, it preferred their accounts. In particular it found on the balance of probabilities that the defendant said to Mr 'B' 'I am going to f***** have you with what I know about you'.
17. The Tribunal had to consider whether the behaviour in question, namely using offensive language to Mrs 'A' and Mr 'B', amounted to a breach of the principle of professional behaviour. Section 100.5(e) of the Code requires a member to comply with the fundamental principle of professional behaviour as set out in Section 150.1 of the Code. In order to find there had been a breach the Tribunal had to be satisfied that the defendant knew or should have known that his actions may discredit the profession. It was common ground that actions which discredit the profession may occur both within and outside the context of an accountant's professional work.
18. The Tribunal was in no doubt that the defendant's actions on the night in question brought discredit on the profession and that he should have known that they would. He had approached Mr 'B' and used offensive words in a threatening manner towards him. He also used offensive language to Mrs 'A'. It was used in the context of a dispute over fees. The incident took place outside a public house and was witnessed by members of the public. As the defendant himself accepted in his oral evidence, he was angry and the 'red mist' had descended.
19. The Tribunal accepted Mr 'B's evidence that he found the incident shocking. The Tribunal noted that in his statement Mr 'B' said 'I found it at first relatively amusing but was very surprised to say the least that [the defendant] would act in this way.' When he was cross-examined about the use of the word 'amusing' he replied 'It was a joke that someone would act in that way. I was shocked and amazed that Paul Singleton would act in that way.'
20. In the Committee's view, whilst the defendant undoubtedly considered he had a genuine grievance against Mr 'B' that could not possibly justify or excuse his behaviour on the night in question. The appropriate remedy in the event of a dispute over fees was recourse to the courts, which he did pursue and which resulted in an order being made in his favour.

21. Section 150.1 makes it clear that an action will discredit the profession if a reasonable and informed party, weighing all the specific facts and circumstances available to the professional accountant, would conclude that the action would adversely affect the good reputation of the profession. The Tribunal was satisfied that the defendant's use of offensive language in the circumstances that existed at the time would adversely affect the good reputation of the profession and that this was therefore discreditable behaviour.
22. The Tribunal therefore found that the defendant had breached the fundamental principle of professional behaviour as set out in Section 150.1. The Tribunal was further satisfied that this behaviour was sufficiently serious to bring discredit on the profession and rendered the defendant liable to disciplinary action under DBL 4.1.a.
23. The Tribunal therefore found the complaint proved.

Matters relevant to sentencing

24. There were no previous disciplinary matters recorded against the defendant. The Tribunal took into account his lengthy membership of the Institute and his otherwise unblemished record. It received character evidence from a member of the Institute, a financial adviser and a solicitor who spoke highly as to the defendant's personal and professional qualities.
25. In mitigation it was submitted that these proceedings had been extremely stressful for the defendant. It was noted that the proceedings had been hanging over him for a considerable time. As a result of the Tribunal's decision he would suffer both reputational and financial damage and therefore he will pay a considerable price for his actions. The Tribunal was invited to bear in mind the background against which the defendant's actions took place. It was an event of short duration, with no long term consequences for anyone other than the defendant himself. Mr Bradly submitted that in these circumstances no sentencing order was required and a finding that the complaint was proved was a sufficient penalty.
26. The Tribunal had regard to ICAEW's *Guidance on Sanctions*. Section 12 of the Guidance indicates that the starting point for sanction in cases involving the use of obscene and grossly offensive language or similar is a severe reprimand and a fine of £2,650. Mr Bradly submitted that these words were not apt to cover the misconduct found proved in this case, and the Tribunal accepted there was some force in those submissions. It accepted that on the scale of seriousness this was at the lower end.
27. The Tribunal was however concerned that the defendant had shown a lack of insight into his behaviour and also a lack of contrition. He had offered no apology to Mr 'B' or Mrs 'A'. He had allowed his anger to dictate his behaviour which was grossly inappropriate for a member of the profession in a public place. He had contested the complaint. He had brought the consequences of his actions upon himself.
28. The Tribunal did not accept that in these circumstances it would be appropriate to make no order. In the Tribunal's view the appropriate and proportionate sanction was a reprimand and a fine of £1,500.
29. The IC applied for costs in the sum of £11,858.
30. The defendant did not contend that he did not have the means to pay the costs. However Mr Bradly submitted on his behalf that the costs were disproportionate in light of the complexity of the matter and that some of the work claimed for appeared to have been duplicated.

