Disciplinary Orders and Regulatory Decisions

DATE PUBLISHED: 8 JANUARY 2020

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. Mr Andrew John Watson [ACA] of
Thame, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 22-24 July 2019

Type of Member Member

Terms of complaint

1. Between January 2010 and December 2011 Mr A J Watson ACA prepared Corporation Tax Return Forms (CT600's) for 'A' Limited and 'B' Limited as set out in Appendix 1.

   In preparing the CT600's set out in 1 above, he was dishonest in that he:

   1. did not include the participator loan in accordance with section 455 of the Corporation Tax Act 2010, section 419 of the Income and Corporation Taxes Act 1988; and
   2. knew that he was required to include the participators loan.

2. Between January 2010 and December 2011, Mr A J Watson ACA prepared sets of accounts for 'A' Limited and 'B' Limited as set out in Appendix 1.

   In preparing the sets of accounts set out in 2 above, he was dishonest in that he:

   (a) did not include the participators loan as required; and

   (b) knew that he had to include the participators loan.

3. On or around October 2006 and January 2012, Mr A J Watson ACA prepared Self-Assessment Tax Returns for Mr 'C' as set out in Appendix 2.

   In preparing the Self-Assessment Tax Returns in 3 above he was dishonest in that he:

   (a) declared self-employed income from a French Ski School as employed income knowing that it was from self-employment; and

   (b) did not declare it as self-employed income to improperly reduce the national insurance liability for Mr 'C'.

In the alternative:

In preparing the Self-Assessment Tax Returns above, he was reckless in that he:

(a) did not make sufficient enquiry with Mr 'C' regarding the nature of the French documentation that he considered to be a British P60 equivalent, before declaring the French Ski School income as employed salary.

4. On or around January 2010 and April 2011, Mr A J Watson ACA prepared the CT600's, Accounts and Self-Assessment Tax Returns for the companies and individuals set out in Appendix 3.

   In carrying out the actions in 4 above, he was dishonest in that:

   (a) in or around January 2010 when preparing the accounts and tax return for Mr 'D' he:

      (i) failed to declare the full income from Mr 'D's invoices knowing what the income on those invoices was; and/or

      (ii) included additional costs of £2,000 which he knew to be wrong.

   (b) in or around November 2010 when preparing the accounts and CT600 for 'E' Limited he:

      (i) included £3,000 worth of "un-receipted" travel expenses to ensure comparability with the previous years' figures; and

      (ii) did so knowing that this amount was wrong.

   (c) in or around December 2004 when preparing the accounts and tax return for Miss 'F' he:

      1. Included 10,000 miles of business mileage to reduce the profit of the company; and

      2. did so knowing that the figure was wrong.

5. In or around December 2010 Mr A J Watson ACA failed to comply with paragraphs 110.1 and 110.2 of the Code of Ethics when preparing the accounts for 'G' Limited and 'H' as set out in appendix 4 in that he:

   (a) included administrative expenses in the accounts of 'G' which should have been recorded in the accounts of 'H'

   (b) improperly increased the amount of business miles claimed.

6. In or around December 2010 Mr AJ Watson ACA failed to comply with paragraphs 110.1 and 110.2 of the Code of Ethics when preparing the CT600 for 'G' and Self-Assessment tax return of Mr 'I' to reflect the incorrect information in the accounts set out in 5 above.

7. In or around December 2011 Mr A J Watson ACA failed to comply with paragraphs 110.1 and 110.2 of the Code of Ethics when preparing the accounts for 'G' and 'H' as set out in Appendix 4 in that he:

(a) included administrative expenses in the accounts of ‘G’ that should have been recorded in the accounts of ‘H’.

(b) improperly increased the amount of business miles claimed.

8. In or around December 2011 Mr Andrew Watson ACA failed to comply with paragraphs 110.1 and 110.2 of the Code of Ethics when preparing the CT600 of ‘G’ and Self-Assessment tax return of Mr ‘I’, to reflect the incorrect information prepared in the accounts set out in 7 above.

9. Mr A J Watson ACA failed to comply with paragraphs 110.1 and 110.2 of the Code of Ethics when preparing the accounts for ‘J’ Limited as set out in Appendix 5 in that he:

(a) included a general use of home charge of £1,000 under the heading ‘rent’ for the year ended 28 February 2011.

