# *Disciplinary Orders and Regulatory Decisions*

## DATE PUBLISHED: 3 FEBRUARY 2021

**Disciplinary orders**

Disciplinary Committee tribunal orders



Investigation Committee consent orders



Investigation Committee fixed penalty order

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Audit Registration Committee



Insolvency Licensing Committee



Investment Business Committee



Practice Assurance Committee

# DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. **Shacter Cohen & Bor LLP** of
   Manchester, United Kingdom

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 8 September 2020**

**Type of Member** Member Firm

**Terms of complaint**

**Complaint 1**

Between 8 November 2011 and 6 September 2014 Shacter Cohen & Bor LLP failed to comply with regulation 22 of the Clients' Money Regulations in relation to any or all of the instances set out in Appendix 1 because the firm allowed amounts to be withdrawn from the client money account without:

a) agreeing the precise amount with each client, or
b) agreeing an accurately calculated formula in writing with each client, or
c) ensuring that thirty days had elapsed since delivery of the invoice

**Complaint 2**

Shacter Cohen & Bor LLP failed to comply with regulation 10 of the Clients' Money Regulations as the firm failed to pay clients' money immediately into a client bank account on the following occasions:

a. Between 7 December 2012 and 26 January 2015 £9.61 received on behalf of 'K' Ltd
b. Between 31 January 2013 and 23 October 2014 £2,703.44 received on behalf of 'K' Ltd
c. Between 4 July 2014 and 27 January 2016 £45 received on behalf of Mrs 'L'
d. Between 4 February 2014 and 6 March 2014 £67 received on behalf of Mr 'M'
e. Between 4 February 2014 and 22 August 2014 £30 received on behalf of Mr 'M'

**Complaint 3**

Shacter Cohen & Bor LLP failed to comply with Regulation 25 of the Clients' Money Regulations because:

a) Between 8 November 2011 and 30 August 2013, the client bank account was not reconciled at least every five weeks against the client credit balances and against the bank statement;

and/or

b) Between 1 January 2014 and 27 February 2014, the client bank account was not reconciled at least every five weeks against the client credit balances and against the bank statement;

and/or

c) Between 1 June 2014 and 30 July 2014, the client bank account was not reconciled at least every five weeks against the client credit balances and against the bank statement;

and/or

d) On 31 July 2014, differences were identified on the client bank account and not corrected immediately in relation to the following amounts:

i) £2,703.44 and/or
ii) £148.30

**Complaint 4**

Between 8 November 2011 and 22 October 2014 Shacter Cohen & Bor LLP failed to comply with regulation 27 of the Clients' Money Regulations as the firm failed to carry out and document annual Clients' Money Regulation compliance reviews.

Shacter Cohen & Bor LLP is therefore liable to disciplinary action under Disciplinary Bye-law 5.1c in respect of Complaints 1, 3 and 4 (effective from 29 September 2011 and 24 July 2013) and Complaint 2 (effective from 29 September 2011, 24 July 2013 and 1 January 2016).

Disciplinary Bye-law 5.1c (effective from 29 September 2011, 24 July 2013 and 1 January 2016) states:

> 5.1 'A member-firm shall be liable to disciplinary action under these bye-laws in any of the following cases
> c. if it has committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them.

**Hearing date**

08 September 2020

**Previous hearing date(s)**

Case management hearings were conducted on 8th April 2020 and 19th August 2020

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| **Pre-hearing review or final hearing** | Final Hearing |
| **Complaints found proved** | Yes upon admission |
| **All heads of complaint proven** | Yes save for Complaint 1 in respect of 'O', and Complaint 3 in respect of d) ii which were withdrawn |
| **Sentencing order** | Complaint 1: a reprimand and a financial penalty of £4,000;<br>Complaint 2: a reprimand and a financial penalty of £2,500;<br>Complaint 3: a reprimand and a financial penalty of £2,500;<br>Complaint 4: a reprimand and a financial penalty of £2,500. The Respondent was ordered to pay the costs of £6,051. The financial penalties and the costs are to be paid at a rate of £1,000 per calendar month, the first payment to be made on 1st November 2020. |
| **Procedural matters and findings** | The proceedings were conducted by way of a virtual hearing pursuant to a case management decision made on 19th August 2020 |

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| **Parties present** | The Respondent firm appeared by Mr Bor |
| **Represented** | The Investigation Committee (IC) was represented by Ms Silpa Tozar<br><br>The Respondent was represented by Mr Christopher Cope |
| **Hearing in public or private** | The hearing was a virtual hearing details of which had been posted on the ICAEW website. |
| **Decision on service** | In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service |
| **Documents considered by the tribunal** | The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle (together with further documents provided by the Respondent.) |

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

Practices

1. Prior to Shacter Cohen & Bor LLP being incorporated, the original practice was called 'A' Ltd, which had previously been called 'N' Ltd. There were four principals of this practice, namely:

    - Mr Jeffrey Bor FCA
    - Mr 'D' FCA
    - Mr 'E' ACCA
    - Mr 'G'

2. Mr Bor and Mr 'D' had equal voting rights and therefore that practice qualified as a member firm.

3. Shacter Cohen & Bor LLP (the Firm) was incorporated on 28 March 2011 with the same four principals set out above. The Firm did not take over the general practice of 'A' Ltd until 8 November 2011 and was audit registered until 3 February 2015.

4. On 25 March 2011, 'N' Ltd was incorporated. This limited company runs alongside the LLP and took over the audit registration of the Firm from 23 December 2014.

5. Mr 'D' FCA and Mr Bor FCA started a partnership called 'Q' & Co. Mr 'G' also joined as a partner, but only until January 2015. Mr 'D' FCA continued this trading name as a sole trader dealing with probate and flat management work. Mr Bor was the 'practice assurance principal' for all of the practices.

Quality Assurance Department Visits

6. In 2009, ICAEW's Quality Assurance Department (QAD) visited the original practice, 'A' Ltd. QAD identified several breaches of the Clients' Money Regulations (CMRs). The table below sets out particular breaches that were identified by QAD as requiring rectification and the Firm's response to the same:

| Breach | Firm's response |
|---|---|
| Ensure that the firm has written consent to deduct the firm's fees from client tax refunds or the fees are only deducted in accordance with regulation 22 | This is currently done |
| Evidence a reconciliation of the account at least every five weeks (regulation 25(a)) | This is already done |
| Carry out and document an annual compliance review (regulation 27(b)) | We will do this |

7. The next QAD visit was in 2014. At this time, the business had been transferred to Shacter Cohen & Bor LLP. QAD identified that the firm had not complied with the previous assurances given by 'A' Ltd and identified the same breaches of the Clients' Money Regulations.

**Complaint 1**

8. Regulation 22 of the Clients' Money Regulations states:

   'Money may only be withdrawn from a client bank account for or towards payment of fees payable by the client to the firm if: the precise amount thereof has been agreed by the client or has been finally determined by a court or arbitrator; or the fees have been accurately calculated in accordance with a formula agree in writing by the client on the basis of which the amount thereof can be determined; or thirty days have elapsed since the date of the delivery to the client of a statements of fees and the client has not questioned the amount therein specified as due'.

9. On 24 and 25 February 2014, QAD identified that the Firm did not have a procedure in place to ensure that fees were only taken from the clients' money account either with the clients' agreement or after 30 days had elapsed since the issue of the invoice.

10. Following the QAD visit, the Firm confirmed that they had since put a procedure in place to prevent any future breaches of regulation 22. The Firm provided a copy of a schedule to be used to obtain approval for the transfer prior to any transfers being made going forward.

11. The Respondent provided a list of all instances where clients' money had been transferred to the office account before 30 days after issue of the invoice and without client's permission. A schedule of office transfers between 1 November 2012 and 31 March 2013 was provided, and at that time most client money was received by way of HMRC refunds.

12. In that five-month sample, potential breaches of regulation 22 were identified, requests were made for details of all transfers from the client account to the office account since the Firm commenced trading on 8 November 2011. Accordingly, the Respondent provided a further list which together with the original sample covered a period between 19 May 2009 and 28 February 2015.

13. While some signed authorities from clients were produced, IC asserts that there had been a breach of Regulation 22 in relation to five instances.

    'R' - A letter dated 4 November 2011 was sent by the Firm to this client explaining that fees of £286.50 had been deducted from the tax refund. This related to six invoices whereby 30 days had elapsed in respect of five of the invoices. Therefore, this breach relates to one invoice dated 18 October 2011 in the sum of £48, which was transferred to the office account after only 22 days on 9 November 2011.

    'S' - The Firm's spreadsheet shows that £202.14 was transferred on 23 August 2012, but the invoice was dated 17 August 2012. Therefore, only 6 days had elapsed.

'R' - £75.00 was transferred on 20 September 2013. £74 was the relevant figure, the invoice was dated 17 September 2013 and therefore only 3 days had elapsed.

'T' –£389.10 was transferred on 9 October 2013. The invoice was dated 19 September 2013 and therefore only 20 days had elapsed.

'U' Ltd –£1198.46 was transferred on 28 April 2014. The invoice was dated 24 April 2014 and therefore only 4 days had elapsed.

**Representations**

14. In a letter dated 29 October 2014 Mr Bor explained that since he became a partner in 1986 "we have never withdrawn money from the client account without obtaining our client's prior authority before any transfer to the office account was made".

15. It was further explained that the Firm had often obtained verbal agreement to transfer fees, and while Regulation 22 does not specify such agreement has to be in writing the Firm accepted that this should have been done. The systems are now more robust and ensure written agreement.

**Complaint 2**

16. Regulation 10 of the Clients' Money Regulations (Document 4) states:

    "Clients' Money or Mixed Monies received by a Firm or by any Principal must be paid immediately into a Client Bank Account, or to the client".

17. Five occasions have been identified where the Firm breached this regulation:

    'K' Ltd

    On 7 December 2012 the Firm received a tax refund from HMRC on behalf of 'K' Ltd in the sum of £2,703.44 into their office account. This was allocated against an outstanding invoice for £2,693.83 gross dated 24 September 2012. The remaining £9.61 of clients' money was held on account in the office account until the next invoice was raised on 27 January 2015.

    Mr Bor explained that when they were notified of the refund the firm incorrectly thought that the money had been paid into the client account and incorrectly transferred the £2,703.44 from the client account into the office account again on 31 January 2013. Therefore, £2,703.44 of clients' money was being held in the office account until the error was identified and corrected on 24 October 2014, some 21 months later.

    'L'

    On 4 July 2014 the Firm received £160.22 from Mrs 'L' into their office account. This receipt resulted in an over payment of £45, leaving £45 of clients' money in the office account. The clients' money remained in the office account until the next invoice was raised on 27 January 2016.

    'M'

    Mr 'M' is the director of 'V' Ltd. On 4 February 2014 £337 of clients' money was transferred to the office account when this client had only authorised the transfer of £240. This resulted in £97 of clients' money being held in the office account in error. This was corrected in two

parts. £67 was transferred back to the clients' money bank account on 6 March 2014 and the remaining £30 was transferred back on the 22 August 2014.

**Representations**

18. While the Firm asserts that the overpayments or errors in transfers into the office account should be treated as payments on account of fees, in the same way as when a client pays an agreed fee which is paid in advance by monthly standing order, IC rejects this as a way of dealing with overpayments. The breaches are now accepted.

**Complaint 3**

19. Regulation 25 of the Clients' Money Regulations states:

    "A Firm must:
    at least once every five weeks, reconcile the total balances on all its Client Bank Accounts with the total corresponding credit balances in respect of its Clients, as recorded by it, and where any difference arises, correct it immediately; and at the same time as carrying out the reconciliation under sub-paragraph (a) above, reconcile the balance on each Client Bank Account, as recorded by it, with the balance on that account as set out in the statement issued by the Bank and, where any difference arises, correct it immediately, unless the difference arises solely as a result of timing differences".

20. On 24 and 25 February 2014, QAD identified that the Firm had not been reconciling the client account at least five-weekly.

21. PCD requested copies of the client bank account reconciliations. Mr Bor provided a list of the reconciliations showing the following three periods whereby the Firm had failed to ensure reconciliations were being performed at least every five weeks:
    - 8 November 2011 and 30 August 2013 (Complaint 3(a))
    - 1 January 2014 and 27 February 2014 (Complaint 3(b))
    - 1 June 2014 and 30 July 2014 (Complaint 3(c))

    £2,703.44

    The difference in the sum of £2,703.44 was first identified on the bank reconciliation on 31 July 2014. The Firm accepts that the error in relation to this sum should have been "picked up by way of the reconciliation of the client account every five weeks…" Mr Bor explained that the £2,703.44 had been entered into the office account in error and needed to be transferred back into the client bank account. He further explained that a client tax rebate had been received into the office account and as they had not realised it had been received into the wrong account an identical sum was also transferred from the client account to the office account. The money was transferred back to correct this error on 24 October 2014.

22. Mr Bor provided copies of the bank reconciliations for the period 1 October 2014 to 30 April 2016, which shows that the reconciliations are now being prepared on a monthly basis. However, the reconciliation to 31 March 2016 still showed the £2,703.44 as an adjustment. Despite Mr Bor previously explaining that it had been corrected on the bank account in October 2014 it had not been updated on the bank reconciliation and client balances list. This was corrected on the April 2016 reconciliation.

**Representations**

23. Mr Bor has explained that there were mitigating personal circumstances that have contributed to these failures. He explained that [private]. In addition to this the firms' bookkeeper was [private].

24. Mr Bor explained on behalf of the Firm that whilst formal reconciliations were not completed as required, the transactions were being recorded and monitored. In February 2016 the bookkeeper provided a statement explaining the process and attaching examples of the records kept of the receipts received.

25. Mr Bor confirmed that procedures were now in place to ensure that the reconciliations are being completed at least five weekly. However, it is noted that were four partners at the firm, and support should have been provided to ensure the failures did not occur.

**Complaint 4**

26. Regulation 27 of the Clients' Money Regulations (Document 5) states:

    "Principals must:
    confirm that their Firm meets the requirements of these regulations and shall supply such evidence as the regulation and/or Council may require to support such confirmation; and
    ensure that their Firm conducts a review at least annually, to consider whether systems it has maintained have been adequate to enable it:
    to comply with these regulations;
    to carry out the reconciliations in accordance with regulation 25; and
    to prepare any return required under regulation 27(a) and to confirm its compliance with these regulations"

27. On 24 and 25 February 2014, QAD identified that the Firm had not completed annual Clients' Money Regulations compliance reviews. QAD also highlighted that the Firm had made declarations on their ICAEW annual returns in 2012 and 2013 confirming that they had reviewed compliance annually.

**Representations**

28. Mr Bor on behalf of the predecessor firm, 'A' Ltd, had previously agreed to carry out and document annual compliance reviews following QAD's visit on 30 April 2009.

29. Mr Bor explained that the operation of the client account is under his supervision and he is constantly reviewing it on a regular basis throughout the year. He explained that no payments are made out of the account without his knowledge or authority. Cheques must be signed by two signatories, of which he is one, and he is the only person who can make online payments on the client account. He accepted that a formal review was not carried out in accordance with ICAEW's help sheet because it was considered that the continued monitoring throughout the year was sufficient. Mr Bor confirmed that the Firm will now use the checklist on an annual basis to ensure that compliance is monitored.

30. On 29 February 2016 Mr Bor explained that he and another partner had been through the audit manual checklist and done a review in order to answer the questions on the ICAEW annual return and they considered this was sufficient at the time. He confirmed that they are now using the ICAEW checklist and they will get another partner not involved in client money to complete the review going forwards. On 15 March 2016 Mr Bor further explained that they considered the audit manual annual checklist was sufficient as it had references to the operation of the client account.

31. Mr Bor provided a copy of the firm completed Clients' Money Regulations compliance review dated 23 October 2014. He acknowledged that the Firm has failed to conduct annual compliance reviews and therefore the Firm has breached regulation 27 of the Clients' Money Regulations.

32. IC submits that the Firm's poor processes led to the Firm failing to complete and document annual compliance reviews which they had agreed to do following the 2009 QAD visit. The Firm's poor processes also led to ICAEW's annual return being completed incorrectly.

**Matters relevant to sentencing**

33. The Respondent had no previous findings of misconduct. We remind ourselves that the key principles are protection of the public, maintaining the reputation of the profession, upholding proper standards of conduct within the profession, and the correction and deterrence of misconduct. The tribunal considered the Guidance on Sanctions. We consider the complaints fell under the heading Clients' money offences where there is no allegation of dishonesty or misappropriation. For Complaint 1, the relevant provision is Paragraph 8 g, and the starting point is a severe reprimand and a category C financial penalty (£10,000). For Complaint 2, the relevant provision is Paragraph 8 a ii, and the starting point is a reprimand and a Category E financial penalty (£3,000). For Complaints 3 and 4, the relevant provision is Paragraph 8 i, and the starting point is a reprimand and a Category E financial penalty (£3,000). We concluded that for the reasons set out in our conclusions and decision the failure was serious, para d ii. The starting point was accordingly a severe reprimand and a category D financial penalty (£5,000).

34. The aggravating features were the repeated breaches over a period of time. The tribunal was addressed at length upon the mitigating features, which it took fully into account. These included the admissions made; the fact that there were no adverse financial consequences of the breaches; no complaint was made by any client; the amounts involved were relatively small; the time taken to conclude the investigation was lengthy; the historic nature of the complaints; the [private]; the [private] the Firm's book keeper; Mr Bor's own health difficulties; and the financial difficulties encountered by the Firm due to Covid 19. The Respondent did not provide any detailed financial information to us.

**Sentencing Order**

35. The Tribunal considered all these matters and all submissions made to it. We concluded that a fair and proportionate sentencing order was as follows. For Complaint 1, a reprimand and a financial penalty of the reduced figure of £4,000; for Complaint 2, a reprimand and a financial penalty of £2,500; for Complaint 3, a reprimand and a financial penalty of £2,500; for Complaint 4, a reprimand and a financial penalty of £2,500. We also order that the costs of £6,051 (which we scrutinised and found to be fair and reasonable) be paid by the Respondent. The financial penalties and the costs are to be paid at a rate of £1,000 per calendar month, the first payment to be made on 1st November 2020.