31. The Tribunal considered that there was no reason in principle why the defendant should not pay the IC's costs. It accepted that the estimated hearing costs should be adjusted to reflect the actual length of the hearing. It further accepted that the amount claimed for the investigation of the case should be reduced and took into account the length of time taken to bring this matter to a hearing. In the Tribunal's view the appropriate figure for costs was £8,000.

Sentencing order

32. The Tribunal made the following order:

Mr Paul Charles Singleton is reprimanded;

Mr Paul Charles Singleton is fined £1,500;

Mr Paul Charles Singleton shall pay costs to the ICAEW in the sum of £8,000.

Decision on publicity

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

Non Accountant Chairman
Accountant Member
Non Accountant Member

Mr Peter Williamson
Mr Michael Barton FCA
Ms Martha Maher

Legal Assessor

Mr Andrew Granville Stafford

020576

APPEAL COMMITTEE PANEL ORDERS

3 Mr Shafeen Ramjan Akbar FCA of
5 The Court Yard, Holding Street, Rainham, Gillingham, Kent, ME8 7HE.

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 5 December 2017

| | |
|--|-----------------|
| Type of Member | Member |
| Date of Disciplinary Tribunal Hearing | 24 May 2017 |
| Date of Appeal Panel Hearing | 5 December 2017 |

Terms of complaint found proven before the Disciplinary Committee

1. Mr S R Akbar FCA, following a QAD visit on 7 August 2007 confirmed on behalf of his firm that:
 - a. "The practice would be stopped" in relation to a QAD point regarding clients' money being banked in the office account.but at a subsequent QAD visit on 1 December 2014 it was found that the assurance had not been complied with.
2. Mr S R Akbar FCA failed to comply with regulation 10 of the Clients' Money Regulations as he paid client funds into the firm's office bank account. Full particulars are set out in a letter sent to Mr Akbar dated 28 April 2016.
3. Mr S R Akbar FCA inaccurately completed the 2010 to 2014 inclusive annual returns for his firm, S. Akbar & Co, as he stated that the firm did not handle client money when he knew that it did.

Mr Shafeen Ramjan Akbar is therefore liable to disciplinary action under Disciplinary Bye-law (DBL) 4.1.a in respect of heads 1 and 3 and DBL 4.1.c in respect of head 2.

DBL4.1: A member... shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member...at the time of the occurrence giving rise to that liability:

- a. **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;**
- c. **if he has committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them;**

Sentencing Order of Disciplinary Tribunal

- (i) Reprimand
- (ii) Fine of £2,000
- (iii) Contribution to costs of £2,500

The sum of £4,500 is payable in 12 equal monthly instalments of £375 to be paid on the 1st day of each month commencing on 1 July 2017.

| | |
|---|--|
| Appeal against finding? | No |
| Appeal against Sentencing order? | Yes |
| Appeal against Costs | Yes |
| Decision of Appeal Panel | The appeal is dismissed. The Appellant shall pay the sum of £1,500 by way of costs incurred by the Appeal. |

Procedural matters and findings

- 1 The Appellant represented himself. With the consent of the Respondent, he participated by telephone because he was unable to attend the hearing in person. Ms Jessica Sutherland-Mack represented the Investigation Committee.
- 2 The hearing was in public.
- 3 There were no preliminary applications.

Grounds of appeal

4. The appeal was made against the fine and specifically the order that the Appellant should make a contribution towards the costs. The original claim for costs in the sum of £9,481.50 included costs that should have been excluded as they related to an incorrectly alleged breach of Regulation 22 and the costs of pursuing a failed head of complaint. The Disciplinary Committee failed to take any or any proper account of the costs which the Appellant had incurred in relation to the disciplinary process.

Decision

- 5 The Appeal Committee dismissed the appeal and ordered that the Appellant pay a contribution towards the costs of the Appeal in the sum of £1,500.