(b) included a general use of home charge of £1,200 under the heading ‘rent’ for the year ended 29 February 2012.

10. In or around June 2011, Mr A J Watson ACA failed to comply with paragraphs 110.1 and 110.2 of the Code of Ethics when preparing the CT600, to reflect the incorrect information prepared in the accounts at 9 above.

Mr Andrew John Watson is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a If in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, ICAEW or the profession of accountancy.

NB. The complaints above appear as amended – the amendments were allowed by the Tribunal on the first day of the hearing further to an application made by the Investigation Committee (“the IC”), which was not opposed by the Defendant.

Hearing date 22-24 July 2019

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes – complaints 1 and 2

All heads of complaint proven

No – The IC offered no evidence at the beginning of the hearing in respect of complaints 3, 4(a), 4(c), 9 and 10. – formal verdicts of not proven entered The Tribunal found complaints 4(b), 5, 6, 7 and 8 not proven.

Sentencing order Exclusion

	Financial penalty £5,000 Costs £18,000
Parties present	Mr Watson ("the Defendant")
Represented	The Defendant by Mr Bradly, counsel and Mr Cope. The IC by Ms Jessica Sutherland-Mack
Hearing in public or private	The hearing was in public An application was made for part of the hearing to be made in private – a very short part of the hearing relating to confidential medical issues was heard in private.
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 following documents:- • The IC report to the Disciplinary Committee. • The IC bundle pages 1-378 (a number of pages were removed during the hearing as they were irrelevant to the Complaints that the Tribunal had to decide). • The Defendant's bundle of documents pages 1-213 which contained the Defendant's first witness statement dated 20 February 2018 ("DWS1"). • The Defendant's second witness statement dated 15 July 2019 ("DWS2"). • Written closing submissions of Mr Bradly dated 24 July 2019.

<u>Complaints 1 and 2</u>

1. The facts as set out in the IC's report to the DC were largely agreed. The case turned primarily on Mr Watson's state of mind and whether, in respect of a number of acts he agreed he had taken (or omissions he was responsible for), the IC had proved that he had acted dishonestly (complaints 1 and 2). We set out the key facts as found by the Tribunal.

2. At the time of the complaints Mr Watson ran a relatively small accountancy practice in Cowley, Oxfordshire. He had a range of clients including a number of Limited companies for whom, amongst other things, he prepared accounts and Corporation tax returns.

3. Two of the companies were 'A' Limited and 'B' Limited.

4. From around August 2011 Mr Watson suffered from a prolonged period of ill health (set out in some detail at §P1 of DWS1 and in his oral evidence). As a result, he sold his practice on 17 August 2012 to another local accountant, Mr 'K' FCA.

5. Complaint 1 related to the Corporation Tax Return Forms ("CT600") of both 'A' Limited and 'B' Limited:-
    a. In respect of 'A' Limited Mr Watson prepared a CT600 for the year ended 31 March 2011;
    b. In respect of 'B' Limited Mr Watson prepared CT600's for the years ended 31 March 2009, 2010 and 2011.

6. Complaint 2 related to the accounts of both 'A' Limited and 'B' Limited:-
    a. In respect of 'A' Limited Mr Watson prepared accounts for the year ended 31 March 2011;
    b. In respect of 'B' Limited Mr Watson prepared accounts for the years ended 31 March 2009, 2010 and 2011.

7. The core allegation in respect of both complaints 1 and 2 was that Mr Watson had failed to disclose in both the CT600's and the accounts of 'A' Limited and 'B' Limited the fact that the directors loan accounts of both companies were overdrawn, such that a loan had been made to the Directors. When such a loan, sometimes referred to as 'a participators loan', has been made it is subject to Corporation Tax at the rate of 25%, under the terms of section 455 of the Corporation Tax Act 2010, subject to the provisions of s.458 of the same act, which allows for repayment of the tax if the loan is repaid within nine months of the year-end and the tax has already been paid. Whether the loan has been repaid or not the legislation requires the fact that the director's account was overdrawn at year-end to be disclosed in the CT600. The Financial Reporting Standard for Small Entities ("FRSSE") requires that such loans to be included within the notes to the accounts.