**Decision on publicity**

36. Publication with name

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|---|---|---|
| **Chair** | Mr Richard Jones QC | |
| **Accountant Member** | Ms Lydia Margaret Ebdon FCA | |
| **Non Accountant Member** | Ms Isobel Leaviss | **023984** |

2. **Mr Jeffrey Anthony Bor FCA** of
Manchester, United Kingdom

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 8 September 2020**

**Type of Member** Member

**Terms of complaint**

1. Between 26 October 2011 and 31 October 2011 Mr Jeffrey Bor FCA in allowing this practice, 'A' Ltd, to loan £50,000 to their client, Mr 'B', failed to have sufficient regard to paragraph 280 of the Code of Ethics

Mr Jeffrey Anthony Bor is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a.

Disciplinary Bye-law 4.1a (effective from 29 September 2011) 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.

**Hearing date**

08 September 2020

**Previous hearing date(s)**

Case management hearings were held on 8th April 2020, 10th June 2020 and 19th August 2020

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|---|---|
| **Pre-hearing review or final hearing** | Final Hearing |
| **Complaint found proved** | Yes |
| **Sentencing order** | A severe reprimand and a financial sanction of £4,000 together with costs of £10,308.50. Payment of £1,000 is to be made monthly, the first payment being on 1st November 2020 |
| **Procedural matters and findings** | The proceedings were conducted by way of a virtual hearing pursuant to a case management decision made on 19th August 2020 |
| **Parties present** | The Investigation Committee (IC) was represented by Ms Silpa Tozar<br><br>The Respondent attended and was represented by Mr Christopher Cope |
| **Hearing in public or private** | The hearing was a virtual hearing details of which had been posted on the ICAEW website |

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| **Decision on service** | In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service |
| **Documents considered by the tribunal** | The tribunal considered the documents contained in the IC's bundle together with witness statements of the Respondent and of Mr 'C', and further emails and documents provided by the Respondent |

**The IC's case**

Background facts

1. At the time the matter complained of arose, the Respondent was a principal of a practice called 'A' Ltd. There were also three other principals, namely: Mr 'D' FCA, Mr 'E' ACCA and Mr 'G'. The Respondent was the Practice Assurance Principal of this practice.

2. The background facts are not in dispute. Mr 'B' was a client of the firm and the Respondent was the Engagement Partner acting for him in relation to the purchase of a business called 'H' Limited. As Engagement Partner, the Respondent was responsible for dealing with all of Mr 'B's affairs and was ultimately responsible for the work undertaken on Mr 'B's behalf. The firm also acted for 'H' Limited. Mr 'B' had also instructed Mr 'C' of 'I' Solicitors to deal with the business purchase transaction.

3. The services provided to Mr 'B' included the Respondent:
    - liaising with various parties connected to the transaction
    - completing due diligence
    - assisting with arranging finance
    - attending meetings with Mr 'B' and 'I' Solicitors
    - preparing accounts for the purpose of the purchase

4. The fee notes in evidence for providing these services were issued on:
    - 11 July 2011 in the sum of £2,760 (gross) – general business advice
    - 25 July 2011 in the sum of £3,840 (gross) – preparing and amending accounts and meetings

5. Both of these fee notes were raised against 'H' Limited.

6. During the course of the acquisition, further monies were required to enable the continuation of trading. Mr 'B' was unable to raise such monies from the usual sources or from friends or relatives and was under significant financial pressure. Although a bank loan for £400,000 had been agreed in principle, it was a term of the loan that Mr 'B' could demonstrate that he had £100,000 by way of clear funds in his bank account.

7. This was achieved in an unusual manner. A total of £100,000 was loaned for the benefit of Mr 'B' in order to assist him. £50,000 was loaned by the practice 'A' Ltd and £50,000 was loaned from a connected third party. On 24 October 2011, £50,000 was paid into the firm's client account in the name 'J', she being the wife of Mr 'B's solicitor, Mr 'C'. The firm was not providing any accountancy services to 'J'.

8. On the same date, £25,000 was transferred from one of the firm's bank accounts into the client account and a similar amount was transferred to client account the following day. These transfers were made for the purposes of the Respondent allowing 'A' Ltd to loan Mr 'B' £50,000.

9. A total of £100,000 was paid to 'H' Limited on behalf of Mr 'B' from the firm's client account in two transfers. The first transfer took place on 25 October 2011 in the sum of £25,000 and the second transfer took place on 26 October 2011 in the sum of £75,000.

10. The Respondent explained that the "terms of the loan were set out by the solicitors" and that "the client needed to confirm to his mortgage lender a level of funds in its bank account to enable the mortgage to be drawn down". He further explained that "the financial arrangements were via the solicitors and the loan was very short term". Furthermore, the solicitors had given an Undertaking to repay the loan upon receipt of the further bank lending.

11. On 31 October 2011, the firm received £106,000 from 'I' solicitors. £53,000 was transferred to the firm's office account. The Respondent explained that the additional £6,000 represented the fee for the loan, which was split equally with the Mr 'C' and J. The tribunal was troubled about an apparent conflict between the bank's objective, of ensuring that the borrower had a particular level of solvency, and the nature of the loan being very transient.

Objectivity

12. Section 120 (Objectivity) of ICAEW's Code of Ethics provides that a professional accountant is under an obligation not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others. Section 280.1 requires a professional accountant to determine when providing any professional service whether there are threats to compliance with the fundamental principle of objectivity as a result of any interest they may have. Section 280.3 states that the "existence of threats to objectivity when providing any professional service will depend upon the particular circumstances of the engagement and the nature of the work that the professional accountant in public practice is performing".

13. Section 280.4 states that a: "professional accountant in public practice shall evaluate the significance of any threats and apply safeguards when necessary to eliminate them or reduce them to an acceptable level", and continues that if "safeguards cannot eliminate or reduce the threat to an acceptable level, the professional accountant shall decline or terminate the relevant engagement".

The IC's case

14. The IC's case is that there was plainly a threat to the Respondent's objectivity once the firm became a lender to his client. The Respondent failed in the circumstances to make a proper assessment as to whether there were threats to compliance with the fundamental principle of objectivity as a result of any interest he may have and how to safeguard against that risk.

15. Notwithstanding the short term nature of the proposed loan, there is no documentary evidence that the Respondent evaluated the significance of the threat and considered applying any safeguards, such as informing the mortgage lender of the loan or not making the loan at all.

The Respondent's case

16. The Respondent maintained that he had carried out an appropriate evaluation of the threat to his objectivity, although no documented evaluation was located. To justify his manner of dealing with the threat he relied heavily upon the views of a senior solicitor, Mr 'C', who was engaged in the transaction and who arranged for the loan to be made. The Respondent stated that he decided not to continue to work for Mr 'B' or 'H' Limited in connection with the transaction while the loan was still outstanding in order to maintain his objectivity. This was his response to the threat and he maintains he told Mr 'B' of this although no written record of the conversation was in evidence.

**Conclusions and reasons for decision**

17. As stated above, the tribunal was troubled by the provision of short term lending when the mortgage lender required a certain level of funds credited to a bank account in order to advance funds, but was apparently unaware that the necessary deposit funds had been advanced on a very short term basis by their client's professional advisers. The tribunal was satisfied that by making the loan for the benefit of his client, the Respondent's objectivity was threatened. The loan enabled funding to be obtained to facilitate the continuation of trading. It was accordingly incumbent upon a professional accountant to evaluate the significance of any threat at the time. The financial interest in the fee of £3,000 was a further risk to the compromising of the Respondent's objectivity. The tribunal concluded on the evidence that the Respondent did not evaluate sufficiently the threat to his objectivity. There was no written evidence of his having done so, and there was no document advising his client recording any safeguards. He placed undue weight upon the views and judgment of Mr 'C', and did not in our view exercise his own independent judgment.

18. The tribunal was satisfied that the Respondent did not give sufficient regard to the Code of Ethics, and did not consider the options open to him including refusing to provide the loan. The decision to cease working for his client at a critical time could well have been against the client's interest had the bank required financial information from the firm. The Respondent's explanation of the nature of risk assessment undertaken at the time addressed in particular the measures that were in place to ensure the loan was repaid rather than evaluating the significance of threats to his objectivity in completing work for his client.

19. Accordingly, having considered all the evidence, oral and written, and the submissions made to it, the tribunal is satisfied that the complaint has been proved.

**Matters relevant to sentencing**

20. The Respondent had no previous findings of misconduct. The tribunal considered the *Guidance on Sanctions*. We remind ourselves that the key principles are protection of the public, maintaining the reputation of the profession, upholding proper standards of conduct within the profession, and the correction and deterrence of misconduct. We consider the complaint fell under the heading Failure to comply with the Fundamental Principle of Objectivity. We concluded that for the reasons set out in our conclusions and decision the failure was serious, para d ii. The starting point was accordingly a severe reprimand and a category D financial penalty (£5,000).

21. The aggravating features were that at the time the loan was granted there had been a recent change in the Regulations relating to objectivity, and more careful attention was required to the proposed course of action; the Respondent relied too much upon another professional, Mr 'C', as opposed to forming his own judgment; there was a financial benefit from the loan, £3,000; and there was a complete lack of paperwork to demonstrate any compliance with the requirements. The mitigating features were that this was an isolated incident; no other similar loans have been made; the lapse in time since the loan was made; and there were no adverse financial consequences for the client or any third party, nor was any complaint made by the client or the bank.

**Sentencing Order**

22. Having considered all of these factors, we concluded that a fair and proportionate sentencing order was a severe reprimand and a financial penalty of the reduced figure of £4,000. No detailed financial information was provided to us. We also order that the costs of £10,308.50 (which we scrutinised and found to be fair and reasonable) be paid by the

Respondent. The financial penalty and the costs are to be paid at a rate of £1,000 per calendar month, the first payment to be made on 1st November 2020.

**Decision on publicity**

Publication with name

| | | |
|---|---|---|
| **Chair** | Mr Richard Jones QC | |
| **Accountant Member** | Ms Lydia Margaret Ebdon FCA | |
| **Non Accountant Member** | Ms Isobel Leaviss | **041977** |

3. **Mr Neil Douglas Snedker ACA** of
Witney, United Kingdom

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 6 October 2020**

**Type of Member** Member

**Terms of complaint**

1. On 24 December 2009, Mr Neil Douglas Snedker ACA, on behalf of his firm Snedker Accountants Limited, issued an unqualified audit report on the financial statements [Company A Ltd] for the year ended 31 March 2009 when the audit was not conducted in accordance with International Standard on Auditing 500 'Audit evidence' in that Mr Snedker failed to obtain sufficient and appropriate audit evidence in respect of:

    a) freehold property fixed assets; and/or
    b) directors' loan accounts.

2. On 20 December 2008, Mr Neil Douglas Snedker ACA, on behalf of his firm Snedker Accountants Limited, issued an unqualified audit report on the financial statements of [Company A Ltd] for the year ended 31 March 2008 when the audit was not conducted in accordance with International Standard on Auditing 500 'Audit evidence' in that Mr Snedker failed to obtain sufficient and appropriate audit evidence in respect of:

    a) freehold property fixed assets; and/or
    b) directors' loan accounts; and/or
    c) income and expenditure.

3. Mr Neil Douglas Snedker ACA, on behalf of his firm Snedker Accountants Limited, in preparing the unaudited financial statements of [Company A Ltd] for the year ended 31 March 2006, did not comply with Part 3 of Schedule 4 of the Companies Act 1985 as they did not contain a note explaining the non-comparability of corresponding amounts for the preceding financial year with the financial statements that had been filed for that former period.

4. Mr Neil Douglas Snedker ACA, on behalf of his firm Snedker Accountants Limited, prepared the financial statements of [Company A Ltd] for the year ended 31 March 2007 which included a statement that the company was entitled to exemption from audit under s249A of the Companies Act 1985 when this was not the case as gross assets exceeded the audit exemption threshold of £2.8m.

Mr Neil Douglas Snedker ACA is therefore liable to disciplinary action as follows pursuant to Disciplinary Bye-law 4.1b for complaints 1-4.

| | |
|---|---|
| **Hearing date** | 6 October 2020 |
| **Previous hearing dates** | Case Management Hearing on 29 July 2020 |
| **Case Management, Sanctions or Final Hearing** | Final hearing |
| **Heads of complaint found proved** | Complaints 1, 2, 3 and 4 |
| **Heads of complaint found not proved** | None |

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|---|---|
| **Sentencing order** | Severe reprimand<br>Fine of £5,000<br>Costs of £14,442.50 |

**Procedural matters and findings**

| | |
|---|---|
| **Parties and representation** | The Investigation Committee was represented by Miss Victoria Morgan<br>The Respondent was not present and was not represented |
| **Hearing in public or private** | The hearing was in public |
| **Decision on service** | The Tribunal was satisfied that service was in accordance with regulations 3 and 26 of the Disciplinary Committee Regulations |
| **Documents considered by the Tribunal** | The Tribunal considered the documents contained in the Investigation Committee's bundle |

**Proceeding in absence**

1. At the Case Management Hearing ('CMH') on 29 July 2020, the CMH Chair was satisfied that service of the Investigation Committee's papers had been effected in accordance with Regulation 3 of the Disciplinary Committee Regulations ('DCR'). At the CMH the matter had been listed for a final hearing on 6 October 2020.

2. Notice of the final hearing was sent to Mr Snedker ('the Respondent') on 31 July 2020. The notice was sent to his registered address. The Tribunal was satisfied that service had been effected in accordance with Regulation 26 of the DCR.

3. The Respondent had not filed a Respondent's Statement. On 30 September 2020 he emailed ICAEW saying that he had resigned as an ICAEW member 'a while ago'. He concluded by saying 'Please stop e-mailing me'.

4. The Tribunal was satisfied that the Respondent was fully aware of the hearing. He had not sought an adjournment. Moreover, he had made it clear he did not intend to engage in the proceedings. The Tribunal was satisfied that no useful purpose would be served in adjourning the hearing and that there was a clear public interest in proceeding in the Respondent's absence.

**The Investigation Committee's case**

5. The Respondent has been a member of the ICAEW since 1986. He is a sole practitioner and operates as Snedker Accountants Ltd ('the firm'). Until 11 January 2017, the firm was registered to provide audit services.

6. From its incorporation in 1993, Company A Ltd engaged the firm as its accountant. Company A ran residential care homes and, latterly, mobile home parks. For the years ended 31 March 2008 and 31 March 2009 respectively, the Respondent also acted as statutory auditor for Company A. The four complaints related to his work on the financial statements for the company in 2006 and 2007 and his auditing in 2008 and 2009.

7. The Respondent resigned as both auditor and accountant to Company A on 6 October 2010. In 2013 the company went into administration. The administrator made two complaints to ICAEW, in 2016 and 2018 respectively, regarding the conduct of the Respondent whilst he

was Company A's accountant. Following an investigation by the Professional Conduct Department, these complaints were referred by the IC to a hearing before the Disciplinary Committee.

8. The IC's case in respect of the complaints, in chronological order, was as follows.

Complaint 3

9. Complaint 3 related to the financial statements for Company A prepared by the Respondent for the year ended 31 March 2006. These statements, as is required, contained comparative figures for the preceding year. In a number of material respects, the 2005 figures had been restated in the 2006 accounts.

10. In particular, the figure for tangible assets in the original 2005 accounts was £1,220,697. However, the restated 2005 figure for tangible assets in the subsequent year's accounts was £220,697.

11. The restated figure for creditors due in less than one year had been changed from minus £157,778 to minus £557,778. The figure for creditors due in more than one year had also been restated from nil to minus £600,000.

12. The net effect was that financial statements for the year ended 31 March 2006 amended the 2005 comparative figures to increase fixed assets and short and long term creditors by £1,000,000.

13. Part 3 of Schedule 4 of the Companies Act 1985, then in force, set out the requirements where comparative figures in financial statements are adjusted:

> 'Para 58 (2): Subject to the following sub-paragraph, in respect of every item stated in a note to the accounts the corresponding amount for the financial year immediately preceding that to which the accounts relate shall also be stated and where the corresponding amount is not comparable, it shall be adjusted and particulars of the adjustment and the reasons for it given.'

14. However, and in breach of this statutory requirement, the comparative figures in the 2006 financial statements were not described as having been restated. Further, there was no note in the accounts disclosing that a prior year adjustment had been made.

Complaint 4

15. Complaint 4 related to Company A's financial statements for the year ended 31 March 2007.

16. On 18 October 2007 the Respondent's firm prepared full unaudited accounts for 2007 and filed an abbreviated set of those accounts at Companies House. Both sets of financial statements included a statement at the foot of the balance sheet that:

> 'for the year stated above (31 March 2007) the company was entitled to the exemption conferred by s249A(1) of the Companies Act 1985'.

17. Section 249A of Companies Act 1985 allowed a company to be exempt from the requirement to have an audit where the following conditions were met:

    a. It qualified as a small company in relation to that year for the purposes of section 246 of the Act;
    b. Its turnover in that year was not more than £5.6 million, and
    c. Its balance sheet total for that year was not more than £2.8 million.

18. Company A's gross assets as at 31 March 2007 were, according to the balance sheet, in excess of £7m. Therefore, the third of those requirements was not met. The IC's case was that the Respondent should not have prepared financial statements claiming audit exemption when, in fact, a statutory audit was required.

Complaint 2

19. The following year, namely year ended 31 March 2008, the Respondent did carry out an audit on Company A. Complaint 2 related to that audit. It alleged that the Respondent had failed to obtain sufficient and appropriate audit evidence in respect of three areas, namely

    a. freehold property fixed assets;
    b. directors' loan accounts; and
    c. income and expenditure

20. The cost of fixed assets included in the opening balance was just over £7m. The IC's case was that this figure, which was brought over from the unaudited 2007 accounts, was not properly checked by the Respondent to confirm its accuracy.

21. Further, there was a material addition to fixed assets in the year of £1.894m. This was not vouched by appropriate documentation to support the figure. The IC's case was that the purchase figure should have been checked against a completion statement or, if that was not available, evidence should have been obtained to verify it. The Respondent did neither.