Reasons for decision

- 6 The Appellant did not challenge the Disciplinary Committee's finding that he had failed to do what he promised he would not do, namely putting client money in an office account, breaching the Client Money Regulations by in effect commingling client money with his own and failing to keep them separate and not completing his annual return correctly for five successive years.
7. The Appeal Committee was satisfied that these were serious matters. The mitigating and aggravating factors identified by the Disciplinary Committee were accepted to be reasonable and the Appeal Committee considered that the sanction order of a reprimand (to which no challenge was made) and a fine of £2,000 properly reflected the seriousness of the matters proved against the Appellant.
8. In respect of costs, the Disciplinary Committee's decision did not disclose its reasons for assessing that the reasonable amount of costs which the Appellant should be required to pay was £2,500.
9. The Appeal Committee therefore had to infer from the decision itself as to whether the Disciplinary Committee had properly taken into account the Appellant's objections to the amount of costs sought against him.

10. The Appeal Committee accepted the principle advanced by the Appellant that costs associated with investigations and complaints, which were either not pursued or proved, should not be included as part of a costs order. It also agreed that the Appellant's means had to be taken into account in determining what was a fair and reasonable amount that he should be expected to contribute to the costs of the proceedings. The Appeal Committee considered that the assessment of the Appellant's means would necessarily take into account any sums which he may have spent in the course of the disciplinary process or have suffered by way of reduced income, for example.
11. The Appeal Committee was satisfied that the Disciplinary Committee must have had proper regard to all of these matters given the decision which it did make. The amount of £2,500 represented a very significant reduction from the Costs Schedule which was presented to the Disciplinary Committee, which totalled £10,231.50. Further, the amount of costs ordered represented only a proportion of the actual costs incurred in respect of the hearing before the Disciplinary Committee itself. Given that there was no challenge made by the Appellant to the fact that he had properly been the subject of an investigation and the disciplinary process, the Appeal Committee was satisfied that the amount of costs that he had been ordered to pay had properly reflected his valid points of objection and that overall the amount was entirely fair and reasonable. His appeal against the sanction and costs order was therefore dismissed.
12. As his appeal was unsuccessful, the Appeal Committee considered that it would be appropriate to require the Appellant to contribute towards the costs of the appeal. It assessed that the amount which it was reasonable and proportionate to expect the Appellant to pay was £1,500.

Chairman
Non Accountant Member
Accountant Member
Accountant Member
Non Accountant Member

Mr Angus Withington
Mrs Maureen Brennan
Mr Richard Lea
Mr Anthony Hemus
Ms Ruth Todd

030072

4 Mr Simon John Austin FCA of
Pine House, Chandlers Way, Southend-on-Sea, Essex, SS2 5SE.

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 5 December 2017

Type of Member Member

Date of Disciplinary Committee Hearing 7 March 2017

Date of Appeal Panel Hearing 5 December 2017

1. Mr Simon Austin FCA failed to obtain and submit to ICAEW the results of external hot file reviews within one month of their completion in breach of a condition imposed by the Audit Registration Committee, set out in a letter dated 14 October 2010, in respect of the following eight audit reports issued by his firm, Austins:
 - a) 'A' Ltd - audit report signed on 13 September 2012
 - b) 'B' Ltd – audit report signed on 14 June 2012
 - c) 'C' plc – audit report signed on 27 June 2012
 - d) 'D' Ltd – audit report signed on 8 October 2012
 - e) 'E' Ltd – audit report signed on 5 March 2012
 - f) 'F' Ltd – audit report signed on 31 August 2012
 - g) 'G' Ltd – audit report signed on 22 June 2012
 - h) 'H' Ltd – audit report signed on 14 May 2012

2. Mr Simon Austin FCA inaccurately completed the 2012 ICAEW annual return for his firm, Austins, in that he failed to disclose the following five new audit clients:
 - a) 'A' Ltd
 - b) 'B' Ltd
 - c) 'E' Ltd
 - d) 'F' Ltd
 - e) 'G' Ltd

3. Mr Simon Austin FCA inaccurately completed the 2013 ICAEW annual return for his firm, Austins, in that he failed to disclose the following three new audit clients:
 - a) 'C' plc
 - b) 'D' Ltd
 - c) 'H' Ltdand the following five existing audit clients:

- d) 'A' Ltd
 - e) 'B' Ltd
 - f) 'E' Ltd
 - g) 'F' Ltd
 - h) 'G' Ltd
4. Mr Simon Austin FCA failed to obtain the Audit Registration Committee's approval prior to accepting the following new audit appointments in breach of a restriction imposed by the Audit Registration Committee, set out in a letter dated 14 October 2010:
- a) 'A' Ltd
 - b) 'B' Ltd
 - c) 'C' plc
 - d) 'D' Ltd
 - e) 'E' Ltd
 - f) 'F' Ltd
 - g) 'G' Ltd
 - h) 'H' Ltd
5. Mr Simon Austin FCA issued audit reports in the name of his firm, Austins, when the audit was not conducted in accordance with International Standard on Auditing (UK & Ireland) 210 'Agreeing the terms of audit engagements' as the appointment as auditor should not have been accepted when the auditor was aware, before accepting the audit engagement, that those who appoint the auditor would impose a limitation on the scope of the audit work likely to result in the need to issue a disclaimer of opinion on the financial statements:
- Year ended 31 December 2011 – audit report dated 4 December 2013
- Year ended 31 December 2012 – audit report dated 28 July 2014
6. Mr Simon Austin FCA issued audit reports in the name of his firm, Austins, when the audit was not conducted in accordance with International Standard on Auditing (UK & Ireland) 210 'Agreeing the terms of audit engagements' as the appointment as auditor should not have been accepted when the auditor was aware, before accepting the audit engagement, that those who appoint the auditor would impose a limitation on the scope of the audit work likely to result in the need to issue a disclaimer of opinion on the financial statements:
- Year ended 31 August 2012 – audit report dated 27 August 2013
- Year ended 31 August 2013 – audit report dated 26 February 2014
7. From 9 May 2012 to 28 July 2014, Mr Simon Austin FCA failed to comply with Regulation 7 of The Money Laundering Regulations 2007 in that he failed to identify the beneficial owner of 'D' Ltd and to take adequate measures, on a risk sensitive basis, to verify their identity.

8. From 8 February 2012 to 26 February 2014, Mr Simon Austin FCA failed to comply with Regulation 7 of The Money Laundering Regulations 2007 in that he failed to identify the beneficial owner of 'G' Ltd and to take adequate measures, on a risk sensitive basis, to verify their identity.

Mr Simon John Austin is therefore liable to disciplinary action:

- i. In respect of heads 1, 2, 3 and 4 under Disciplinary Bye-law 4.1.a;
- ii. In respect of heads 5, 6, 7 and 8 under Disciplinary Bye-law 4.1.b.

Disciplinary Bye-law (DBL) 4.1 states:

4.1 'A member or provisional member shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member or provisional member at the time of the occurrence giving rise to that liability:

a 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;

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

Sentencing Order of Disciplinary Committee Tribunal

- (i) Exclusion from membership, with a recommendation that no application for readmission be entertained until Mr Austin is able to demonstrate full insight into and contrition for his behaviour.
- (ii) Costs of £7,500 be paid by 12 equal instalments of £625 each starting on the 1st of May 2017.

| | |
|----------------------------------|-----|
| Appeal against finding? | No |
| Appeal against Sentencing order? | Yes |
| Appeal against Costs | Yes |

Decision of Appeal Panel

Appeal against sanction and amount of costs dismissed. The Appeal Committee granted an extension of the time to pay the costs order. The Appellant was required to pay a contribution towards the costs of the appeal of £1,250.

Procedural matters and findings

- 1 The Appellant represented himself. The Investigation Committee was represented by Ms Jessica Sutherland-Mack.
- 2 The hearing was in public.
- 3 There were no preliminary applications.

Grounds of appeal

- 4 The Appellant accepted that his conduct had brought himself and the profession into disrepute. This had not been his intention and he apologised unreservedly for it. He had insight into his conduct and was contrite. He therefore sought to appeal against the order for exclusion.
- 5 The Disciplinary Committee's order as to costs was too high, when compared to the costs of the hot file reviews which the Appellant had incurred. The costs order should be reduced by £5,655.