'B' Limited

8. In respect of 'B' Limited's tax year year-ending 31 March 2009 Mr Watson wrote to Mr 'L', the Director of 'B' Limited, on the 19 January 2010. He dealt with the issue of Director's loans as follows:-

> *"Unfortunately the income extracted from the business exceeds that generated. As a result I have been unable to avoid leaving the accounts showing that at 31 March 2009 you owed the company just over £10,000. This should attract an additional tax at 25%. Most clients prefer to wait and see if the Revenue spots this additional liability (which invariably they don't) and as such I have not made a declaration of the loan in the CT600."*

9. Mr Watson completed the accounts for 'B' Limited for the year ending March 2011. He did not include any note dealing with the director's loan as he should have done.

10. The position was almost identical in respect of 'B' Limited's 2010 and 2011 accounts and CT600s. There is a line on the CT600 which states, *"Loans to participants by close companies, form CT600A"* beside which there is a box, which had not been marked.

11. On 14 December 2010 Mr Watson wrote to Mr 'L' in respect of the year ending March 2010:-

> *Unfortunately the income extracted from the business again exceeds that generated. As a result I have been unable to avoid leaving the accounts showing that on 31st March 2010 you again owed the company a significant sum. This year, the amount owed has increased to almost £42,000. This should attract an additional tax at 25%. Most clients prefer to wait and see if the Revenue spots this additional liability (which invariably they don't) and as such I have not made the required declaration of the loan in the CT600.*

12. This passage is similar but not identical to the passage quoted above from the 19 January 2010 letter. Mr Watson stated in evidence that it was a "cut and paste" job, but although much of the wording is the same it is clear that he amended both the figures and some of the wording. The Tribunal was satisfied that Mr Watson had cut and pasted from the previous letter, but that he had taken the time to amend the contents in line with the current year's figures and to amend some of the wording. As a result, he would have been aware of the content and have considered the import of the words that he had used. Although he may as he said, have completed the work quickly and whilst under pressure, he still knew exactly what he was doing.

13. There was no note in the end of year accounts and therefore both the CT600 and the accounts failed to mention the existence of the director's loan at year end.

14. On 21 July 2011 Mr Watson wrote to Mr 'L' in respect of the year ending March 2010:-

> *Unfortunately the income extracted from the business again exceeds that generated. As a result I have been unable to avoid leaving the accounts showing that on 31st March 2011 you again owed the company a significant sum. This year, the amount owed has increased to almost £40,000. This should attract an additional tax at 25%. Most clients prefer to wait and see if the Revenue spots this additional liability (which invariably they don't) and as such I have not made the required declaration of the loan in the CT600."*

15. Again, the contents are similar but not identical to previous years and Mr Watson must have read the paragraph and made the relevant amendments to it. As with the previous year both the CT600 and the accounts failed to mention the existence of the director's loan at year end.

16. The IC's case was that in these letters Mr Watson had identified that there was a director's loan, which would attract tax at 25%, but that he was advising the client not to include any declaration in the CT600 which would identify that it was due and that they would wait to see if HMRC spotted it. The CT600's that Mr Watson prepared and filed for 'B' Limited did not declare the Director's loan.

17. The IC's case was that absent any note in the accounts and the relevant box not being ticked on the CT600 there would be no information from which HMRC would be able to know or deduce that there was an outstanding director's loan at the end of the tax year, which might attract additional tax. It's case was that Mr Watson had acted dishonestly in this regard and that his intention to do so was clear from the wording of three letters, the contents of which were supported by the fact that the CT600s and accounts over the course of three years all failed to mention the director's loan when they should have done and that Mr Watson had deliberately not included such mention in order to avoid any possible charge to tax. The IC alleged that he had acted dishonestly in this way.

18. The position was very similar in respect of 'A' Limited tax year-ending 31 March 2011. Mr Watson wrote to Mr 'M' the Director of 'A' Limited on 14 December 2011. He stated:-

> *Unfortunately as we were hoping to file the extended account the cash balance at year end is very low meaning the director's loan account is over £156,000. Obviously if the Revenue identifies this there will be a considerable additional tax to pay.*

19. The CT600 that Mr Watson filed for 'A' Limited did not reveal the existence of the director's loan and he did not include any note in the end of year accounts. The IC's case was again that this was a dishonest act on the part of Mr Watson, that he had deliberately failed to include mention so that HMRC would not know about the director's loan, thereby making a tax saving for his client.