22. The 2008 financial statements showed material movements in the directors' loan account. Audit procedures should therefore have been undertaken to verify the balance. Company A's director had provided written confirmation of the balance. Notwithstanding, the IC's case was that audit procedures as a whole in respect of the directors' loan account balance were insufficient.

23. The audit file for the year in question contained no audit work programme for the testing of income and expenditure. The audit working papers comprised a copy of the company trial balance with no explanations for year-on-year movements and an overall conclusion which stated that the figures are 'all as expected and consistent' without any supporting detail.

24. The IC's case was that that the preparation of management accounts for the company, or regular communications with it, did not represent an effective alternative to audit testing because neither of these activities entailed any verification of the figures presented in the financial statements

25. The IC contended that, in respect of each of these three areas, the audit evidence obtained by the Respondent was insufficient to comply with the requirements of International Standard on Auditing ('ISA') 500 as then applicable. Paragraph 2 of ISA 500 stated:

> 'The auditor should obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion'.

Complaint 1

26. Complaint 1 related to the audit report issued by the Respondent on 24 December 2009 for the year ended 31 March 2009. The IC's case was that, for similar reasons to that identified in relation to the 2008 audit, the Respondent had failed to obtain sufficient and appropriate audit evidence as required by ISA 500.

27. In respect of freehold properties, the IC highlighted three issues in addition to those identified for the previous year.

28. Fixed assets purchased during the year included freehold land and buildings valued at £69,000. The Respondent failed to obtain evidence of the purchase and failed to verify the figure included in the accounts.

29. The accounts showed a property valued at in excess of £800,000. However a rental income of circa £3,000 per annum was recorded in respect of the property. The Respondent should have obtained evidence to satisfy himself that, in light of this obvious disparity, the value was not materially misstated and that the property was not impaired.

30. The accounts showed a carrying value for a mobile home park owned by the company of £2.4m. However the bank valuation was £1.2m. The IC's case was that procedures should have been performed to identify and investigate the discrepancy but this was not done.

31. As in the previous year, there were material movements in the director's loan account balance However, the IC's case was that the Respondent did not undertake audit procedures to test the validity of transactions in the accounts.

Liability to disciplinary action

32. The ICs case was that the Respondent was liable to disciplinary action under DBL 4.1b (as effective up to September 2011) on the basis he had conducted his professional work so incompetently as to bring discredit upon himself.

**The Respondent's case**

33. The Respondent wrote to ICAEW on 7 February 2020. He said that his audit of Company A had been his last audit and he no longer held audit registration. He pointed out that the last audit he had done was for the year ending 31 March 2008, which was more than five years before the company entered administration.

34. The Respondent emailed ICAEW on 10 June 2020 saying:

> 'I have not involved myself in the farce since it began, and have not read any of your documents associated with this case, nor do I intend to. You must do what you will.'

**Conclusions and reasons for decision**

Decision on complaint

35. The Tribunal considered the documentary evidence before it and the submissions of Miss Morgan on behalf of the IC.

36. The Tribunal considered that the matters alleged in Complaints 1 and 2 were in large measure a repeat of each other. They amounted to failings to seek and obtain appropriate evidence to back up the figures in the financial statements.

37. The Tribunal was satisfied that the Respondent's audit of the fixed assets, in both years in question, did not include sufficient accepted audit steps to support the values as stated in the accounts.

38. In respect of the directors' loan accounts the Respondent should have sampled and checked the movement and validity to check each account. It is clear that he failed to do so. He should have checked a representative sample of the transactions during the year and he should have checked the final balance at the year end. The Tribunal noted that the Respondent said he reviewed the directors' loans account with the Company A's director but there was no documentation of any review or testing on the audit working papers.

39. The Tribunal was satisfied that, in respect of both Complaint 1 and Complaint 2, the Respondent had failed to obtain sufficient and appropriate audit evidence as required by ISA 500. Accordingly, these complaints were found proved.

40. In respect of Complaint 3 and Complaint 4, the Tribunal considered these were factual failings to comply with the relevant provisions of the Companies Act 1985. The evidence satisfied the Tribunal that these complaints had been made out.

41. The Tribunal went on to consider whether these matters rendered the Respondent liable to disciplinary action under DBL 4.1b.

42. The Tribunal was satisfied that the failings identified in these complaints demonstrated incompetence to such an extent as to bring discredit on the Respondent. These were serious failings and, taken together, the Tribunal was in no doubt that they rendered the Respondent liable to disciplinary action under DBL 4.1b.

**Matters relevant to sentencing**

43. There were no previous disciplinary matters recorded against the Respondent. The Tribunal bore in mind, in its consideration of sanction, that the Respondent had been a member of the Institute for over 30 years and had a previously unblemished record.

44. The Tribunal had regard to ICAEW's *Guidance on Sanctions* ('GDS'). The starting point for audit work of a seriously defective nature is exclusion and a category C financial penalty (£10,000). For lesser forms of bad audit work the starting point is a reprimand and a category D financial penalty (£5,000).

45. In considering the aggravating and mitigating factors, the Tribunal took into account that the events in question had happened a long time ago and related to one client, albeit the failings occurred on more than one occasion. Out of the four complaints that the Tribunal had found proved, two related to audit work and the other two to non-audit work, albeit Complaint 3 related to a wrongful declaration as to audit exemption. There was no evidence before the Tribunal that any actual loss had been caused by the Respondent's errors.

46. Though the Tribunal considered the audit work was seriously defective, in light of the circumstances identified above it was in the Tribunal's view inappropriate and disproportionate to exclude the Respondent from membership. The Tribunal considered that the appropriate sanction was a severe reprimand. In addition the Tribunal imposed a fine of £5,000.

47. The IC applied for costs in the sum of £14,442.50. The application was supported by a detailed schedule. The Respondent had provided no information about his means. The Tribunal was satisfied that the sum sought was appropriate and had been reasonably incurred and that the Respondent should pay the costs in full.

48. Under DBL 32.1 and DBL 33.2 any fine or costs imposed by the Tribunal must be paid within 35 days of date on which the written record of decision is served on the Respondent, unless a longer period is permitted. The Tribunal directed that, if the Respondent requests time to pay, he shall be permitted to pay the fine and costs by 12 equal instalments of £1,620.20 with the first payment on 11 January 2020 and monthly thereafter on the 11th of each month.

**Sentencing order**

49. In respect of all the complaints the Tribunal imposed a severe reprimand and a fine of £5,000.

50. The Tribunal ordered the Respondent to pay costs of £14,442.50.

**Decision on publicity**

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

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| **Chair** | Mr Ron Whitfield | |
| **Accountant Member** | Mr Jon Newell FCA | |
| **Non Accountant Member** | Miss Jane Rees | |
| **Legal Assessor** | Mr Andrew Granville Stafford | **036657** |

4. **Mr Richard William John Best ACA** of
Eastbourne, United Kingdom

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 6 October 2020**

**Type of Member** Member

**Terms of complaint**

1. Between 11 June 2019 and 29 June 2019, Mr R W J Best ACA failed to provide the information, explanations and documents requested by letter dated 11 June 2019, issued in accordance with Disciplinary Bye-law 13.1, contrary to Disciplinary Bye-law 13.2.

Mr R W J Best ACA is therefore liable to disciplinary action under disciplinary bye-law 4.1c.

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|---|---|
| **Hearing date** | 6 October 2020 |
| **Previous hearing dates** | Case Management Hearing on 29 July 2020 |
| **Case Management, Sanctions or Final Hearing** | Final hearing |
| **Complaint found proved** | Yes |
| **Sentencing order** | Severe reprimand<br>Fine of £5,000<br>Costs of £2,727.50<br>Ordered to comply with DBL 13 request by 31 October 2020 |

**Procedural matters and findings**

| | |
|---|---|
| **Parties and representation** | The Investigation Committee was represented by Miss Victoria Morgan<br>The Respondent was not present and was not represented |
| **Hearing in public or private** | The hearing was in public |
| **Decision on service** | The Tribunal was satisfied that service was in accordance with regulations 3 and 26 of the Disciplinary Committee Regulations |
| **Documents considered by the Tribunal** | The Tribunal considered the documents contained in the Investigation Committee's bundle |

**Proceeding in absence**

2. At the Case Management Hearing ('CMH') on 29 July 2020 the Chair was satisfied that service of the Investigation Committee's papers had been effected in accordance with Regulation 3 of the Disciplinary Committee Regulations ('DCR'). At the CMH the matter had been listed for a final hearing on 6 October 2020.

3. Notice of the final hearing was sent by email to Mr Best ('the Respondent') on 31 July 2020 The Tribunal was satisfied that service had been effected in accordance with Regulation 26 of the DCR.

4. The Respondent had not filed a Respondent's Statement. He had not attended the Case Management Hearing and had not responded to the notice of this hearing.

5. The Tribunal was satisfied that no useful purpose would be served in adjourning the hearing and that there was a clear public interest in proceeding in the Respondent's absence.

**The Investigation Committee's case**

6. The Respondent has been a member of the ICAEW since 1995. He does not hold a practising certificate.

7. ICAEW received a complaint from Company A Ltd, an accountants' firm and the Respondent's former employer. The complaint alleged that, whilst employed by the company, the Respondent had been undertaking work for former clients of the company, using the company's systems but billing them in his own name. The Professional Conduct Department ('PCD') of ICAEW commenced an investigation into whether the Respondent had been carrying out public practice without a practising certificate, without professional indemnity insurance and without a money laundering supervisory body.

8. On 1 April 2019, PCD wrote to the Respondent asking him to provide information in relation to the matters being investigated. There was no response from the Respondent.

9. PCD sent further chasing letters to the Respondent by post on 17 April and 13 May 2019. Again, there was no response.

10. On 11 June 2019 the PCD made a formal request for information under Disciplinary Bye-law ('DBL') 13. This was sent by post and email. There was no reply from the Respondent.

11. The letters have been sent to the Respondent's registered address and none have been returned through the post.

12. Telephone calls were made by PCD to the Respondent's current employer on 27 August 2019 and 8 October 2019. On both occasions PCD was told that the Respondent was not in the office.

13. DBL 13 states:

> (1) The Investigation Committee shall have power by notice served on any member, member firm, regulated firm or provisional member to call for such information, such explanations and such books, records and documents as the Committee considers necessary to enable it or the head of staff to perform its or his functions under these bye-laws.
>
> (2) It shall be the duty of any person or body on whom a notice is served under paragraph (1) to comply with it within the period of fourteen days beginning with the date of service or such longer period as the Investigation Committee may allow.

14. The IC's case was that the Respondent had breached DBL 13 and was therefore liable to disciplinary action under DBL 4.1.c, which states that a member is liable to disciplinary action 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.'

**The Respondent's case**

15. The Respondent had not made any response to the complaint.

**Conclusions and reasons for decision**

Decision on complaint

16. The Tribunal had sight of the letters and emails sent to the Respondent, including the letter and email sent with the formal DBL 13 request on 11 June 2019. The Tribunal was satisfied that the Respondent had not replied to the request. Accordingly, he had breached DBL 13 and was liable to disciplinary action under DBL 4.1c.

17. The Tribunal therefore found the complaint proved.

**Matters relevant to sentencing**

18. There were no previous disciplinary matters recorded against the Respondent.

19. The Tribunal had regard to ICAEW's Guidance on Sanctions ('GDS'). The starting point for sanction where a member has not responded at all to a DBL 13 request is a severe reprimand and category D fine.

20. The GDS requires the Tribunal to have regard to the seriousness of the underlying allegations which led to the request for information being made. The underlying complaint here is serious, involving potentially significant breaches of the Respondent's obligations as a chartered accountant.

21. The Tribunal considered there was no reason to depart from the starting point in the GDS. It therefore imposed a severe reprimand. The Tribunal additionally imposed a fine of £5,000.

22. Further, the Tribunal ordered that the Respondent to reply to the requests for information by no later than 31 October 2020.

23. The IC applied for costs in the sum of £2,727.50. The Tribunal considered that the Respondent had brought this matter on himself and there was no reason why he should not pay these costs.

24. Under DBL 32.1 and DBL 33.2 any fine or costs imposed by the Tribunal must be paid within 35 days of date on which this written record of decision is served on the Respondent, unless a longer period is permitted. The Tribunal directed that, if the Respondent requests time to pay, he shall be permitted to pay the fine and costs by 12 equal monthly instalments starting on 11 January 2020.

**Sentencing order**

25. The Respondent is severely reprimanded and fined £5,000.

26. The Respondent shall pay costs to ICAEW of £2,727.50.

27. The Respondent shall provide a full reply to the requests made in the letter from the Professional Conduct Department dated 11 June 2019 by no later than 31 October 2020.

**Decision on publicity**

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

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| **Chair** | Mr Ron Whitfield | |
| **Accountant Member** | Mr Jon Newell FCA | |
| **Non Accountant Member** | Miss Jane Rees | |
| **Legal Assessor** | Mr Andrew Granville Stafford | **052033** |

5. **Mr Jeremy William Gare Newman BSc [FCA]** of
Surrey, United Kingdom

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 2, 3 and 4 September 2020 and a sanctions hearing on 16 October 2020.**

**Type of Member** Member

**Terms of complaint**

**Complaint 1**

Contrary to paragraph 100.4 of the Code of Ethics and his duty to comply with the fundamental principles of integrity and / or objectivity and / or confidentiality, between September 2009 and June 2010, Jeremy Newman:

(a) provided professional services, including tax advice, to 'A' and / or other 'D' in respect of the 'B' development while, at the same time, he provided professional services to 'C' Group in circumstances in which he knew that, or was reckless as to whether, the interests of the 'D' Group and the 'C' Group were in conflict and that no safeguards were available to reduce or eliminate the threat to compliance with the fundamental principles of objectivity or confidentiality, and failed to take any reasonable steps to remove himself from the position of the 'C' Group engagement manager; and / or

(b) provided assurances to Mr 'H' and Mr 'F' of 'G' in relation to the concerns raised by Mr 'K' in e mails to them about the 'C' Group's expenditure of the funds it had received from 'A' which he knew to be unreliable or was reckless as to their reliability.

If proven, Jeremy Newman may be liable to disciplinary action pursuant to Disciplinary Bye-law 4.1a

AND / OR

Contrary to paragraph 100.4 of the Code of Ethics, and his duty to comply with the fundamental principles of objectivity and /or professional competence and due care and / or confidentiality, between September 2009 and June 2010, Jeremy Newman:

(a) provided professional services, including tax advice, to 'A' and other 'D' Group companies in respect of the 'B' development while at the same time he provided professional services to the 'C' Group in circumstances in which he should have known that the interests of the 'D' and the 'C' Group were in conflict and that no safeguards were available to reduce or eliminate the threat to compliance with the fundamental principles of objectivity or confidentiality; and / or

(b) Provided assurances to Mr 'H' and Mr 'F' of 'G' in relation to the concerns raised by Mr 'K' in emails to them about the 'C' Group's expenditure of the funds it had received from 'A' which he should have known were unreliable.

If proven, Jeremy Newman may be liable to disciplinary action pursuant to Disciplinary Bye-law 4.1b

**Complaint 2**

Contrary to paragraph 100.5 of the Code of Ethics, and his duty to comply with the fundamental principles of integrity and / or confidentiality and / or professional behaviour, between around October 2011 and 27 June 2012, Mr Newman set up, administered and / or contributed to a website with domain name 'E', which published statements about the 'D' Group, and/or its owners and /or its staff which were:

(a) Derogatory and potentially defamatory; and/or

(b) Offensive and inappropriate; and/or

(c) Confidential to the 'D' Group.

If proven, Jeremy Newman may be liable to disciplinary action pursuant to DBL 4.1a.

**Complaint 3**

Contrary to paragraph 100.4 and/or 100.5 of the Code of Ethics, and his duty to comply with the fundamental principles of integrity and / or professional behaviour and / or confidentiality, and in connection with the work carried out by 'G' for the 'D' Group and the 'C' Group, Mr Newman misled Mr 'F' and / or acted contrary to the instructions of Mr 'F' in relation to the following matters:

(a) The information he provided to the 'C' Group in his emails of 26 and 28 June 2010 to assist with the 'C' Group's report of the 'D' Group to the Serious Fraud Office; and/or

(b) His denial to Mr 'F' on 22 June 2012 that he had no involvement in the 'E' website; and/or

(c) His deletion of material from his computer and/or online email account following his meeting with Mr 'F' on 22 June 2012 contrary to the instructions given to him by Mr 'F' at that meeting not to delete anything

If proven, Jeremy Newman may be liable to disciplinary action pursuant to DBL 4.1a

**Hearing date**

2, 3 and 4 September 2020

Sanctions hearing – 16 October 2020

**Previous hearing date(s)**

Case Management hearings on 31 March, 14 May and 18 August 2020

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| **Pre-hearing review or final hearing** | Final Hearing |
| **Complaint found proved** | Yes in respect of Complaints 1a, 2, 3b and c. |
| **All heads of complaint proven** | No – Complaints 1b and 3a were Not Proven |
| **Sentencing order** | Exclusion, Financial Penalty of £10,000, Costs of £60,000 |
| **Parties present** | Mr Newman represented himself |
| **Represented** | IC represented by Mr Vinall and Ms Sutherland-Mack |

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| **Hearing in public or private** | The hearing was in public |
| **Documents considered by the tribunal** | The tribunal considered an extensive bundle of materials as present by the IC and Mr Newman. |

**The Tribunal's Decision**

On 5 October 2020, in advance of the sanctions hearing, the Tribunal provided the following written reasons for its decisions.

1. The bundles of evidence in this case ran to over 3000 pages and the Report to the Disciplinary Committee was itself 82 pages. Together they set out a very complex factual matrix, but in the end the Tribunal concluded that the facts underpinning the complaints could actually be greatly simplified.

2. Mr Newman joined 'G' as a senior manager in October 2007. He was an experienced accountant and had been a partner at other firms prior to joining 'G', but is important to note that at all relevant times he was an employee, acting on the instruction and direction of the partners of 'G'.