Decision

6. The Appellant fairly did not seek to challenge any aspect of the Disciplinary Committee's decision in relation to misconduct. He fully accepted his behaviour amounted to misconduct and he apologised wholeheartedly for it. He recognised that he ought to have refused to act in the circumstances in which he found himself and that, by failing to do so, he had brought himself and the profession into disrepute.
- 7 The Appeal Committee had regard to the Guidance on Sanctions. For Audit Work of a seriously defective nature, the starting point for a Registered Individual is Exclusion with a financial penalty of £5,750 – £11,500.
- 8 The Appeal Committee was entirely satisfied that the Disciplinary Committee had correctly identified all relevant aggravating and mitigating factors and had reached a reasonable decision. The Appeal Committee were satisfied that exclusion was the only applicable sanction, given the seriousness of the Appellant's misconduct and the need to uphold standards of conduct, maintain the reputation of the profession and protect the public. The Appellant's appeal against the sanction order was therefore dismissed.
- 9 The Appeal Committee noted the Disciplinary Committee's recommendation as to when the Appellant might make an application for readmission. The Appeal Committee regarded this recommendation as simply reflecting that which the Re-admission Sub-Committee would have considered in any event, given its obligation to ensure that the Appellant was a fit and proper person before permitting his re-admission to membership.
- 10 In respect of costs, the Appeal Committee appreciated the Appellant's concern that the hourly rate charged by the Investigation Committee was higher than he would be able to command in the course of his practice. However, it determined that the proper approach was to consider firstly whether the amount of costs sought was reasonable and then whether any such amount was within the Appellant's means to pay.
11. In making its costs order, the Disciplinary Committee had made some reduction from the amount actually sought by the Investigation Committee. The Appeal Committee was satisfied that the amount of £7,500 was reasonable given the nature of the investigation and the hearing before the Disciplinary Committee. The Appellant fairly

accepted that he could pay the full amount, but stated that he would require additional time to pay. On the evidence presented before it, the Appeal Committee was satisfied that this was a reasonable request.

12. As his substantive challenge to the sanction and costs order was unsuccessful, the Appeal Committee determined that it was reasonable that the Appellant should contribute towards the costs of his appeal. The Appeal Committee determined that the costs of the appeal which it would be reasonable to expect the Appellant to pay was £1,250 and that this sum, together with the costs order made by the Disciplinary Committee, should be discharged at the rate of £350 per month.

Chairman
Accountant Member
Accountant Member
Non Accountant Member
Non Accountant Member

Mr Angus Withington
Mr Richard Lea FCA
Mr Tony Hemus FCA
Mrs Maureen Brennan
Ms Ruth Todd

024992

INVESTIGATION COMMITTEE CONSENT ORDERS

5 Mr Stephen Mark Quinn FCA

Consent order made on 18 January 2018

With the agreement of Mr Stephen Mark Quinn of 2 Craven Court, Craven Road, Altrincham, Cheshire, WA14 5DY the Investigation Committee made an order that he be reprimanded, fined £2,000 and pay costs of £3,893 with respect to a complaint that:

1. Mr S M Quinn FCA as supervisor of the IVA of Mr 'X' failed to issue a notice of breach in the timescale required by the terms of the IVA.
2. Mr S M Quinn FCA repeatedly failed to reply to correspondence sent to him and his staff in connection with the breach in a timely manner.

027478

AUDIT REGISTRATION COMMITTEE

ORDER – 13 DECEMBER 2017

6 Publicity Statement

Prestons & Jacksons Partnership LLP, 364-368 Cranbrook Road, Ilford, Essex, IG2 6HY has agreed to pay a regulatory penalty of £2,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of paragraph 23 of APB Ethical Standard 2 and audit regulation 3.01 in that a connected firm made a loan to one of its charity audit clients.

041051

PROBATE COMMITTEE

ORDER – 20 OCTOBER 2017

7 Publicity Statement

Duncan & Toplis Probate Services Limited, 3 Castlegate, Grantham, Lincolnshire, NG31 6SF to pay a regulatory penalty of £500 for failure to apply for affiliate status of an individual held out as a principal of the firm in accordance with the requirements of Regulation 2.4f.

ORDER – 25 APRIL 2017

8 Publicity Statement

Hunter Healey Ltd, Abacus House, 450 Warrington Road, Culcheth, Warrington, Cheshire, WA3 5QX to pay a regulatory penalty of £3,000 for failure to inform ICAEW of a change in ownership of the firm, in accordance with Regulation 2.7. and failure to comply with the *Probate Regulations* as the firm carried out probate work while ineligible to do so.

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