20. There was very little dispute in respect of these underlying facts. Mr Watson accepted in his evidence that the director's loan was not included in any of the CT600's when it should have been. He accepted when cross-examined that he had made a change in the electronic accounts package to move the directors loans to debtors in the accounts which caused the relevant box on the CT600 not to be ticked, when it should have been. He accepted that this had been a deliberate act on his part. He stated that he had taken a short cut, to save time, and had not made the disclosure because he knew that the director's loans would be paid pack within 9 months of the year thereby avoiding any additional charge to tax. His case was that this was poor practice, possibly negligent, but that it was not dishonest because at no time did he think that any tax would actually be evaded.

21. In respect of the failure to note the loans in the accounts Mr Watson's evidence was that he did not know that such a disclosure was required and that was how he had always dealt with it i.e. he had never included the required note in the accounts. He relied on evidence of a Quality Assurance visit performed by the ICAEW which identified this as an error which occurred across a number of his files. He said this supported his case that he did not know that he was meant to include such a note in the accounts.

22. Mr Watson relied upon a number of other matters which he said should be taken into account when assessing whether he had acted dishonestly:-
    a. His good character;
    b. His ill health at or around the relevant time;
    c. The fact that as a result of selling his practice he no longer had access to all his documents, He could not, he said, tell whether the letters which are set out above had actually been sent or whether they were drafts;
    d. The passage of time had had an effect on his memory and he could not be expected to remember all the details of what had taken place so many years ago.

Discussion

23. The Tribunal considered all of the matters set out in §22 above and indeed all of the matters set out in Mr Bradly's detailed written submissions, which he expanded upon orally. In particular the Tribunal considered Mr Watson's good character, firstly, it made it less likely that after so many years in practice he would act dishonestly and secondly, it gave support to the credibility of the evidence he gave.

24. The test against which the Tribunal made its decision in respect of dishonesty is the test set out by the Supreme Court in Ivey v Genting Casinos (UK) Ltd [2017 UKSC 67, namely it had to determine Mr Watson's actual state of knowledge or belief as to the facts and then decide if his conduct was dishonest according to the objective standards of ordinary decent people. The Tribunal was also alive to the fact that an allegation of dishonesty is of the most serious nature and that although the standard of proof does not change, the IC was required to produce strong and cogent evidence to prove its case.

25. Mr Watson accepted that he had failed to include the director's loans in both the CT600 and the accounts, the former because he took a short cut and the later because he did not know he had to. The Tribunal did not find his evidence in respect of his failure to include a note in the accounts to be credible. The inclusion of a note in respect of the Director's loan is so fundamental that the Tribunal did not believe Mr Watson when he said that he did not know he needed to include it. The Tribunal concluded that Mr Watson had deliberately decided not to include a note in the accounts in order to avoid alerting HMRC to the existence of the director's loans.

26. Likewise, as Mr Watson accepted, the Tribunal was satisfied that he had taken a deliberate decision and deliberate steps to ensure that the relevant box on the CT600 remained blank. The Tribunal was satisfied that he had done this not as he said because it was a short cut, but rather he did it in order to conceal the existence of the loans from HMRC. If they were not mentioned in either the accounts or the CT600 there would be no way for HMRC to know that they existed.

27. This evidence on its own may have been sufficient for the Tribunal to make a finding of dishonesty, but the Tribunal concluded that these failures taken together with the letters that Mr Watson had sent or drafted to 'B' Limited and 'A' Limited provided overwhelming evidence of his dishonest intent. In those letters he had set out that he would exclude the relevant information from the CT600 because it would lead to an additional charge for tax and that they would wait to see if HMRC spotted it. As we have already said, given the state of the accounts and the CT600 as prepared by Mr Watson it would have been impossible for HMRC to do so. In these circumstances the Tribunal was satisfied that Mr Watson had deliberately concealed information which he knew should have been included and that his actions in this regard were dishonest by the objective standard of ordinary decent people. He knew that the actions that he had taken would conceal the director's loans, possibly saving (or deferring tax) and that he had explicitly told his clients that this was his intention. The combination of the failure to include the information in the accounts and the CT600s, along with what Mr Watson had himself said in his letters made this conclusion inevitable.

Complaints 4(b), 5, 6, 7 and 8

28. As we found each of these complaints not proven we deal with them briefly.

29. Each of them involved an allegation that Mr Watson had acted either dishonestly (complaint 4(b)) or with a lack of integrity (complaints 5-8). Each related to the accounts of a number of companies or sole traders. The IC's case was that he had given advice in correspondence to his clients that they should include figures in the tax returns/accounts which were not true e.g. inflating claims for mileage or improperly transferring expenses from one entity to another in order to reduce their tax liability.