3. From around 2006 the Southend office of 'G', and in particular a partner Mr 'I', acted as the auditors for the 'D' Group (which was made up of a number of related companies together 'L'). It was owned and run by the 'J' family, with Mr 'J' at the helm. As time went by Mr 'I's role with 'L' expanded and he assisted it with many aspects of its overall business. 'G's overall role with 'L' also expanded following the introduction of Mr 'F', the managing partner of 'G's Egham office, who began to assist 'L' with various issues, but in particular the raising of corporate finance. Mr Newman was involved in this engagement and assisted Mr 'J' and 'L' with corporate finance, corporate structure and tax advice.

4. 'L' was undertaking a major construction/development project at 'B' in St Vincent, which involved building a holiday resort which included individual properties (or cabanas as they were often described), along with the type of facilities that could be expected to be found at a high-end holiday resort. In 2008 'L' became dissatisfied with its main building contractors. In the summer of 2008, it sacked them and appointed in their place the 'C' Group, who had previously been acting as sub-contractors on the project.

5. The business model employed by 'L' was that it sold cabanas to individuals. Deposit money received was used to part fund the building project, to part fund commissions to sales agents and to fund its own costs. There are allegations that 'L' and Mr 'J' were in fact running a fraudulent scheme of some sort, but for our purposes it is irrelevant whether they were or were not (and we make no determination either way).

6. 'C' Group began work as the main contractor at 'B' and by the summer of 2009 it was itself in need of audit services. There is evidence that neither 'L' or 'C' Group were particularly assiduous with their record keeping and documentation, best demonstrated by the fact that there was never a proper written agreement between them in respect of 'C' Group's appointment as the main contractor on 'B'.

7. It is unclear exactly how it happened, but it is clear that 'C' Group entered into discussion with 'G' about it becoming the auditor. There is some evidence that this was at the suggestion of Mr 'J, who considered it might be a good idea for both 'L' and 'C' Group to have the same auditor. Whoever's idea it was, it was a matter for 'G' to decide, having regard to its own professional obligations, whether it was appropriate for it to take 'C' Group on as a client or not.

8. It was decided within 'G' that the Egham office would pitch for the 'C' Group work and on 3 September 2009 there was a meeting between representatives of 'C' Group and Mr 'F', Mr

'H' (another partner at the Egham office) and Mr Newman at which the engagement was discussed. Mr 'F', Mr 'H' and Mr Newman all recognised that there was, at the very least, the potential for conflict in acting for both 'L' and 'C' Group.

9. In evidence Mr Newman stated that he was tasked to draft a document setting out issues relating to the potential conflict and identify the steps that could be put in place to mitigate it. Despite extensive searches this document has not been found, but we are satisfied, given his evidence on the topic, that such a document was compiled by Mr Newman. Mr Newman stated that he submitted this document to Mr 'F' and Mr 'H'. We accept that he did, and, having considered the contents, it was they who made the final decision that it was appropriate for 'G' to act on behalf of 'C' Group. On 23 September 2009 an engagement letter was issued, with Mr Newman named as the engagement manager.

10. 'G' were therefore acting for both 'L' and 'C' Group, albeit there were two offices involved, but the Egham office and in the context of the current complaints, Mr Newman in particular, were now acting for both and in respect of the same building project. We will return to this, but in our view, it was entirely inappropriate for 'G' and Mr Newman to be acting for both entities in these circumstances. The Tribunal is satisfied that there were no service provision safeguards that could have been put in place which could have properly mitigated the risks that existed.

11. Over the next 9 months or so the work at 'B' began to fall behind schedule and issues in respect of payments by 'L' to 'C' Group also arose. Put shortly, the relationship between 'L' and 'C' Group deteriorated.

12. At the beginning of 2010 another 'G' accountant Mr 'K' was sent to Barbados (where 'C' Group had its headquarters) with the task, inter-alia, of reconciling the 'C' Group accounts. On 12 February 2010 he sent an email to Mr 'H', Mr 'F' and Mr Newman, expressing concerns that he had about the way in which 'C' Group were using the money that they were being paid by 'L' for the work on 'B'. Again, it is unnecessary for us to decide whether money was in fact being spent improperly, but what is clear is that there were at the very least concerns, raised by 'G' employees junior to Mr Newman, about the way that 'C' Group was acting. Mr Newman responded to this email on 13 February 2010 setting out a short response to each of the issues that had been raised by Mr 'K'.

13. Mr Newman accepted very candidly during the course of his evidence that following the receipt of the 'K' email there should have been a reassessment of the conflict issue, but there had not been. He said on a number of occasions that "if I had my time again" he would have done things differently.

## The complaints

### Complaint 1

14. The first complaint has two elements both with two alternative allegations. The first part of complaint 1 alleges that in acting for both 'L' and 'C' Group Mr Newman acted contrary to paragraph 100.4 of the Code of Ethics and his duty to comply with the fundamental principles of integrity and / or objectivity and / or confidentiality, that he either knew or was reckless as to whether, the interests of the 'D' Group and the 'C' Group were in conflict and that no safeguards were available to reduce or eliminate the threat to compliance with the fundamental principles of objectivity or confidentiality, and failed to take any reasonable steps to remove himself from the position of the 'C' Group engagement manager. A similar allegation was made in the alternative on the basis that Mr Newman "should have known" that the interests of the 'D' Group and the 'C' Group were in conflict and that no safeguards were available to reduce or eliminate the threat to compliance with the fundamental principles of objectivity or confidentiality.

15. The existence of a potential conflict between 'L' and 'C' Group had been recognised by Mr 'F', Mr 'H' and Mr Newman. Mr Newman's evidence was that despite this potential for conflict he considered that there were steps that could be put in place that would adequately address the issues and reduce the risk of a conflict to an acceptable level. The main weapon deployed to address the conflict issues was the erection of a virtual information barrier between the Egham and the Southend offices, with Egham acting for 'C' Group and Southend acting for 'L'. The difficulty with this approach is that the Egham office and, in the context of this complaint, Mr Newman were already acting for 'L'. Mr Newman stated in evidence that he was able to put an information barrier down the middle of his brain such that information he had in respect of 'C' Group would not affect the approach he took to 'L' and vice versa.

16. In our opinion the conflict that existed was obvious. In Mr Newman's own words, he "straddled the wall" which separated 'C' Group and 'L'. In our view he was actually on both sides of the wall, acting for both entities, often in respect of the same project.

17. It was in our view also obvious that given what had gone before, the employer/builder relationship that existed and the way in which the two businesses operated, that there was real potential for the relationship to deteriorate, as it in fact did as time went by. In our opinion given that members of the Egham office, and Mr Newman in particular had a foot on both sides of the information barrier there was bound to be a conflict.

18. An early example of the conflict issues can be found in a 'G' file note that Mr Newman prepared in respect of its work for 'C' Group, dated 15 September 2009 (shortly before the engagement letter on 23 September 2009). It recorded that 'C' Group's *"single point of risk is 'L's failure to deliver. 'L' are not providing sufficient cash for the 'B' project to be built properly and so 'M' is funding the balance from 'C' Group's and his own resources. This means that at launch of Phase I on 1 July 2010, 'C' Group will be owed some $37 million"*. We consider that this identified an actual conflict. In the course of cross-examination, Mr Newman accepted that he would not have written this if there was no conflict. Despite this the 'G' engagement with 'C Group proceeded.

19. There are a number of documents that demonstrate the conflicted position that 'G' and Mr Newman found themselves in:-

    a. In an email dated 27 January 2010 Mr Newman stated that *"Largely, peace has broken out"* (between 'C' Group and 'L') and later *"We're meeting 'M's lawyers tomorrow afternoon and one of the items we need to get drafted is a formal agreement with 'L' so that Mr 'J' has no wriggle room".* This demonstrates that there were issues and that they were going to have to act on behalf of one client 'C' Group, to ensure that another client, 'L', had no 'wriggle-room'. This was the conflict writ large.

    b. In an email exchange between Mr 'F' and Mr Newman on 28/29 January 2010, Mr 'F' asked *"Is all not totally resolved between 'C' Group and 'L' and there will not be problems further down the line?"*. Mr Newman replied *"The position with 'L' is a mess, so we're trying to get as much protection for 'C' Group in places we can, and get as much cash upfront as possible. The consensus is that Mr 'J' will try to do the dirty on 'C' Group come the end of July; at the moment, Mr 'J' needs 'C' Group, and we have to make the most if* (sic) *that while 'C' Group has the whip hand".* This clearly demonstrates that there were problems between 'C' Group and 'L' and Mr Newman was effectively having to choose which to help on which issue. In the course of his evidence Mr Newman stated that 'L' was not his client, except to a limited extent. The contradiction in this statement is obvious, either they were a client or not, in these circumstances there was really no half-way house. Mr Newman also stated that in his view it was *"not so outrageous, so as to be a massive problem".* Mr Newman may have held this view, but in our opinion, he was wrong to have done so.

c. This exchange of emails continued on 29 January 2010 with Mr Newman setting out the continuing issues between 'C' Group and 'L'. He appeared to accept in evidence that this exchange destroyed any Chinese wall that existed (or was meant to exist.)

d. This is perhaps best demonstrated by an extraordinary meeting held between representatives of 'C' Group and 'L' on 5 February 2010 at a time when the dispute between the parties was coming to a head. Mr Newman stated in evidence that the 'C' Group and 'L' representatives sat, both metaphorically and literally, on opposite sides of the table, with one of the key areas of discussion being the payment schedule on the 'B' project. Mr Newman went to the meeting to deal with issues on behalf of 'C' Group and by the end had to cross the table to deal with issues on behalf of 'L'. This demonstrates with real clarity the invidious position that Mr Newman had put himself in.

These are but a few examples of the existence of the conflicts which had positively manifested themselves.

20. We should say that we found Mr Newman to be, in general a consistent, impressive and truthful witness. He presented his case, unrepresented as he was, with considerable calmness and courtesy. He was firm in his evidence, but made appropriate concessions when cross-examined and when asked questions by the Tribunal. In the end he did not actually dispute much of what was put to him and at times it seemed to us that he was almost advancing mitigation, rather than contesting the charges. However, we do of course proceed on the basis that he did in fact contest each of the charges.

21. We are satisfied that there was the clearest of conflicts right from the start of the engagement of 'G' by 'C' Group. It was an engagement which 'G' should never have accepted and Mr Newman should have realised this. As time went by the potential for conflict manifested itself as actual conflict, but still 'G' and Mr Newman continued to act for both parties.

22. In respect of the first part of complaint 1 the Tribunal is satisfied that Mr Newman acted contrary to paragraph 100.4 of the Code of Ethics and his duty to comply with the fundamental principles, and that as a result he is liable to disciplinary action pursuant to DBL 4.1a as his conduct brought discredit on himself, the Institute and the profession of accountancy. In our view the evidence before us, fell just short of establishing that Mr Newman actually knew that there existed a conflict which could not be eliminated or reduced to an acceptable level, but that he was reckless in that regard. On this basis the Tribunal finds this part of complaint 1 proved.

23. We note again that Mr Newman was not a partner and he was not the ultimate decision maker, though he was a senior employee and an accountant with considerable experience. This does not excuse Mr Newman's conduct, or provide any defence, but is a factor that is likely to be of some significance when deciding on the appropriate sanction.

24. The second part of complaint 1 related to assurances that were said to have been provided by Mr Newman in an email to Mr 'H' and Mr 'F', dated 13 February 2010 in relation to the concerns raised by Mr 'K' in an email to them, dated 12 February 2010, about the 'C' Group's expenditure of the funds it had received from 'L' which he knew to be unreliable or was reckless as to their reliability. We indicated part way through the hearing (and before closing submissions) that we did not regard there to be sufficient evidence to support this complaint. In short, we concluded that Mr Newman had responded to Mr 'K's concerns, at a time when he was abroad on business, in a reasonable manner. The answers were not particularly detailed, nor intended to bind. Overall, we took the view that even if the response might have been better expressed, it did not amount to a breach of the Code of Ethics. The Tribunal finds this part of complaint 1 not proved.

25. It is also necessary to record that Mr Newman made a number of complaints, both at CMH's and at the final hearing, in respect of the disclosure made to him (or not made to him) by the IC. We indicated to him that we would keep this issue under review. His complaints in this regard related almost exclusively to this part of complaint 1 and so with its dismissal, the disclosure issues also fell away.

**Complaint 2**

26. Complaint two relates to a website with the domain name 'E', presumably a play on the fact one of the main purposes of the site was to promulgate an opinion that 'L' was operated as a fraudulent enterprise designed to con investors out of their money (the 'E' website). It was set up after the relationship between 'C' Group and 'L' had broken down. The pleaded allegation was that contrary to paragraph 100.5 of the Code of Ethics, and his duty to comply with the fundamental principles of integrity and / or confidentiality and / or professional behaviour, between around October 2011 and 27 June 2012, Mr Newman set up, administered and / or contributed to the 'E' website, which published statements about the 'D' Group, and/or its owners and /or its staff which were:

    (d) Derogatory and potentially defamatory; and/or
    (e) Offensive and inappropriate; and/or
    (f) Confidential to the 'D' Group.

    And that Mr Newman was liable to disciplinary action pursuant to DBL 4.1a.

27. The 'E' website operated through much of 2011 and until June 2012 when lawyers acting for 'L' alleged that they had evidence which established that it was being run by Mr Newman – steps having been put in place to make it very difficult to uncover who the administrator of the site was (and there was certainly nothing on the face of the site to identify who the administrator or contributors were).

28. When he was confronted about this by Mr 'F' on 22 June 2012, Mr Newman denied that he had any involvement. On 26 June 2012 Mr Newman sent an email to Mr 'F' accepting that he had in fact been involved with 'E' and expressing his regret for having been untruthful. He set out at some length what he had done and why. He made no mention that he had acted because he considered it to be in the public interest.

29. It is unnecessary for us to set out in any detail the contents of the 'E' website, they are dealt with in some detail in the DC report and underlying evidence (and indeed the contents are such that it is in the public interest not to repeat them). It is sufficient to say that the site made very serious allegations of fraud and dishonesty against 'L' and individuals associated with it and it gave offensive and inappropriate descriptions of a number of those individuals. There was considerable content in this regard, which included the publication of material was said to have been confidential. In our view there is no doubt whatsoever that the content of the website was derogatory, potentially defamatory, offensive and inappropriate. The content and tone of the site was such that in our view no professional accountant should ever have involved themselves in such an enterprise regardless of motive.

30. What then was Mr Newman's role? He was once again frank in his evidence. He had of course accepted as far back as 26 June 2012 that he had been involved. He accepted that he had been the administrator of the site and that he had been responsible for some of the early content, but that the author of the main articles and contributor of content was Mr 'M' (who was the driving force behind 'C' Group). Mr Newman accepted that he and Mr 'M' had become close and it appears to us that the closeness of their relationship clouded Mr Newman's judgment as regards the website. In a response to a question from the Tribunal Mr Newman accepted that he was responsible for the administration of the website, he was aware of the content and that to an extent he aligned himself to it. Nor did he seriously dispute that the content was derogatory, potentially defamatory, offensive and inappropriate.

We heard evidence from Mr 'M' that he was the main contributor to the website and that Mr Newman's role was limited to that of administrator. We accept that that was the case.

31. There was a suggestion from Mr Newman in his written evidence that he had become involved with 'E' because he considered that 'exposing' 'L's activity (which he considered to be fraudulent) was in the public interest. Again, and to his credit, Mr Newman did not seriously pursue that line of argument in front of us.

32. In any event we are satisfied that the content of website went far beyond what could ever be described as being in the public interest. It did not involve the recitation of facts, followed by some opinion – rather it presented a highly partial view of affairs rather than a serious attempt to convey information. In our opinion the contents of the website were such that an accountant in practice should never have aligned himself to, let alone in respect of a former client. We reject any argument that it was in the public interest to publish the content such as it was and any suggestion that Mr Newman ever actually believed that such publication was in the public interest.

33. We have analysed the content of the website in some detail – it is difficult to say that the material published was truly confidential, there is a very strong likelihood that it was, but given our other findings we do not feel that it is a point that we actually have to decide, and we give Mr Newman the benefit of the doubt.

34. It follows that we find complaint 2 proved on the basis that Mr Newman was the administrator of a website that published material that he knew was derogatory, potentially defamatory, offensive and inappropriate. We accept that he was not the author of the vast majority of the content, but he knew what it said and could have taken it down at any time. We are satisfied that his conduct represented a breach of paragraph 100.5 of the Code of Ethics and that Mr Newman is liable to disciplinary action pursuant to DBL 4.1a as his conduct brought discredit on himself, the Institute and the profession of accountancy.

**Complaint 3**

35. Complaint 3 is closely linked to Complaint 2, alleging that Mr Newman acted contrary to paragraph 100.4 and / or 100.5 of the Code of Ethics, and his duty to comply with the fundamental principles of integrity and / or professional behaviour and / or confidentiality, and in connection with the work carried out by 'G' for the 'D' Group and the 'C' Group, Mr Newman acted contrary to the instructions of Mr 'F' and / or misled Mr 'F', in relation to the following matters:

    (a) By providing information to the 'C' Group in his emails of 26 and 28 June 2010 to assist with the 'C' Group's report of the 'D' Group to the Serious Fraud Office; and / or

    (b) By denying to Mr 'F' on 22 June 2012 that he had no involvement in the 'E' website; and / or

    (c) By his deletion of material from his computer and/or online email account following his meeting with Mr 'F' on 22 June 2012 contrary to the instructions given to him by Mr 'F' at that meeting not to delete anything.

    And that he was liable to disciplinary action pursuant to DBL 4.1a.

36. We deal with each of the three particulars a.-c. in turn.

37. Particular a. related to assistance Mr Newman had given to 'C' Group in making a report to the SFO about 'L'. It was said that Mr 'F' had instructed Mr Newman not to provide such assistance. We were not satisfied that it was even appropriate for Mr 'F' to have given such

an instruction to Mr Newman, but even if it was, we were not satisfied that any assistance that was given could amount to a breach of the Code of Ethics.

38. Particular b. related to Mr Newman's denial, when confronted by Mr 'F' on 22 June 2012, that he had anything to do with the 'E' website. These denials were untrue, and Mr Newman accepts them as such. The evidence that he remedied these untruths in short order in his email of 26 June 2012 is in our view no defence, but rather mitigation. Mr Newman accepted in evidence that he had lied to Mr 'F' because he had panicked. We note that Mr Newman had previously been warned by Mr 'F' about his involvement in another website that had published unflattering material, it cannot therefore have come as any real surprise that Mr 'F' would confront him having been provided with evidence that Mr Newman was behind 'E'.