30. The Tribunal's conclusion was that the IC had not presented sufficient evidence to prove that the figures which Mr Watson advised should be included in the tax returns/accounts were in fact inaccurate or wrong. This was the first matter that needed to be proved before any issue of dishonesty or lack of integrity could be considered. The IC was in a difficult position given that the only evidence it had was the correspondence and it had no witness evidence to say that the figures had been fabricated or any underlying working papers to support its case in this regard. Further, in respect of these complaints the Tribunal was of the view that Mr Watson was somewhat hampered by not having access to his full papers.

31. There was simply insufficient evidence in respect of each these complaints.

32. For the avoidance of doubt, the Tribunal did not take any of the evidence in respect of these complaints into account in reaching its decisions on complaint 1 and 2.

Matters relevant to sentencing

33. The Tribunal had regard to the *Guidance on Sanctions* (effective from 1 July 2019). The proven complaints did not sit neatly in any of the guidelines. The Tribunal identified guideline 9(c) which relates to a failure to comply with the Fundamental Principle of Integrity as being the most relevant to the current case but concluded that a finding of dishonesty was even more serious. Guideline 9(c) suggests a starting point for both 'very serious' and 'serious' cases as an exclusion.

34. The Tribunal took into account a number of points that were advanced in mitigation:-
    a. Mr Watson's good character;
    b. The fact that the proceedings had been hanging over him for many years;
    c. The age of the allegations;
    d. His ill-health;
    e. The fact that there was no evidence that there had actually been any tax loss;
    f. The work pressure that he had been under at the time.

35. The Tribunal considered that the conduct was aggravated by the fact that it was not a single isolated incident, that it had been in relation to two different companies, one over a period of three tax years.

36. In all the circumstances the Tribunal considered that exclusion was the only appropriate sanction, given the findings of dishonesty. The financial penalty of £5,000 was a reduced figure which took into account Mr Watson's current financial circumstances.

37. The Tribunal considered that a contribution to the costs of £18,000 was appropriate.

38. In respect of the financial orders totalling £23,000 the Tribunal order that Mr Watson pay in 23 equal monthly instalments with the first payment by 1 November 2019.

Non Accountant Chair	Mr Jonathan Kinnear QC
Accountant Member	Mr Michael Barton FCA
Non Accountant Member	Mr Nigel Dodds

031178

2. Mr Howard Lionel Morris FCA of
London, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 17th September 2019

Type of Member Member

Terms of complaint

1. Mr Howard Lionel Morris FCA breached Practice Assurance Regulation 8, in that he failed to provide in full, or at all, by 14 August 2017, the information requested in a letter from a case manager in ICAEW's Professional Standards Department dated 12 April 2016.

2. Mr Howard Lionel Morris FCA breached Practice Assurance Regulation 4 in that he failed to agree to a further paid visit by an ICAEW QAD Reviewer as requested by the Practice Assurance Committee and as notified to him as required by Practice Assurance Regulation 16 by letter from the secretary to the Practice Assurance Committee dated 2 June 2017.

3. Mr Howard Lionel Morris FCA, breached Practice Assurance Regulation 8 in that he failed to confirm to ICAEW's Members' Records by 30 June 2017, the name of his alternate under the Clients' Money Regulations, as requested by the Practice Assurance Committee on 24 May 2017 and notified to him by the secretary to the Practice Assurance Committee in a letter dated 2 June 2017.

Mr Howard Lionel Morris is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(c).

4.1 'A member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student (all hereinafter referred to as 'respondent') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student at the time of the occurrence giving rise to that liability;

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

Hearing date

17 September 2019

Previous hearing date(s)

N/A

Pre-hearing review or final hearing

Final Hearing

Complaint found proved

Yes

All heads of complaint proven

Yes

Sentencing order

Severe reprimand and a financial penalty of £5,000. In addition Mr Morris should pay the costs of the Investigation Committee in the sum of £8,960. £7,680 is to be paid in 35 days, and the balance of £6,280 on or before 31st December 2019.