39. Particular c. relates to an instruction that Mr 'F' gave to Mr Newman on 22 June 2012 not to delete any material from his computer and/or online email account. The words underlined were added to the complaint by way of an amendment made on the first day of the hearing. Mr Newman opposed that amendment, but we were satisfied that it was a technical amendment which caused no prejudice to Mr Newman, and was in any event prompted by the contents of his own written evidence. There was no dispute that Mr 'F' had given Mr Newman an instruction not to delete material from his computer. This was because of the potential legal proceedings following the discovery of the 'E' website. There is also no dispute, because Mr Newman accepted it during the course of his evidence, that he went home and deleted a number of relevant emails from his online account (as opposed to those retained on the memory of his computer). Mr Newman asserted that what he actually did, had not fallen within the ambit of the instruction given to him by Mr 'F', which he asserted related only to emails physically held on his computer. We are satisfied that any relevant emails held on a server fell well within the ambit of the instruction given to Mr Newman by Mr 'F'. We have no doubt that he fully appreciated the seriousness of the situation and that all efforts should have been made to retain relevant evidence. He acted completely to the contrary and took it upon himself to delete emails that were relevant (and given that he deleted them there is an inference that they were damaging).

40. We are satisfied that Mr Newman acted as described in particulars b and c, and that such conduct amounted to a breach of paragraphs 100.4 and 100.5 of the Code of Ethics and that Mr Newman is liable to disciplinary action under DBL 4.1a as his conduct brought discredit on himself, the Institute and the profession of accountancy. As such we find complaint 3 proved on that basis.

**Matters relevant to sentencing**

41. The Tribunal considered sanctions at a hearing on 16 October 2020.

42. The Tribunal concluded that Complaints 3b and c were the most serious of the Complaints that it had found proven. Both involved dishonesty and a very serious failure to comply with the Fundamental Principle of Integrity. Complaint 3c in particular, involved Mr Newman destroying evidence that he knew might be relevant to future legal proceedings, he had destroyed the evidence knowing that to be the case. Taking into account the Guidance on Sanctions Part 9(c)(i) the starting point was Exclusion and a category C financial penalty (£10,000). Complaints 1a and 2 were also serious and may on their own have merited Exclusion as the starting point.

43. The Tribunal took into account the regret that Mr Newman expressed for his actions and his frank admission that he had no intention to practice as an accountant or to renew his membership of the ICAEW, but in reality, there was very little mitigation in respect of Complaints 3b and c. The Tribunal concluded that it had no option other than to Exclude Mr Newman.

44. In respect of the financial element of the order the Tribunal had to consider Mr Newman's means and the overall impact of the financial penalty and costs. The Tribunal did consider a financial penalty in the region of £20,000, but given the overall financial position reduced this to £10,000. Due to the complexity of the investigation and the involvement of other parties the IC estimated its costs at approximately £100,000 (out of a much larger sum). Having considered the schedules the Tribunal considered this to be a fair estimate, which if anything favoured Mr Newman. Taking into account the fact that not all of the Complaints had been proven (though the most serious ones had) and Mr Newman's financial circumstances the Tribunal considered that a contribution towards the costs of £60,000 was proper, again taking into account the financial penalty and Mr Newman's overall means.

**Sentencing Order**

45. The Tribunal ordered the following sanctions:
    a. Exclusion
    b. Financial Penalty - £10,000
    **c.** Costs- £60,000

**Decision on publicity**

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

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| **Chair** | Mr Jonathan Kinnear QC | |
| **Accountant Member** | Mr Michael Barton FCA | |
| **Non Accountant Member** | Mr Geoff Baines | **033294** |

6. **Mr Andrew Robert Lovelady [FCA]** of
Prenton, United Kingdom

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 17 and 18 November 2020**

**Type of Member** Member

**Terms of complaint**

2. Mr Andrew Lovelady FCA as treasurer of the 'A' Trust failed to include in the accounts for the 'A' Trust for the period ended 31 March 2013:

    a. some or any contingent liabilities arising from demands for payment of business rate arrears; and / or

    b. A going concern note arising from the risk to the charity of the ongoing litigation arising from the business rate arrears;

    As required by the Financial Reporting Standard for Small Entities (effective 2008).

2A. Between 31 March 2013 and 19 December 2013 Mr Andrew Lovelady FCA failed to comply with section 110.1 and 110.2 of the Code of Ethics 'Integrity' in that he failed to provide Mr 'B', the Independent Examiner of 'A' Trust, with sufficient information regarding (a) demands to 'A' Trust for payments of business rate arrears and / or (b) on-going litigation concerning 'A' Trust so as to enable the inclusion of some or any material contingent liabilities and / or going concern disclosures in the financial accounts for the period ended 31 March 2013;

AND/OR

2B. Between 31 March 2013 and 19 December 2013 Mr Andrew Lovelady FCA failed to provide Mr 'B', the Independent Examiner of 'A' Trust, with sufficient information regarding (a) demands to 'A' Trust for payments of business rate arrears and / or (b) on-going litigation concerning 'A' Trust so as to enable the inclusion of some or any material contingent liabilities and / or going concern disclosures in the financial accounts for the period ended 31 March 2013.

3. Between
A) 21 June 2012 to 19 May 2013 and/or
B) 20 May 2013 to 30 January 2014

    Mr Andrew Lovelady FCA failed to comply with section 150.1 of the Code of Ethics in that he allowed himself to be associated with the 'A' Trust when he should have known that by being trustee of a charity which operated by entering into arrangements with commercial landlords so that business rate relief could be claimed on empty properties, this would amount to conduct that may discredit the profession.

Mr Andrew Robert Lovelady FCA is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a for complaints 2A and 3 and Disciplinary Bye-law 4.1b for complaint 1 and 2B

**Hearing date** 17 November 2020

Case Management hearing 5 October 2020

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

| | |
|---|---|
| **All heads of complaint proven** | 1(a) by admission<br>1(b) Proved<br>2 A Proved<br>2 B Proved<br>3 Proved |
| **Sanction** | Exclusion and a fine of £20,000. Costs of £13,595 |
| **Parties present** | Mr Andrew Robert Lovelady (the Respondent), represented by Mr Christopher Cope, solicitor<br>The Investigations Committee was represented by Miss Victoria Morgan with assistance from Carrie Langridge, senior case manager |
| **Hearing in public or private** | The hearing was in public and three observers were present, all from ICAEW. |
| **Decision on service** | In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service |
| **Documents considered by the tribunal** | The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with a witness statement and exhibits of Mr 'B', the Respondent's Response form, his Statement of defence and his witness statement. |
| **Findings on preliminary matters** | The Respondent, through his solicitor, made an application for the late admission in evidence of five emails attesting to the character of the Respondent. This was acceded to. |
| **Conflicts of Interest** | All three Panel members made declarations that they had no known conflict of interest, save that Mr Ranson FCA declared that he was acquainted professionally with Mr 'C', former President of the ICAEW and one of the character witnesses referred to above. No objection was made to Mr Ranson's inclusion as a member of the Panel. |

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

1 **BACKGROUND**

1.1 'A' Trust is a private company limited by guarantee and a registered charity. It was incorporated on 8 February 2012 and commenced activities on 21 June 2012.

1.2 'A' Trust's financial statements for the period ended 31 March 2013, stated that 'A Trust's objective was to promote the advancement of education, health and the saving of lives.

1.3 The Respondent set up 'A' Trust and was appointed as a director and trustee on 8 February 2012. He also assumed the role of treasurer.

**'A' Trust business model**

1.4 'A' Trust stated its charitable objectives were to promote the advancement of education, health and the saving of lives. In November 2013, the Respondent told the Charity Commission that 'A' Trust provided free Wi-Fi/Bluetooth access from transmitters located in

its properties which deliver to the Trust, and indeed other charities, an electronic platform that enables those charities and the Trust to raise public awareness of the charitable work they undertake, and also educate the general public. He said that 'A' Trust were also making donations to other charities that shared the same objectives; providing defibrillators, or funds to acquire them to organisations that otherwise may not be able to do so and offering and making available to other charities access to the Trust's portfolio of properties.

1.5 Full business rates are due on empty commercial properties that remain unoccupied after three months. However, charities occupying commercial property qualify for a mandatory 80% discount on business rates, provided the property is used wholly or mainly for charitable purposes. The local authority also has the discretion to grant the remaining 20% as a further discount.

1.6 'A' Trust entered into an arrangement with 'D' Limited. 'D' Limited would source properties for 'A' Trust to rent with a short term notice period. 'A' Trust would then pay a nominal/peppercorn rent to the landlord. The landlord would pass on some of the saving from the relief of not having to pay business rates on unoccupied properties because they were now occupied by a charity to 'A' Trust who in turn would pass most of this (95%) on to 'D' Limited in the form of fees. In order to demonstrate that 'A' Trust were using the property for charitable purposes, 'D' Limited installed equipment to provide free Wi-Fi and to remotely send out Bluetooth messages with charitable content using the Wi-Fi. They would then claim the business rate relief for charities.

1.7 Following a High Court judgment in May 2013[1], involving a charity which attempted to claim business rate relief using a scenario very similar to that described above, local authorities began to challenge 'A' Trust as to whether its occupation of the large number of properties was 'wholly or mainly' for charitable purposes. Despite 'A' Trust's stated intention to rely on case law and attempt to defend the claims against it for non-payment of business rates, the charity says it did not have the cash resources to pay for lawyers needed to defend the claims which resulted in the directors' putting the charity into voluntary liquidation in January 2014.

1.8 On 30 January 2014, a special resolution was passed to voluntarily wind up 'A' Trust. The statement of affairs as at 30 January 2014, show that 'A' Trust owed almost £3.4m to Councils and Local Authorities in respect of unpaid business rates on properties which had been occupied by 'A' Trust. None of the £3.4m owed appeared in the accounts that were signed and approved on the 19 December 2013, just 6 weeks beforehand.

## 3. Relevant Guidance

### Charity Commission alerts

2.1 In December 2011 (prior to the incorporation of 'A' Trust) and in May 2013, the Charity Commission issued and then re-issued an alert concerning charities which entered into tenancy agreements and took advantage of business rates relief. The alert stated:

> *'The Charity Commission is aware of cases where charities are being approached by retailers and landlords of hard to let property to enter into tenancy agreements that would relieve the landlords of the requirement to pay full business rates. It can be advantageous for charities to enter such agreements and provide good opportunities for them to lease accommodation for charitable uses, for low or nominal rents. They may also sometimes receive charitable donations from landlords that reflect a percentage of the business rates that they would otherwise be liable for.*

[1] Public Safety Charitable Trust v Milton Keynes Council [2013] EWHC 1237

*However, these arrangements can represent a significant risk for charities and trustees. If the charity is not making sufficient use of the premises for charitable purposes which would attract the business rate relief, then it may be liable for the full business rate liability. In addition, the trustees may find themselves subject to personal liability if they have not carefully considered the proposed future use of the property before entering into any agreement and subsequently the claim for rate relief is not available.'*

**Case Law**

2.2 The Charity Commission alert was re-issued in May 2013 after the judgment by the High Court in respect of a case involving Public Safety Charitable Trust (PSCT), a registered charity, and Milton Keynes Council[2].

2.3 PSCT entered into leases of commercial premises and installed transmitters to provide free Wi-Fi access and also to broadcast crime prevention and public safety messages via Bluetooth technology. The size of the transmitter installed by the PSCT was similar in size to a domestic broadband box.

2.4 PSCT then applied for the mandatory 80% rates relief. In return, PSCT received a fee from the property owner which was less than the costs of the business rates for which the property owner would have been liable but for the lease which created a saving to the property owner.

2.5 Mr Justice Sales found that it was "reasonable to infer that Parliament intended that the substantial mandatory exemption from rates...should depend upon the charity actually making extensive use of the premises for charitable purposes...rather than leaving them mainly unused".

2.6 As a result, Mr Justice Sales found that PSCT's use of the premises was not "wholly or mainly" for charitable purposes and that PSCT was not entitled to the mandatory rate relief given to charitable bodies. This judgment led to the Charity Commission's re-issuing the alert in May 2013. In addition, as a result of this case, many Councils started to challenge the use of commercial properties by charitable companies and requested evidence to show that they were making extensive use of the premises for charitable purposes.

## 3 Charity Commission Investigation of 'A' Trust

3.1 On 3 June 2014, the Charity Commission announced that it had opened a statutory inquiry into 'A' Trust. The announcement stated:

> *'The regulator is investigating concerns about the trustees' decisions to enter into agreements by the charity to occupy vacant commercial premises, resulting in the charity becoming potentially liable for the payment of significant business rates.*
>
> *The inquiry will examine whether the trustees have properly discharged their legal duties including timely filing of the charity's annual accounts and returns and whether, and to what extent, there was mismanagement or misconduct in the administration and management of the charity on the part of the trustees.'*

3.2 The Institute has had confirmation by email that the Charity Commission has now concluded its investigation on the basis that the charity had stopped operating/ceased to exist and no action has been taken against the Respondent. The Charity Commission website confirms that 'A' Trust was removed from the Charity Register on 5 February 2019.

[2] Ibid

## 4 Relevant Rules and Regulations

### Financial Reporting Standard for Smaller Entities ("FRSSE") (effective 2008)

4.1 The financial statements of 'A' Trust were prepared in accordance with the FRSSE. The following extracts from the FRSSE are considered to be relevant in relation to the complaints against the Respondent.

4.2 Liabilities are defined by the FRSSE as follows:

*'An entity's obligations to transfer economic benefits as a result of past transactions or events'.*

A contingent liability is defined as follows:

a. *A possible obligation that arises from past events and whose existence will be confirmed only by the occurrence of one or more uncertain future events not wholly within the entity's control; or*

b. *An obligation at the balance sheet date that arises from past events but is not recognised as a provision because:*

i. *It is not probably that a transfer of economic benefits will be required to settle the obligation; or*

ii. *The amount of the obligation cannot be measured with sufficient reliability.*

The FRSSE defines a 'provision' as follows:

*'A liability of uncertain timing or amount'.*

Paragraph 11.7 states:

*'Contingent liabilities and contingent assets shall not be recognised.'*

The FRSSE defines 'recognition' as follows:

*'Recognition is the process of incorporating an item into the primary financial statements under the appropriate heading. It involves depiction of the item in words and by a monetary amount and inclusion of that amount in the statement totals.'*

Paragraph 11.8 states:

*'The following shall be disclosed for contingent liabilities, except where their existence is remote, and for probable contingent assets:*

a. *A brief description of the nature of the contingent item; and*

b. *Where practicable, an estimate of its financial effect; and*

c. *Its legal nature.*

Events after the balance sheet date are defined as follows:

*'Adjusting events*

a. *Those that provide evidence of conditions that existed at the balance sheet date; and*

*Non-adjusting events*

b. *Those that are indicative of conditions that arose after the balance sheet date.'*
Paragraph 14.3 states:

*'If non-adjusting events after the balance sheet date are material, non-disclosure could influence the economic decisions of users taken on the basis of the financial statements. Accordingly, an entity shall disclose the following for each material category of non-adjusting event after the balance sheet date:*

a. *The nature of the events; and*

b. *An estimate of its financial effect, or a statement that such an estimate cannot be made.'*

The obligations regarding going concern are set out in Paragraph 2.12:

*''The company is presumed to be carrying on business as a going concern. When preparing financial statements directors shall assess whether there are significant doubts about the entity's ability to continue as a going concern. Any material uncertainties, of which the directors are aware in making their assessment, shall be disclosed. Where the period considered by the directors in making this assessment has been limited to a period of less than one year from the date of approval of the financial statements, that fact shall be stated. The financial statements shall not be prepared on a going concern basis if the directors determine after the balance sheet date either that they intend to liquidate the entity of to cease trading, or that they have no realistic alternative but to do so.:*

**ICAEW Code of Ethics**

4.3 Section 110.1 of the Code of Ethics states:

*'The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.'*

4.4 Section 110.2 of the Code of Ethics states:

*'* *A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:*

a. *Contains a materially false or misleading statement;*

b. *Contains statements or information furnished recklessly; or*

c. *Omits or obscures information required to be included where such omission or obscurity would be misleading.*

*When a professional accountant becomes aware that the accountant has been associated with such information, the accountant shall take steps to be disassociated from that information.'*

4.5 Section 150.1 of the Code of Ethics states:

*'The principle of professional behaviour imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession.'*

## 5 Financial statements of 'A' Trust for the period ended 31 March 2013

5.1 The first and only set of financial statements for 'A' Trust was prepared for the period ended 31 March 2013. Mr 'B' of 'E' was appointed as the Independent Examiner (IE). Mr 'B' signed an unqualified Independent Examiner's report on 'A' Trust's accounts on 19 December 2013.

5.2 Summary of financial information

| **Income and expenditure account and statement of financial activities** | | **Balance sheet** | |
|---|---|---|---|
| | £ | | £ |
| Voluntary income | 470 | Trade debtors | 76,913 |
| Investment income | 11 | Prepayments | 712 |
| Fees receivable | 298,048 | Cash at bank | 53,720 |
| **Total incoming resources** | **298,529** | **Current assets** | **131,345** |
| Fees payable | 283,811 | Fees payable | 123,029 |
| Grants made | 7,656 | Accruals | 3,500 |
| Governance costs | 4,345 | VAT | 2,099 |
| **Total resources expended** | **295,812** | **Total liabilities** | **128,628** |
| **Net incoming resources** | **2,717** | **Unrestricted funds** | **2,717** |

5.3 As described above, 'A' Trust entered into a number of rental agreements under a model in which Bluetooth technology was installed in the property which was capable of transmitting, via Wi-Fi, messages with charitable content. It was argued by 'A' Trust that the property was then being used for charitable purposes, in order that business rate relief could be obtained. The premises were not occupied and the operation of the Wi-Fi was done remotely other than when the equipment required updating. The charity would then receive charitable donations from the landlord who would have saved the cost of non-domestic rates.

5.4 The accounts show income from fees receivable of £298,048 in the period ended 31 March 2013 and fees payable of £283,811. The Respondent said that the fees payable represented payments to 'D' Limited (the third party company who was introducing the charity to landlords) for putting the rental agreements into place and dealing with the day to

day liaison between the charity and councils and landlords. The fees receivable were from the landlords of the properties whose leases 'A' Trust had entered into. The net effect of these transactions was a very small surplus for the charity for them to use to further their charitable objectives.

5.5 The charity's accounts show liabilities for the fees due to the third party entity, 'D' Limited, but there are no trade creditors recognised in these accounts nor any contingent liabilities. Specifically, there is no provision for the Statutory Demands for payments of business rates arrears.

5.6 The accounts are for the year end 31 March 2013 and were signed by Mr 'F', one of the trustees, on 19 December 2013. Any statutory demands issued before the year end date should have been reviewed for inclusion in the accounts as a contingent liability. It would be necessary to assess the likelihood of the contingent liability crystallising and becoming a liability that 'A' Trust were due to pay. Any statutory demands that were issued after the year end, but before the accounts were signed should have been reviewed during the post balance sheet event work. Those that arose during the period ended 31 March 2013 should be reviewed to consider whether inclusion in the accounts (either by way of adjustment or a note) was necessary. Those that post-date the year end would require review to see if they affected whether the charity should be considered a going concern, i.e. capable of continuing to meet their financial obligations as they become due. The IC takes the view that even if the trustees considered that the legitimacy of a statutory demand was in issue, the fact of the demands should have been represented in the accounts in some form, considering the volume of demands and also the impact on the charity if the demands became due, as they subsequently did. If it was considered likely that there would be litigation arising from a particular statutory demand, these would have amounted to contingent liabilities at the least because of the impact on 'A' Trust both of the potential liability but also because of the need to use charity funds to defend any legal challenge and the resultant impact on the charity funds. Further, in the particular circumstances of this case, by May 2013 following the PSCT case and the Charity Commission alert it would have been clear that there were contingent liabilities that needed careful treatment.

5.7 Following the resolution to liquidate 'A' Trust on 30 January 2014, the statement of affairs signed by Mr 'F', 'A' Trust's director, on 30 January 2014, included five pages of creditors amounting to £3,384,735. The majority of this balance represented amounts due to numerous county councils in respect of business rate relief to which the relevant Councils considered 'A' Trust was not entitled because the premises had not been rented for charitable purposes. The IC is aware that some of those Councils had commenced recovery action.

5.8 Since 'A' Trust entered liquidation, the liquidators have filed 76 Notice of Disclaimer forms with Companies House. A Notice of Disclaimer is a formal notice issued by a liquidator in respect of 'onerous' property. It has the effect of removing all responsibility from the liquidator for the property disclaimed and discharges all personal liability in respect of it. In some cases there is only one property/lease referred to on the notice, for others there are multiple properties/leases. The liquidators' progress report dated February 2015, stated that as at 30 January 2014, all of 'A' Trust's leases had been disclaimed and later in the report, it was stated that 343 disclaimers had been prepared, that is, 343 properties/leases had been disclaimed.

5.9 There were six weeks between the time that Mr 'B' signed the Independent Examiner's report on 'A' Trust's accounts on 19 December 2013, which included no disclosure or recognition of liabilities due in relation to unpaid business rates, and when 'A' Trust entered liquidation on 30 January 2014.

5.10 There is clear evidence that before the accounts were signed on the 19 December 2013, and before the conversation between the Respondent and the IE, Mr 'B', on 17 December

2013, a significant number of demands for payment of business rates against 'A' Trust had been made. Correspondence provided by the Charities Commission shows that legal demands for rent arrears were in existence prior to 19 December 2013. In particular:

(a) 'G' had issued a summons on 3 July 2013 for £1,017,195 and issued a second summons on the same day for £17,900. By 25 September 2013 'A' Trust had instructed solicitors. According to the email correspondence, this amount was reduced to £598,373 after 'G' had terminated the tenancies with 'A' Trust. 'G' was successful in pursuing the Liability Orders and orders were made on 2 December 2013. It is noted that in the list of Creditors 'G' is listed with the sum of £598,373 owing.

(b) 'H' had proceedings in issue as at 26 November 2013. These were adjourned until 20 January, 2014 for a reserved judgment. In the list of Creditors, 'H' is listed as a creditor with the sum of £358,809.02 owing.

(c) 'I' as at 3 October 3013 had a summons issued and due to be heard at court for the sums of £6,675 and £47,100 (in respect of 'J') and £1047 and £4097 (in respect of 'K'). In the list of creditors, 'I' is listed as having a sum of £58,920.67 owing.

(d) The Trustee meeting minutes of 30 May 2013 noted that 'L' were refusing to grant mandatory rate relief to 'A' Trust and that the matter 'continued' to be postponed for a hearing at the Magistrates court. In the list of Creditors, 'L' is listed as having £68,464 owing.

(e) 'M' had issued notices on the 11/4/2013 for non-payment of business rates for £3,632.40 and £2,041.95, and, on the same date in respect of 'N' £3,548.58. 'O' upper ground floor £2,688.27 and 'O', vacant part upper ground floor £769.94.

5.11 The Respondent was fully aware of these issues. In correspondence, he referred to the current position. For example he wrote an email on 26 April 2013 indicating there were problems with 'M' not granting discretionary rate relief. Further, he acknowledged this in his letter to the Charities Commission dated 8 November 2013 which stated that "*Local Authorities have issued proceedings in respect of many of the Trust's properties and the potential liabilities are in respect of the rates payable on these properties in the event of the Court deciding that the trust is not entitled to claim zero rated relied*". These comments indicate that he was aware that there were significant concerns regarding the potential liabilities that called into question whether the charity was also a going concern.

5.12 Therefore, at the time of the conversation between the Respondent and Mr 'B' on 17 December 2013, there had been claims raised against 'A' Trust with a total value of certainly over £700,000. The IC contends, in light of the figures that appear in the list of creditors, the contents of the correspondence with the Charity Commission, and the very short time scale between the signing of the accounts and the liquidators' statement of affairs, there is a reasonable inference to be drawn that it was significantly higher than this.

5.13 The IE's position is that he was aware of legal cases being brought against other companies/charities operating with similar business models to 'A' Trust. During the course of the independent examination work, Mr 'B' was provided with Counsel's Opinion dated August 2013, which 'A' Trust's directors had obtained. Mr 'B' has explained that the Opinion identified other legal decisions on which 'A' Trust could purportedly rely on, to continue to claim rate relief, until case law or legislation changed.

5.14 Mr 'B' states that at the time of the Independent Examination he was aware of demands being issued to 'A' Trust for repayments of over-claimed rates but gained an assurance,

through discussions with trustees (namely the Respondent), that these had all been successfully defended. Mr 'B' explained that the Independent Examiner's opinion was deferred before receiving final assurances from the trustees that no successful claims had been brought against the charity and there was no prospect of any potential claims succeeding.

5.15 The Independent Examination working papers included a note, prepared by Mr 'B', of a conversation which took place on 17 December 2013 between 'A' Trust and him in relation to post balance sheet events. In his letter to the Institute of 19 April 2017, Mr 'B' states that the note was a record of a telephone conversation between himself and the finance director, who was the Respondent. However, the note does not detail who represented 'A' Trust in the discussions. The note makes no reference to any on-going legal claims against the charity. Further, Mr 'B' states that at no time did the directors draw Mr 'B's attention to any legal actions that had been brought against 'A' Trust**.** Mr 'B' states that the Independent Examiners' report was signed on 19 December 2013 on that basis. The Institute asked the Respondent if the telephone call was with him. He said he has no recollection of the discussion but the call may have been with him.

5.16 The IC considers that it is implausible that if the IE had known about the number and value of the claims against 'A' Trust that were already in issue at the time of the signing of the accounts there would have been no provision by way of identifying some or any material contingent liabilities. Moreover, there is no evidence that the Respondent did disclose the number and value of the claims to the IE. The only evidence that does exist is a telephone note of a conversation suggests that the Respondent stated that no claims had been successful. Whilst that statement may have been technically correct – court proceedings having been not concluded - the IC takes the view that that statement gave the wrong impression and was an inadequate representation of the true state of affairs. This led to the failure to include the claims for the payments of business rates in the accounts of 31 March 2013 as a post balance sheet event.

## 6 Charity Commission alert and impact

6.1 On 14 May 2013, the Judgment regarding the PCST case, as explained above, was issued and on 20 May 2013, the Charity Commission re-issued its alert regarding charities claiming rate relief on properties.

6.2 The trustee meeting minutes of 30 May 2013 include a heading 'PSCT Court Case'. Under this heading it states:

> *'For the principal benefit of* [redacted] *and* [redacted]*,* [redacted] *gave a resume of the business model and Ratings law under which 'A' Trust took leases and occupancy of premises in order to further the aims and objectives of the Trust. At the present time some Local Authorities (notably 'L') were refusing to grant Mandatory Rate Relief to 'A' Trust and the matter continued to be postponed for a hearing at the Magistrates Court. Mr 'P' explained the background to the PSCT case and the judgment – which had relied on the "Kenya Aid programme" Case ruling. However at Sunderland Court last week judgment was found in favour of 'A' Trust for "wholly and mainly" occupation of a hereditament. Thus the case law and statute appear to be contradictory.* [redacted] *reported that 'D' Limited were having a meeting with Counsel and Solicitors at 1pm today (30th May). The Trustees considered the overall position and concluded that until such time as definitive guidance was obtained from our legal advisers:*
>
> - *No new leases should be entered into by 'A' Trust*
> - *No further distributions of funds should be made by 'A' Trust*
> - *The matter should be re-assessed at each subsequent meeting. Mr 'P' agreed to keep all Trustees informed of developments.'*

6.3 The liquidators of 'A' Trust provided the Institute with all the Trustee meeting minutes they had which covered the meetings on 5 December 2012, 17 January 2013, 28 March 2013, 30 May 2013, 23 April 2013, 2 July 2013 and 2 September 2013. No subsequent meeting minutes were provided to the Institute. The minutes have been redacted by the liquidators to remove third party data.

**Legal advice**

6.4 Legal advice was sought and obtained by 'A' Trust from Mr 'P' of counsel, dated 7 August 2013. His Opinion was provided to the Institute by Mr 'B'. Mr 'P' states:

6.5

> *'I am instructed to advise 'A' Trust ("the Trust") on its ability to avoid the payment of non-domestic rates in respect of certain hereditaments owned by it.'*

6.6 The conclusion reached in Counsel's opinion was:

> *'As a result of three cases, English Speaking Union v. Edinburgh, Kenya Aid and Public Safety Charitable Trust v. South Cambridgeshire, it will now be very difficult to argue that a charity 'wholly or mainly' uses a large hereditament for charitable purposes simply by placing Wi-Fi transmitters within that hereditament'.*

6.7 Mr 'P' indicated that other case law may be utilised by 'A' Trust, in trying to avoid the payment of non-domestic rates, however, Mr 'P' considered that they were likely to be challenged by the billing authorities through the courts. Mr 'P' states,

> *'I have concluded that my clients may utilise the Sterling decision until a higher court decides that decision was wrong or there is a change in the legislation. Utilising the Oyston decision to apply both for zero rating of the unoccupied main hereditament and 80% relief of the remaining Wi-Fi hereditament is a potential way forward also, but it would undoubtedly be challenged by billing authorities*'.

6.8 The advice provided stated that 'A' Trust may utilise two authorities, the Sterling and Oyston decisions, but only until the time if and when a higher court decides those decisions to be wrong or if there is a change in legislation. The advice highlighted the charity would be challenged by the billing authorities for attempting to avoid the payment of business rates by applying for a zero rating.

6.9 Mr 'P' concluded that,

> *'Given the large number of issues raised in my instructions and the complex nature of the advice I have had to give. I anticipate my instructing solicitor will have some queries to raise.'*

**Correspondence with the Charity Commission**

6.10 On 17 September 2013, the Charity Commission wrote to the Respondent, as the contact for the charity, with regard to the PSCT High Court decision and the fact the 'A' Trust's website, at the time, explained that it was using Wi-Fi situated in commercial buildings to draw attention to 'A' Trust's website. 'A' Trust's website contained links to other charities which were supported by 'A' Trust and therefore the uses of the Wi-Fi were exposed to the details of the associated charities.

6.11 The Charity Commission requested confirmation from the Respondent as to whether 'A' Trust was:

- involved in a similar scenario to that of PSCT, and/or
- involved in any litigation with local authorities

6.12 On 8 November 2013, the Respondent responded to Miss 'Q' at the Charity Commission. The Respondent stated:

> *'We and our advisors are of course aware of the High Court Judgment of Mr Justice Sales in the Public Safety Charitable Trust v Milton Keynes and others [2013] EWHC 1237 (Admin) ("the PSCT Case"). As you will know the PSCT Case involved a charity attempting to claim mandatory relief from non-domestic rates pursuant to Section 43 of the Local Government Finance Act 1988 ("the 1988 Act").*
>
> *Although the Trust originally sought to claim mandatory relief in respect of properties occupied as a consequence of Wi-Fi installations being located in properties, following the PSCT Case the Trust now claims, on legal advice, zero rated relief under Section 45A of the 1988 Act. In particular, the Trust places reliance on the decision in Preston City Council v Oyston Angel Charity [2012] EWHC 2005 (admin) ("the Oyston Case") for its zero rated relief claim in respect of those parts of the property which are currently unoccupied, notwithstanding the location of the Wi-Fi installations in other parts of the property.'*

6.13 As explained above, 'A' Trust was operating a similar scenario to PSCT. However, following the PSCT case, 'A' Trust changed its policy and was seeking to claim zero rated relief. The Respondent confirmed to the Charity Commission:

> *'…the Trust is not involved in a similar scenario to that which was considered by the High Court in the PSCT Case. The Trust seeks to rely on zero rated relief as opposed to mandatory relief'.*

6.14 The Respondent also confirmed that the Trust was involved in litigation, he stated:

> *'Nevertheless the Trust is unfortunately involved in litigation with local authorities who have made applications seeking Liability Orders against the Trust. Many of those Liability Orders were originally claimed on the basis that the Trust was not entitled to mandatory relief following the PSCT Case. Even though we have now clarified the Trust's position, some local authorities are now challenging the Trust's ability to claim zero rated relief. In order to clarify the Trust's entitlement to zero rated relief, the Trust, through its legal advisors, has been negotiating with the local authorities concerned with a view to identifying a limited number of test cases which will proceed to trial, with the balance of any cases being adjourned pending the outcome of the test cases It is likely that any decision made by a District Judge will be appealed to the High Court. The results will be crucial to the future of the Trust.*
>
> *Local authorities have issued proceedings in respect of many of the Trust's properties and the potential liabilities are in respect of the rates payable on these properties in the event of the Court deciding that the Trust is not entitled to claim zero rated relief. '*

6.15 Mr 'B' has provided the IC with a copy of a document titled 'Skeleton argument of the respondent' in litigation between the 'G' and 'A' Trust. It was not provided to him by 'A' Trust during his work on the Independent Examination of 'A' Trust's accounts prior to him signing the Independent Examination. The document states that the proceedings, between the 'G' and 'A' Trust, were for a liability order based on a summons issued on 3 July 2013 for £1,017,195.70 for the period from 1 February 2013 to 31 March 2014 and a further summons, issued on the same date, for £17,900 for the period from 1 April 2013 to 31 May 2014 relating to zero rated relief.

6.16 This is further evidence that at the time the 2013 'A' Trust accounts were being prepared, around November 2013 and prior to the signing of the accounts in December 2013 and subject to the Independent Examination, the Respondent and the other directors/trustees were dealing with legal claims against 'A' Trust for unpaid rates.

**Contingent liabilities and post balance sheet events**

6.17 'A' Trust's 2013 accounts were prepared in accordance with the FRSSE and approved by the directors on 19 December 2013. The Trustees report and the balance sheet were both signed by Mr 'F'. The Respondent did not sign the accounts.

6.18 It is arguable as to whether the summonses received by 'A' Trust reflected liabilities or contingent liabilities of 'A' Trust. 'A' Trust had obtained advice that it could rely on case law to claim rate relief but there was an acknowledgement that billing authorities would challenge 'A' Trust's right to claim the relief. Various Councils throughout 2013 issued summonses and liability orders against 'A' Trust for the rate relief claimed. Given that 'A' Trust had obtained legal advice and intended to defend its position, the IC considers at the very least, the summonses represented contingent liabilities, which are defined as:

> *'possible obligations arising from past events and whose existence will be confirmed only by the occurrence of one or more uncertain future events not wholly within the entity's control'.*

6.19 'A' Trust would not have known whether it was liable for the payments until the cases had been determined in court. As such they should have been disclosed within the financial statements, in accordance with the provisions regarding contingent liabilities and non-adjusting post balance sheet events as set out above. Given the scale of these, the accounts should also have identified the risk to going concern.

6.20 The summonses and court cases referred to above related to the financial period ended 31 March 2013 and to the period prior to the post year end work (completed 19 December 2013). This information was all available prior to the date the accounts were approved.

**The Respondent's role as treasurer and trustee**

6.21 The Respondent has noted that his responses provided during the course of this investigation are from memory as he has no access to any records relating to 'A' Trust as these were all provided to the administrators.

6.22 The Respondent has confirmed that his role of trustee of 'A' Trust involved the following:

- General financial oversight of 'A' Trust including 'A' Trust's basic books and records;
- Responsibility for taking notes of and production of minutes of trustee meetings;
- An understanding of the link with 'D' Limited; and
- Preparation of periodic management information for trustee meetings.

6.23 The Respondent states that in order to prepare the management information, he was in regular contact with 'D' Limited who did all of the back office system of invoicing and ran the ledgers for the charity. The Respondent states that his time commitment to 'A' Trust was probably around 3-4 hours per week on average. The Respondent said his appointment to the trust was a personal appointment, not part of his role as a chartered accountant in practice.

6.24 The Respondent also confirmed that he was the main link between the trustees and Mr 'B', the Independent Examiner. The Respondent provided Mr 'B' and his staff with the books and records and had meetings with Mr 'B's staff over queries in connection with the preparation of the statutory accounts.