Parties present

Mr Howard Morris (the Respondent) was present in person

Represented

Ms Victoria Morgan appeared on behalf of the Investigation Committee

Hearing in public or private

The hearing was in public

Decision on service

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

Documents considered by the tribunal

The Tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with further correspondence provided by Mr Morris

The Investigation Committee's (IC's) case

1. The Respondent, Mr Howard Morris FCA, has two practices, H Morris & Co, a business he operates as a sole practitioner, and 'X' Experts Ltd, a company of which he is one of two directors and the only fee-generating member of staff. Mr Morris' wife is the other director.

2. Practice Assurance annual returns submitted for the last three years show the following turnover for Mr Morris' practices:

	2016 £	2015 £	2014 £
H Morris & Co (31 August annually)	74,385	58,375	49,325
'X' Ltd (30 September annually)	39,713	54,688	63,550

3. A Practice Assurance (PA) desktop review was commenced for both practices on 17 November 2015 and completed on 16 December 2015. At the time of the review 'X' Ltd was not a member firm as Mr Morris and his wife each held 50% of the voting shares. For a practice to be a member firm it is necessary for an ICAEW member to hold the majority voting control. ICAEW was therefore not automatically its AML supervisor.

4. Mr Morris advised that he was about to change the shareholdings of the company such that it would then be controlled by him, and would be a member firm, and on this basis ICAEW also reviewed AML compliance for 'X' Ltd at its visit on 16 December 2015. Mr Morris later supplied to QAD documentation confirming that his wife had transferred one share to Mr Morris on 1 January 2016, to give him a 51% holding making 'X' Ltd a member firm from that date.

5. Initial responses were provided by Mr Morris to the QAD report on 8 January 2016 to which the QAD reviewer replied the same day and clarified the information required in respect of the review findings. Mr Morris provided further responses on 19 February 2016 which satisfied some of the QAD reviewer's queries but a number remained outstanding.

Complaint 1

6. Mr Morris was sent a letter on 12 April 2016 by the Practice Assurance case manager following up the key issues arising from PA visit on 16 December 2015. The key issues were:
   - AML supervision
   - Compliance with the Money Laundering Regulations - risk assessment and evidencing periodic consideration of Client Due Diligence (CDD)
   - Compliance with the Clients' Money Regulations (CMRs) requiring:
     - A copy of the firm's next annual clients' money compliance review
     - confirmation that the firm will obtain written evidence of the client's authority to pay third parties from the clients' money in future;
     - confirmation that the firm will obtain client's written consent to deduct fees from tax repayments
     - confirmation that the firm will notify Members' Records in writing of the clients' money alternate
   - Companies Act (CA) disclosure requirements in two sets of accounts provided to the reviewer, including an absence of related party and ultimate controlling party disclosure; no reference to going concern issues for insolvent company, no goodwill amortisation and no small company exemption statements (also identified at a previous visit)

7. Mr Morris replied on 27 April 2016 and requested an extension to respond. He was given a further 2-3 weeks, which would have given Mr Morris until 18 May 2016 at the latest to respond. No response was received and a further email was sent on 24 May 2016 chasing a response. Mr Morris responded on 10 June 2016, explaining that the delay was due to being busy and having two elderly family members needing care. Mr Morris also requested assistance regarding the points raised on AML as he was having difficulty with ICAEW's website. On 17 June 2016 PCD provided Mr Morris with 'hyper-links' to further information and guidance on ICAEW's website. Mr Morris was also directed to the additional support available through the support members scheme and CABA.

8. On 15 September 2016, Mr Morris explained that further delays had occurred due to June to October being the firm's busiest period. He also asked PCD to 'reconsider his case and to relieve him of this most pressuring burden to allow him to use his time for what, he would hope the Institute is more concerned with, the proper supervision of his clients' accountancy and tax affairs'. The QAD reviewer who completed the visit contacted Mr Morris in October 2016 and agreed to give him a link to the SWAT product so that he could locate some forms to follow for AML and potentially obtain assistance from a Support Member.

9. In January 2017, the Practice Assurance Case Manager followed up the outstanding matters (as set out in the letter of 12 April 2016) with Mr Morris. No response was received and a further reminder was sent on 15 February 2017. Mr Morris was advised that if he did not respond by 1 March 2017 the matter would be referred to the PAC to consider further action.