6.25 The statutory accounts were prepared by 'E' from 'A' Trust's books and records. The Respondent states that the approval of the accounts would have been brought to the trustees to discuss, however he has no record of that meeting.

6.26 The Respondent states that he is fully aware of the responsibilities of an officer/trustee/director of an organisation to make full disclosure to the Independent Examiner or auditor in connection with post balance sheet events.

6.27 With regards to the telephone call between 'A' Trust and Mr 'B' on 17 December 2013, as explained above, the Respondent states that he has no record of that conversation but appreciates that he may have had the discussion. The Respondent highlights that Mr 'B's note does not specify whether the conversation was held over the phone or in person and that he only refers to the 'client' and therefore it may be that Mr 'B' spoke to another director. The Respondent states his personal recollection is that he met Mr 'B' sometime around 17 December 2013.

6.28 As part of the investigation into his conduct, Mr 'B' provided an email from the Respondent to Mr 'R', a director of 'D' Limited, the company that provided its services to 'A' Trust to source vacant properties. The email is dated 22 March 2017 and regarding legal claims against the charity states:

> *'Whilst the actions may have been taken out pre 19/12/13 (when the accounts were signed) there was no indication on that date that the councils were to be successful and we were in the process of defending the claims. My recollection is that we had claims coming in and the lawyers were defending them. I recall having a conversation with Mr 'B' confirming that some of the Councils were looking to take action but that we were defending and believed on the evidence available that we had a robust defence.*
>
> *When, post 19/12/13 it became clear that the funds spent by 'A' Trust on defending the actions were not going to be sufficient and the first cases were indeed lost - the directors decided to put the company into liquidation on 5/2/14.'*

6.29 This appears to support that the Respondent did have the call with Mr 'B' on 17 December 2013 despite the Respondent's earlier comments that he couldn't recollect if he was on the call.

6.30 On 15 May 2017, the Institute wrote to the Respondent to inform him that his conduct was being investigated with respect to the preparation and approval of the 2013 accounts of 'A' Trust, in particular the concern that the Respondent failed to provide Mr 'B' with relevant information regarding 'A' Trust's financial position, specifically the extent of the demands for repayment of over-claimed rates that had been received post year end and details of the legal cases against the charity. In addition, the Institute had concerns that the Respondent, in his position of trustee and treasurer, had allowed 'A' Trust's accounts to be approved by the board when they were misleading in that they did not disclose a material contingent liability.

## 7 The Respondent's written representations

7.2 As set out above, Mr 'B' stated that the Independent Examiner's opinion was deferred before receiving final assurances from the trustees that no successful claims had been brought against the charity and there was no prospect of any potential claims succeeding. The Respondent states that he does not agree with this. The Respondent has explained that at this time there were a large number of cases that were either in process, deferred or dropped by Local Authorities but the board of Trustees/ Directors were of the opinion, based on discussions with their legal advisors, that the claims were capable of being defended. The Respondent states that, although he has no evidence to support his recollection, this was discussed with Mr 'B' at the time. In addition, he states he is also sure that the Board could not have given such a definitive statement to Mr 'B', as there is never "no" prospect but that the board felt that the defence at the time was robust.

7.3 The Respondent also states that with hindsight a brief note to the accounts may have clarified the position with regards to the legal claims against 'A' Trust, but the board presumably were of the opinion that such a note was not needed, although he has no evidence of this.

7.4 In the Respondent's email to Mr 'R' (a director of 'D' Limited) in March 2017, he explains that after the accounts had been signed, 'A' Trust lost some of the legal cases and at this point 'A' Trust realised that it did not have sufficient funds to continue to defend the claims and hence 'A' Trust was put into administration.

## 8 Conclusion

### Complaints 1 and 2

8.1 In respect of Complaint 1, the IC considers that the Respondent, as a qualified chartered accountant and member of the board, should have ensured that the 2013 financial statements of 'A' Trust had disclosure of contingent liabilities of 'A' Trust in accordance with the FRSSE and/or a going concern note, capturing the risk to the charity from the on-going litigation. Certainly by 8 November 2013 the Respondent had identified that "the results [of the on-going litigation] will be crucial to the future of the Trust". This was over a month before the accounts were signed. The letter of 8 November 2013 from the Respondent to the Charity Commission gives an indication of the extent of the legal proceedings initiated by the Councils and also shows that the Respondent understood their potential impact.

8.2 Without reference to any contingent liabilities/going concern risk, the accounts were fundamentally misleading. IC's primary case is that the Respondent's actions in failing to give the Independent Examiner sufficient details of statutory demands issued for payments of rates and details of the on-going litigation were deliberate, considering his state of knowledge as outlined in this report, his position as treasurer and also being main point of contact for Mr 'B'/'E', which he has confirmed he was, and having provided the accounting records from which the financial statements were compiled.

8.3 The Respondent has also confirmed that he understands the role of a trustee and director and their responsibility to the Independent Examiner to make full disclosure of post balance sheet events.

8.4 Mr 'B', who was called as a witness by the IC, has stated that he had a telephone call with the Respondent on 17 December, two days before the 'A' Trust financial statements were signed, and that the Respondent failed to disclose that 'A' Trust had a Liability Order from 'G' (c£600k), legal demands from at least four other authorities and was facing legal action from other Councils nor the extent of those liabilities. The Respondent states that he does not have a record of that call but accepts that a call or meeting did take place, and his email to Mr 'R' of March 2017 also states that he recalls having a conversation with Mr 'B' regarding Councils 'looking to take' legal action.

8.5 The Respondent, however, considers that the Board would have made Mr 'B' aware of the claims as part of the Independent Examination but that the Board could not have made a statement to the effect that there was no prospect of the claims succeeding. The Respondent considers that the Board thought it had a robust defence and that the claims were capable of being defended and accepts, with hindsight, that a note to the financial statements would have clarified the position.

8.6 The Respondent has explained that after the date of signing the accounts it became clear that 'A' Trust did not have sufficient resources to be able to defend the claims against 'A' Trust and hence the decision to liquidate 'A' Trust in January 2014.

**Complaint 3**

8.7 Although incorporated in February 2012, 'A' Trust began activities on 21 June 2012. The IC contends that it is at this point that the Respondent's association with 'A' Trust breached the principles of integrity. 'A' Trust's business model was based on 'A' Trust taking advantage of the business rate relief, available to charitable organisations, for commercial property lets. As shown by 'A' Trust's financial statements for 2013, the charitable interests of 'A' Trust benefitted from a very small amount of profit to be used for charitable purposes which was calculated as the difference between the amounts payable to 'D' Limited for securing the properties and administrative services, and the amounts received from the landlords who benefitted from not paying business rates on vacant properties, at a cost to local councils. The IC consider that 'A' Trust was an unsuitable business model for the Respondent to be associated with, particularly so considering the on-going litigation, legal advice received (as per Mr 'P's legal advice), and the charity's operations to assist business in avoiding paying business rates on vacant properties.

*8.8* In December 2011, the Charity Commission had issued an alert to charities about the risks associated with this type of operation. On 20 May 2013, the alert was re-issued following the PCST case. After this case and the re-issued alert, it was clear that a business model taking advantage of the business rate relief for charities which where the charity was not making extensive use of the premises for charitable purposes would be challenged. Therefore, the second period for consideration is the date from the point of re-issue of the CC alert until 30 January 2014 (when there was the resolution to liquidate 'A' Trust).

*8.9* Section 150.1 of ICAEW Code of Ethics states that *'The principle of professional behaviour imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession.'*

8.10 By being a trustee and director of 'A' Trust, the Respondent allowed himself to be associated with an entity whose purpose was to enter into arrangements with commercial landlords so that business rate relief could be claimed on empty properties, thus saving the landlord money. The IC considers that this is not conduct that would be expected of a professional accountant and as such the Respondent's conduct has brought discredit on the profession.

## 9 The Respondent's case

9.1 The Respondent gave oral evidence and amplified his written submissions and his statement. He explained that he had no access to contemporaneous written records other than those which were referred to in his written submissions; that the events, the subject of these proceedings were seven years ago and he had no recollection of much of the detail.

9.2 He averred that he was not sure when he had been aware of particular details of the various legal proceedings brought against 'A' Trust by Councils and local authorities, although he was sure that Mr 'F' was. He stated that had he been aware of a Liability Order being made against 'A' Trust prior to finalising the end-March accounts then he would have brought that to Mr 'B's attention. He, the Respondent, was the sole conduit between 'A' Trust and Mr 'B', as IE.

9.3 Asked about the Liability Order obtained by the 'G', he said he did not remember when he came to know about it. As far as the 'H' action was concerned, he said he had heard about

it but was not involved. He told the Tribunal that he did not know whether he had been aware that there was an action involving 'H' in December 2013.

9.4 Once the Charity Commission opened an Inquiry, in 2014, his involvement was restricted to responding to enquiries from the Commission. Asked about the content of 'B' witness statement, the Respondent said that had he, Mr 'B', asked for information about legal claims against 'A' Trust he would have provided it. He said Mr 'B' was aware of Counsel's Opinion but had not asked for a copy. He accepted he had had a conversation with Mr 'B' and agreed with the annotation on Mr 'B' note that they should "Hold accounts pending resolution of Court hearing", which the Respondent thought referred to the 'H' case, "currently may be unable to report on true amount of the Company's liabilities" and that, as a corresponding note stated, he accepted the position "and non-filing of a/cs".

9.5 He agreed, in cross-examination, that 'A' Trust had about 343 properties as at the date of liquidation. He recognised that contingent liability should have been reflected in the accounts. It was put to him that 'G' had issued a summons on 3 July 2013 and he admitted he knew about the summons and the proceedings even if he did not know about the Liability Order subsequently obtained. He had "no idea" why he had made no checks on the status of the 'G' summons. Had he been aware of the 'G' Liability Order, he would have mentioned it to Mr 'B'. He said either he wasn't aware, or the trustees believed they had a robust defence to the proceedings. He was aware that 'A' Trust was involved in litigation which was either pending or in progress.

9.6 In relation to "a going concern", he said he did have material uncertainties and passed on material to Mr 'B' that he requested and believed he passed on sufficient information to enable him to prepare the accounts. Asked if he told him about the five court cases (see 5.10 above) he could not comment and had "no idea what I said to him seven years ago".

9.7 He was asked about charitable grants made by 'A' Trust and agreed that the total came to approximately £8,000, with about £2,700 remaining in unrestricted reserves.

9.8 Asked about the company's assessment of risk, the Respondent said that risk was reviewed regularly at 6-weekly meetings. The only set of minutes available (for May 2013) was put to the Respondent and it was pointed out to him that no reference was made to risk. The Respondent suggested it would have been dealt with in the management accounts and a formal risk register was reviewed only "intermittently".

## 10 Issues of fact and law

10.1 The Tribunal made their finding of facts on the basis of the civil standard of proof and the IC accepted that the onus was on them at all times to prove their case to that standard.

## 11 Conclusions and reasons for decision

11.1 The Respondent admitted Complaint 1(a).

11.2 The Tribunal was satisfied that the Respondent, as Treasurer of 'A' Trust, failed to include in its accounts for the period ended 31 March 2013 a going concern note arising from the risk to the charity of the ongoing litigation arising from the business rate arrears. The Tribunal had particular regard to the letter written by the Respondent to the Charity Commission on 8 November 2013, where the Respondent, referring to on-going litigation with local authorities who had sought Liability Orders against 'A' Trust, noted that the results of these case "will be crucial to the future of the 'A' Trust", indicating that he was well aware of the risks to 'A' Trust arising directly from the litigation. The Tribunal found that Complaint 1(b) was proved.

11.3 The Tribunal was satisfied that between 31 March 2013 and 19 December 2013 the Respondent failed to provide Mr 'B' in his capacity as IE, with sufficient information regarding (a) demands to 'A' Trust for payments of business rate arrears and/or (b) on-going litigation concerning 'A' Trust so as to enable the inclusion of some or any material contingent liabilities and/or going concern disclosures in the financial accounts for the period ended 31 March 2013. The Tribunal noted that the Respondent in his evidence before it denied or failed to remember when or even whether he became aware of demands for payments of business rate arrears and/or on-going litigation concerning 'A' Trust; however, the Tribunal had regard to an email from 'D' Limited, into which the Respondent was copied (and indeed the copy produced was printed from the Respondent's computer) dated 26 April, 2013, which states that "'M' will not grant discretionary rate relief for the charity. This being the case, they have issued summons and notices to that effect that we must make payment. Attached are the sums due. I have checked these amounts and they are correct…"

11.4 The Tribunal also had regard to Mr 'B's evidence in which he questioned whether a demand for payment of non-domestic rates would in itself constitute a contingent liability; however, if that demand was followed up with a summons he would "reconsider the situation". He denied that the Respondent (his only contact at 'A' Trust) had made him aware of any pending litigation. The Tribunal took the view that the note of the conversation referred to in paragraph 9.4 may have referred to the 'H' litigation, which was underway, although subsequently adjourned until January 2014. The Tribunal considered as unlikely Mr 'B's explanation of the conversation regarding the "resolution of court hearing" in that paragraph which he suggested may have referred to litigation generally in the charity sector. With that exception, the Tribunal accepted Mr 'B's evidence,

11.5 The Tribunal was satisfied that in failing to provide Mr 'B' with such sufficiency of information as set out above, the Respondent was not only in breach of DBL 4.1.b but also in breach of Sections 110.1 and 110.2 of the Institute's Code of Ethics 'Integrity' in force in 2013, in that, being a professional accountant he was knowingly associated with reports, returns, communications or other information, namely the IE's report, where he believed that the information contained a materially false or misleading statement; or omitted or obscured information required to be included where such omission or obscurity would be misleading. The Tribunal therefore found that Complaints 2 A and 2 B were proved.

11.6 The Tribunal was satisfied that by allowing himself to be associated with 'A' Trust when he should have known that by being trustee of a charity which operated by entering into arrangements with commercial landlords so that business rate relief could be claimed on empty properties, this would amount to conduct that may discredit the profession in breach of Section 150 of the Institute's Code of Ethics in force in 2013. This, despite the repeated alerts from the Charity Commission, which warned charities that "these arrangements can represent a significant risk for charities and trustees. If the charity is not making sufficient use of the premises for charitable purposes which would attract the business rate relief, then it may be liable for the full business rate liability. In addition, the trustees may find themselves subject to personal liability if they have not carefully considered the proposed future use of the property before entering into any agreement and subsequently the claim for rate relief is not available". The Tribunal recognises that being able to lease properties at a low cost to use for charitable purposes helps charities keep their costs down. However, the good name of charity should not be abused for the benefit of commercial companies as the Tribunal considers it was in this case.

11.7 The Tribunal took the view that the scheme operated by 'A' Trust and which generated significant fee income for 'D' Limited was inherently unethical, using the front of a genuine charity to enable landlords to claim up to 100% rebate on rates due on otherwise empty properties, causing, by the date of liquidation of 'A' Trust, a loss of over £3 million in unpaid business rates due to councils and local authorities in England and Wales and associated legal costs. The Tribunal accepted the submission of the IC that it only had to be satisfied

that there was a likelihood of the behaviour being to the discredit of the profession in order to find a breach of Section 150 proved. The Tribunal considered that there was a strong likelihood that association with an enterprise such as that described in this case would bring the profession into disrepute and discredit and accordingly found Complaint 3 proved.

## 12 Matters relevant to sanction

12.1 The Tribunal took into account the Institute's *Guidance of Sanctions* (effective from 1 July 2019). The Tribunal noted the following aggravating factors which justified a higher penalty:

12.1.1 The Respondent had been a distinguished member of the profession, having served twice as President of the Liverpool Society of Chartered Accountants: once, in 2003-2004 and again, in its 150th anniversary year, 2019-2020 and had been a member of ICAEW Council from 2007-11 and a member of its Professional Standards Board 2009-2014. As such, he would have been expected to be a role model for the profession and be well aware of the professional standards, responsibilities and obligations required of a chartered accountant.

12.1.2 He was in a position of trust as a trustee of 'A' Trust and its Treasurer. As such, the other trustees in 'A' Trust were entitled to rely on his professional knowledge and adherence to the Institute's Code of Ethics and its Regulations in fulfilling his role with the Trust.

12.1.3 He was instrumental in setting up 'A' Trust which was ostensibly intended to provide grants and donations to other charities and organisations with charitable objectives but was a vehicle for the scheme which was the subject of these proceedings. In fact, donations and grants to other organisations barely exceeded £10,000 throughout the existence of 'A' Trust despite it generating income of at least £298,529 and it owing almost £3.4 million to Councils and Local Authorities at the point of liquidation.

12.1.4 As a member of the Board of Directors of 'A' Trust and designated Treasurer, the Respondent was responsible for the preparation of the accounts and he had an obligation to draw to the attention of the IE the need for a contingent liability note and to disclose sufficient information to the IE about the legal actions being brought against 'A' Trust by a number of councils and local authorities and ensuring that the accounts represented the true state of affairs.

12.1.5 The Respondent's actions in setting up 'A' Trust and failures in relation to the accounts had a severe adverse impact on others. As well as the £3.4 million loss to public funds in unpaid business rates at the date of liquidation of 'A' Trust, and legal costs incurred by Councils and Local Authorities, Mr 'B', the IE, was drawn unwittingly into breaching the Institute's Regulations by his reliance on the integrity of the Respondent as a fellow chartered accountant and a fellow President of his Liverpool Society of Chartered Accountants.

12.1.6 The Respondent was aware of the alerts from the Charity Commission issued in December, 2011, just before 'A' Trust was formed, and again in May, 2013, yet persisted in the activities which were specifically referred to in the Commission's alerts. The Respondent's actions enabled the good name of charity to be abused for the significant benefit of commercial companies over a sustained period.

12.1.7 In the Tribunal's view, the Respondent gave misleading reassurances to the Charity Commission in response to their Inquiry, including in relation to 'A' Trust's business model which it sought to distinguish from PSCT and its risk management.

12.2 The Tribunal had regard to the following mitigating factors:

12.2.1 The Respondent had a career of over 40 years in the profession and had a clear disciplinary record.

12.2.2 There was no evidence before the Tribunal that the Respondent had personally benefited from the activities of 'A' Trust.

12.2.3 The Respondent apologised to the Tribunal through his solicitor, who said that he had learnt a painful lesson. On this basis, the Tribunal took the view that the public was unlikely to be at risk from his activities in the future.

12.2.4 The Tribunal took into account the considerable delay in bringing these proceedings which was not the fault of the Respondent.

12.2.5 The Respondent had fully co-operated with the Institute's investigation throughout.

12.2.6 The Tribunal took into account a schedule of the Respondent's means which were relatively modest.

12.3 The Respondent produced six references to attest to his good character. None of those referees, who included two past Presidents of the Institute, indicated that they were aware of the detail of the disciplinary proceedings against the Respondent or the circumstances giving rise to these proceedings and as such, the Tribunal considered it was unable to accord much evidential weight to the references.

12.4 The Tribunal took the view that there was a strong likelihood that public confidence in the profession and the Institute as a professional regulator would be shaken by the actions of the Respondent and that the reputation of the profession was likely to be impugned.

**Sanction**

Exclusion and a financial sanction, based on a Category C starting point in the ICAEW Guidance on Sanctions, in respect of the three complaints proved.

The IC made an application for costs in the sum of £13,595 which was not opposed by the Respondent. The Tribunal considered that the sum sought was appropriate and proportionate and accordingly awarded costs to the Institute in that amount.

Mr Cope asked the Tribunal to make an order that the Respondent could pay a fine and costs in instalments over one year and the Tribunal acceded to that request.

**Decision on publicity**

Publicity will follow in the usual manner.

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|---|---|---|
| **Chair** | Rosalind Wright QC | |
| **Accountant Member** | Mike Ranson FCA | |
| **Non Accountant Member** | Isobel Leaviss | **022648** |

7. **UHY Hacker Young LLP** of
London, United Kingdom

Consent order made on 16 December 2020

With the agreement of UHY Hacker Young LLP of London, United Kingdom the Investigation Committee made an order that the firm be severely reprimanded, fined £38,250; and pay costs of £6,363 with respect to a complaint that:

> On 27 January 2017, UHY Hacker Young LLP issued an unqualified audit opinion on the financial statements of "X" Limited for the year ended 31 December 2015 when the audit was not conducted in accordance with the following International Standards on Auditing (UK and Ireland):
>
> a. International Standard on Auditing (UK and Ireland) 315 'Identifying and assessing the risk of material misstatement through understanding the entity and its environment' in that UHY Hacker Young LLP did not consider information obtained from the acceptance process when identifying risks of material misstatement;
>
> And/ or
>
> b. International Standard on Auditing (UK and Ireland) 315 'Identifying and assessing the risk of material misstatement through understanding the entity and its environment' in that UHY Hacker Young LLP did not include in the audit documentation the significant decisions reached when considering the information obtained from the acceptance process when identifying risks of material misstatement.

**039011**

8. **Mr Dorian Lyn Griffiths FCA** of
Carmarthen, United Kingdom

Consent order made on 16 December 2020

With the agreement of Mr Dorian Lyn Griffiths of Carmarthen, United Kingdom the Investigation Committee made an order that he be severely reprimanded, fined £8,783.50 and pay costs of £3,265 with respect to complaints that:

1. On 24 September 2015, Mr Dorian Lyn Griffiths FCA signed an Accountant's Report Form for "X" for the year ended 31 March 2015 when he was ineligible to do so under Rule 34 of the SRA Solicitors Accounts Rules 2011 as he was not an individual who is a registered auditor within the terms of section 1239 of the Companies Act 2006.

2. Mr Dorian Lyn Griffiths FCA failed to comply with Regulation 6 of the Regulations governing the use of the description 'Chartered Accountants' (effective until 18 June 2017) as his firm "Y" Ltd used the description when it was not eligible to do so for the following reasons:

   a. Between 1 March 2013 and 10 May 2013 as "Y" Ltd was not a member firm;

   And/or

   b. Between 13 April 2014 and 16 March 2017 as "Y" Ltd was not a member firm;

   And/or

   c. Between 17 March 2017 and 18 June 2017 as Mr "Z" was a director of "Y" Ltd but was not an ICAEW member nor did he hold affiliate status.

3. Mr Dorian Lyn Griffiths FCA failed to comply with Regulation 12 of the Regulations governing the use of the description 'Chartered Accountants' (effective from 19 June 2017) as his firm "Y" Ltd used the description when it was not eligible to do so for the following reasons:

   a. Between 19 June 2017 and 9 July 2017 as Mr "Z" was a director of "Y" Ltd but was not an ICAEW member nor did he hold affiliate status;

   And/or

   b. Between 10 July 2017 and 13 September 2017 as "Y" Ltd was not a member firm.

4. Between 17 January 2018 and 5 July 2019 Mr Dorian Lyn Griffiths FCA engaged in public practice as a director of "A" Ltd without holding a practising certificate, contrary to Principal Bye-law 51a.

**042222**

9. **Mr Michael Barry Davis FCA** of
Radlett, United Kingdom

Consent order made on 8 January 2021

With the agreement of Mr Michael Barry Davis of Radlett, United Kingdom, the Investigation Committee made an order that he be Severely Reprimanded, Fined £14,000 and pay costs of £1,540 with respect to complaints that:

3. Between 1 and 31 January 2011, Mr Michael Davis FCA signed, on behalf of his firm "X" (formally "Y"), the audit report of "Z" Ltd for the year ended 31 December 2009 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland) when:

   a. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 230 'Audit documentation' in that he failed to prepare audit documentation that provides a sufficient and appropriate record of the basis for the auditor's report in relation to:

   iii. the recognition and/or the valuation of gold reserve notes; and/or

   iv. the issue of share capital

   And/or

   b. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that he failed to obtain sufficient and appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion in relation to:

   iii. the recognition and/or the valuation of gold reserve notes; and/or

   iv. the issue of share capital

   And/or

   c. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 570 'Going concern' in that he failed to consider the appropriateness of management's use of the going concern assumption in the preparation of the financial statements.

   And/ or

   d. the audit was not conducted in accordance with International Standard on Auditing (UK & Ireland) 200 'Overall objectives of the independent auditor and the conduct of an audit in accordance with International Standards on Auditing (UK and Ireland)', in that he failed to perform the audit with an attitude of professional scepticism in his consideration of the audit evidence obtained in respect of the gold reserve notes.

4. On 11 August 2011, Mr Michael Davis FCA signed, on behalf of his firm "X" (formally "Y"), the audit report of "Z" Ltd for the year ended 31 December 2010 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland) when:

a. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 230 'Audit documentation' in that he failed to prepare audit documentation that provides a sufficient and appropriate record of the basis for the auditor's report in relation to:

iii. the recognition and/or the valuation of gold reserve notes; and/or

iv. the issue of share capital

And/or

b. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that he failed to obtain sufficient and appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion in relation to:

iii. the recognition and/or the valuation of gold reserve notes; and/or

iv. the issue of share capital

And/or

c. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 570 'Going concern' in that he failed to obtain sufficient appropriate audit evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial statements.

And/ or

d. the audit was not conducted in accordance with International Standard on Auditing (UK & Ireland) 200 'Overall objectives of the independent auditor and the conduct of an audit in accordance with International Standards on Auditing (UK and Ireland)', in that he failed to perform the audit with an attitude of professional scepticism in his consideration of the audit evidence obtained in respect of the gold reserve notes.

**048115**

10. **Mr David Michael Gamblin ACA** of
Romsey, United Kingdom

Consent order made on 8 January 2021

With the agreement of Mr David Michael Gamblin of Romsey, United Kingdom the Investigation Committee made an order that he be reprimanded, fined £2,000 and pay costs of £2,820 with respect to complaints that:

2. On 16 September 2016, Mr David Gamblin ACA issued an unqualified audit report on behalf of his firm, "X" Limited, on the financial statements of "Y" Limited for the year ended 31 December 2015 which stated that the audit had been conducted in accordance with International standards on Auditing (UK & Ireland), when he failed to prepare audit documentation that was sufficient to enable an experienced auditor, having no previous connection with the audit to understand the nature, timing and extent of the audit procedures performed in respect of work in progress, in breach of International Standard on Auditing 230 (UK and Ireland) 'Audit documentation'.

3. On 15 July 2016, Mr David Gamblin ACA issued an unqualified audit report on behalf of his firm, "X" Limited, on the financial statements of "Y" Limited for the year ended 31 December 2015 which stated that the audit had been conducted in accordance with International standards on Auditing (UK & Ireland), when he failed to prepare audit documentation that was sufficient to enable an experienced auditor, having no previous connection with the audit to understand the nature, timing and extent of the audit procedures performed in respect of work in progress, in breach of International Standard on Auditing 230 (UK and Ireland) 'Audit documentation'.

**052461**

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11. **UHY Hacker Young LLP** of
London, United Kingdom

Consent order made on 12 January 2021

With the agreement of UHY Hacker Young LLP of London, United Kingdom the Investigation Committee made an order that the firm be severely reprimanded, fined £105,000 and pay costs of £11,558.88 with respect to complaints that:

2. UHY Hacker Young LLP issued unqualified audit reports on the following entities:

a. "A" Limited for the years ended 31 May 2010 and 2011; audit reports dated 10 June 2011 and 27 October 2011, respectively.

b. "B" Limited for the years ended 31 May 2010, 2011 and 2012; audit reports dated 10 June 2011, 27 October 2011 and 26 July 2013, respectively.

c. "C" Limited for the year ended 31 May 2010 and 2011, audit reports dated 10 June 2011 and 27 October 2011, respectively.

when the audits were not conducted in accordance with International Standard on Auditing ('ISA') (UK and Ireland) 570 'Going concern', in that the auditor failed to obtain sufficient and appropriate audit evidence about the appropriateness of management's use of the going concern assumption.

3. Contrary to the requirements of paragraphs 100.1 and 100.5 (e) of the Code of Ethics (Fundamental Principle of Professional Behaviour), between 9 May 2011 and 27 November 2013 when acting as auditor of the financial statements of "C" Limited for the years ended 31 May 2010 and 31 May 2011 which included provision for undeclared VAT liabilities, UHY Hacker Young LLP did not follow the procedures set out in Professional Conduct in Relation to Taxation (PCRT)

4. UHY Hacker Young LLP issued unqualified audit reports on "A" Limited for the years ended 31 May 2010 and 2011, audit reports dated 10 June 2011 and 27 October 2011, respectively, when the audits were not conducted in accordance with International Standards on Auditing (ISA) (UK and Ireland) 500 'Audit evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions regarding the completeness and valuation of antiques.

5. UHY Hacker Young LLP issued unqualified audit reports on "B" Limited for the years ended 31 May 2010, 2011 and 2012, audit reports dated 10 June 2011, 27 October 2011 and 26 July 2013, respectively, when the audits were not conducted in accordance with International Standards on Auditing (ISA) (UK and Ireland) 500 'Audit evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions regarding the completeness of disclosures of contingent liabilities and/or the completeness of provisions.

6. UHY Hacker Young LLP issued an unqualified audit report on "B" Limited for the year ended 31 May 2012, audit report dated 26 July 2013, when the audit was not conducted in accordance with International Standards on Auditing (ISA) (UK and Ireland) 500 'Audit evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions regarding the valuation and existence of the director's loan account.

7. UHY Hacker Young issued an unqualified audit report on "B" Limited for the year ended 31 May 2012, audit report dated 26 July 2013, when the accounts did not comply with FRS 21 Events after the balance sheet date, in that they failed to disclose the sale of the "Z" leases in June 2013.

**019150**

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12. **A.H.Cross & Co** of
Newport, United Kingdom

Consent order made on 12 January 2021

With the agreement of A.H.Cross & Co of Newport, United Kingdom the Investigation Committee made an order that the firm be severely reprimanded, fined £6,300 and pay costs of £2,403 with respect to complaints that:

A.H.Cross & Co, following a QAD visit in August 2010, in sections 2.1 and 2.2 of the 2010 visit closing record and the firm's letter dated 25 August 2010, confirmed the following:

1. Anti-money laundering (AML) procedures:

   a. We have agreed to formulate a standard risk assessment questionnaire to cover all clients. Due to time constraints we are planning to have this in place to complete by the end of February 2011.

   b. As part of the risk assessment, for all existing clients we will ensure consideration is given to whether we have sufficient evidence of identity.

c. We intend completing an annual review of CDD each February/March.

2. Clients' Money Regulations:

a. We have made a request to the bank for a duplicate letter. We expect to receive this by the middle of September.

b. We are adopting procedures, including the enhancement of the repayment declaration signed by clients on tax returns, to ensure we have documented their consent to our fees being paid by deduction.

c. A designated client for the account identified has been opened. The position will be monitored on a monthly basis in parallel to the office account balance review.

d. As above, the position will be monitored alongside the office account.

e. We have carried out a review of the client account balances to identify if any should have received interest. We are satisfied that there was no obligation to pay interest. We will monitor this on a monthly basis.

f. We will carry out an annual compliance review each February/March.

but at the QAD's subsequent visit on 13 March 2018, it was found that theses assurances had not been complied with.

**049115**

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13. **Mr Charles Roy Moorby** of
Halifax, United Kingdom

Consent order made on 13 January 2021

With the agreement of Mr Charles Roy Moorby of Halifax, United Kingdom the Investigation Committee made an order that he be severely reprimanded, fined £4,500 and pay costs of £2,056 with respect to a complaint:

1. Between February 2016 and March 2017 Mr Charles Moorby advised Mr and Mrs "X" on the disposal of "A" Limited. In doing so Mr Moorby introduced and represented a potential purchaser, "B" Limited, a company in which he had a personal interest "C" Limited who had provided loan finance to "B" Limited. In so doing, Mr Moorby:

a. Failed to consider whether advising both parties posed a conflict of interest and lead to a threat to his objectivity; and/or

b. Failed to assess the ethical threat arising from loans outstanding between "C" Limited and "B" Limited; and/or

c. Failed to apply any safeguards to reduce the threat to an acceptable level contrary to Section 220 ICAEW Code of Ethics.

**043285**

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## INVESTIGATION COMMITTEE FIXED PENALTY ORDER

14. **Mr Jonathan Thornton ACA**

Penalty order made on 17 December 2020

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

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

1. Between 1 September 2019 and 1 July 2020 Mr Jonathan D Thornton ACA engaged in public practice without an ICAEW practising certificate, contrary to Principal Bye-law 51a.

**055492**

## AUDIT REGISTRATION COMMITTEE

## ORDER – 11 NOVEMBER 2020

15. **Publicity Statement**

Crowe U.K. LLP, London, United Kingdom, has admitted a breach of Crown Dependencies' Audit Rules and Guidance Rule 4.01b, for allowing an audit report to be signed by an individual before the Jersey Financial Services Commission had been notified of the individual's appointment. The Audit Registration Committee decided that no financial sanction should be offered to the firm.

**054926**

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## ORDER – 11 NOVEMBER 2020

16. **Publicity Statement**

Ellis Lloyd Jones LLP, Newport, United Kingdom, has admitted a breach of audit regulation 2.03b for failing to ensure that it was eligible to hold audit registration, in that the majority of the voting rights were not held by individuals holding the Audit Qualification, or registered auditors. The Audit Registration Committee decided that, in the particular circumstances of this case, no financial sanction should be offered to the firm.

**056705**

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## ORDER – 9 DECEMBER 2020

17. **Publicity Statement**

Dutton Moore, Hull, United Kingdom, has agreed to pay a regulatory penalty of £8,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.01, in that a partner in the firm was a trustee in a trust which held a financial interest in an audit client.

**057215**

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## ORDER – 9 DECEMBER 2020

18. **Publicity Statement**

Robert Evans, London, United Kingdom, has admitted a breach of a condition imposed by the Audit Registration Committee under audit regulation 7.01, for failing to submit the results of external hot file reviews within the timeframe specified. The Audit Registration Committee decided that, in the particular circumstances of this case, no financial sanction should be offered to the firm.

**040427**

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## ORDER – 9 DECEMBER 2020

19. **Publicity Statement**

The registration as company auditor of Robert Evans, London, United Kingdom, was withdrawn on 6 January 2021 under audit regulation 7.03g and 7.03i of the Audit Regulations and Guidance, on the basis of its failure to comply with conditions previously imposed by the Audit Regulation Committee.

**040427**

## INSOLVENCY LICENSING COMMITTEE

## ORDER – 16 DECEMBER 2020

### 20. Publicity Statement

Mr James Gibson of Manchester, United Kingdom has agreed to pay an Insolvency Licensing Committee regulatory penalty of £7,000. This was in view of his admitted breach of Insolvency Licensing Regulation 3.9 in that he failed to adequately verify the property position and provided inaccurate information to creditors, in breach of the Statement of Insolvency Practice 3.1.

**056556**

# INVESTMENT BUSINESS COMMITTEE

# ORDER – 15 OCTOBER 2020

21. **Publicity Statement**

MBL (Business and Tax Advisers) Ltd of Altrincham, United Kingdom has agreed to pay a regulatory charge of £8,587, which was decided by the Investment Business Committee. This was in view of the firm's admitted breach of Designated Professional Body (Investment Business) Handbook 2018 regulation 2.07d for failing to notify ICAEW of the appointments of two principals in May 2010 and March 2018 respectively, regulation 2.03b for failing to ensure that one of the principals held DPB affiliate status, and failing to comply with paragraph 12 of the Regulations governing the use of the description Chartered Accountants and ICAEW general affiliates.

**054516**

# PRACTICE ASSURANCE COMMITTEE

## ORDER – 19 NOVEMBER 2020

22. **Publicity statement**

Mr Jeffrey Roy Bradshaw FCA of Macclesfield, United Kingdom has agreed to pay a practice assurance penalty of £700. This was in view of his admitted breach of breach of Practice Assurance 4 (2008 Regulations); in that he failed to comply with a written assurance to issue clients with details of the firm's fees and complaints procedures, as required by the Code of Ethics (240.2b [2011]) and ICAEW Disciplinary Bye-law 11.1.

**055082**

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