10. Mr Morris responded on the same day and explained that the delay was due to January being a busy period due to the tax return deadline. He also expressed his concern about being 'threatened' with referral to the PAC. He asked PCD to be more patient. A further letter was written to Mr Morris on 9 March 2017 to tell him that the matter would be reported to the PAC, as despite the various exchanges of emails since April 2016, he had still not provided a full response to the letter of 12 April 2016. Consequently PCD had not been able to clarify whether he has addressed all of the issues raised during the 2015 PA visit.

11. Mr Morris was again provided with a copy of the information to be considered by the PAC, and on 5 April 2017 he emailed ICAEW stating that he contacted the "support team" but the person he spoke to adopted a very negative attitude to his enquiry. He was referred to a support member, however the matter was still not resolved. Furthermore, he revisited the ICAEW website in a further attempt to obtain guidance on how to complete the compliance reviews, but this also proved to be unsuccessful. Mr Morris has reiterated that he has no one else to rely on in running his practice and that his clients' needs override those of ICAEW. He has also confirmed that he will be looking into retiring from practice in the next 2-3 years, 'subject to dealing with an orderly transfer of his clients'.

Complaint 2

12. At its meeting on 24 May 2017 the PAC considered Mr Morris' failure to provide the information requested in ICAEW's letter of 12 April 2016, which meant that ICAEW had not been able to satisfactorily complete the review carried out on 16 December 2015. The PAC was concerned at the length of time it had taken Mr Morris to address the issues raised at the visit, and decided that the firm Morris & Co should receive a QAD follow up visit as soon as possible, which Mr Morris was required to pay for.

13. In his response of 6 June 2017, Mr Morris said that the cost of such a visit when he had not been advised how long the visit would take, or how many reviewers would attend was simply unacceptable. As a '1-man practice' he said he simply could not afford such a cost. He also advised that the AML issues remained unresolved as he found the ICAEW website to be like a minefield, and the support network could not really be called a support network, at least in so far as his attempts to use it. Mr Morris repeated that he intended to retire in 2-3 years' time and that he would be grateful to be left in peace from ICAEW to service the needs of his clients in that time, which were his primary responsibility.

14. Mr Morris was advised on 12 June 2017 that one reviewer could carry out the follow up QAD visit in one day, so the cost would therefore be limited to £1,150, and that although normal practice was for the firm to pay in one full payment, consideration would be given to receiving settlement in two instalments. Mr Morris was asked to confirm which of three dates suggested in July and August 2017 were suitable for the visit to take place. He was advised that if he failed to accept the PAC's decision that the follow-up review was undertaken the matter may be referred to the Professional Conduct department for investigation and warned that he may be required to contribute to the costs of such an investigation.

15. Mr Morris' concerns about lack of support with the AML issues were addressed and he was provided with a range of materials available to him and given details of the ICAEW AML service package. He was asked to confirm by 21 June 2017 whether he accepted the PAC decision to have the follow up review. He was also asked to provide the outstanding information arising from the earlier correspondence by 30 June 2017, which included copies of his AML and CMR compliance reviews, and details of his client money alternate.

16. Mr Morris responded on 13 June 2017 and said that he had no intention of paying anything for the proposed follow up visit and that he believed it was 'outrageous that a one-man firm, under constant pressure to service clients, should be subjected to the degree of scrutiny and bureaucracy that the ICAEW impose'. He made no comment about the client money alternate. Mr Morris felt that the help offered by ICAEW for the AML matters remained wholly inadequate and that he had received exactly nothing in the way of assistance from the ICAEW. Mr Morris stated that if the issues outstanding required referral to the Investigation Committee he would cancel his ICAEW membership 'and be done with ICAEW'.

Complaint 3

17. Sole practitioners are required to provide details of an alternate contact who would be able to make repayments to clients if the practitioner were unable to do so in the event of ill health or incapacity in accordance with Clients Money Regulation 31. The Practice Assurance annual returns submitted for H Morris & Co since 2015 showed that an alternate was held, but in his responses provided to QAD on 8 January 2016, Mr Morris had said that the firm had no alternate contact. He considered that an executor would have the power to manage the client money bank account in the event of his death.

18. PCD took the view this was not satisfactory, as he/she would not be able to manage the client account if he were incapacitated. Further, it would cause significant delay while waiting for the executors to take over any client money bank accounts which would have a detrimental effect on any clients whose money was being held in the account.

19. Mr Morris was asked in PCD's letter of 2 June 2017 to advise ICAEW in writing who his clients' money alternate was by 30 June 2017. Mr Morris did not provide this information until his letter of 14 May 2018, after further protracted correspondence and after the issue of an investigation report.

The Respondent's case

20. PCD wrote to Mr Morris on 9 April 2018 with the complaint wording and a copy of the draft report.

21. Mr Morris responded on 14 May 2018. He has now made full admissions in respect of each of the complaints, although maintains that they are not justified, and in particular makes the following points:

    - It is not through unwillingness to comply that the returns and documentation requested have not been provided; he could not cope with what was being requested of him. He has, so he told us, a problem dealing with electronic sources of information.
    - Mr Morris feels that the assistance offered by ICAEW fell far short of what a governing body should provide, and had difficulty in navigating on-line assistance,
    - Having failed to obtain assistance from ICAEW to deal with the AML issues raised at the QAD visit on 16 December 2015, he felt unwilling and insulted at being asked to pay costs for a further visit.
    - He accepts that he has failed to advise ICAEW of his clients' money alternate, and nominated his wife as his alternate.
    - Annual returns submitted for 'X' Ltd disclosed the shareholding that showed it was not a member firm, but it was not pointed out by ICAEW that was the case and that ICAEW would not be the AML supervisor

Issues of fact and law

22. Bearing in mind the burden and standard of proof, we have to consider all the evidence placed before us, and consider the submissions made to us by each party. We then have to decide whether the complaints are made out. We note that Mr Morris has made full admissions to the complaints, repeated orally to the Tribunal. Notwithstanding the admissions, he states that the complaints are unfounded. He has put forward explanations and mitigation for his conduct.

Conclusions and reasons for decision

23. Having considered all the evidence and submissions made to us, and having regard to the admissions made by Mr Morris, we are satisfied that each of the complaints has been proved. Mr Morris had a clear obligation to comply with the reasonable requests from ICAEW, and he signally failed to comply with those requests over a substantial period of time. In our view he was preventing the ICAEW from carrying out its proper functions.

24. While he did engage in correspondence, it was couched in argumentative terms as to why he would not supply the information reasonably sought. The tone was aggressive and unhelpful. He stated that his priority was his clients (a point repeated to us during the hearing), and the requests from ICAEW were of secondary importance. When asked by the Tribunal why he could not attend a course on AML, his response was that as a sole practitioner he could not spare the time. We found this profoundly unsatisfactory.

Matters relevant to sentencing

25. Mr Morris 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 were satisfied that the starting point for the sanction was under 11 i, the generic heading being Other Regulatory and Compliance Issues. The starting point is a severe reprimand and a category D financial penalty and/or order for remedial training. The aggravating factors were the giving of correct advice by ICAEW and the ignoring of the same; repeated failures over a lengthy period of time; and the failure to express any remorse. Mitigating features were: no adverse financial or other consequences on clients; there was no ignoring of correspondence from ICAEW; and the situation was partially rectified. We considered that these factors did not change the starting point in either direction.

26. The complaint specific aggravating factors were that the conduct continued for more than a year, and there was a deliberate decision not to engage with ICAEW. Again, we did not conclude that these factors changed the starting point.

27. Although the complaints were admitted, our view was that the admission was not full and unequivocal, in the sense that Mr Morris maintained the proceedings should not have been brought at all.

28. We recommend a practice assurance visit within 12 months, and we direct that the two sets of statutory accounts which Mr Morris agreed to provide on 1st May 2019 be served by him on ICAEW on or before 4 p.m. 30th September 2019.

Sentencing Order

29. After reviewing all of the factors, the Tribunal decided that the appropriate sanction was a severe reprimand and a financial penalty of £5,000. In addition Mr Morris should pay the costs of the IC, and we scrutinised the schedule of costs, and assessed them at £8,960, a sum which we considered to be fair and proportionate. £7,680 is to be paid in 35 days, and the balance of £6,280 on or before 31st December 2019.

Decision on publicity

30. Publication with name.

Non Accountant Chair	Mr Richard Jones QC
Accountant Member	Mr Martin Ward FCA
Non Accountant Member	Miss Jane Rees

040935

3. Mr Phillip Cooper FCA of
Hull, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 24 September 2019

Type of Member Member

Terms of complaint

1. Mr Phillip Cooper FCA failed to obtain and submit to ICAEW the results of external hot file reviews within one month of their completion in breach of a condition imposed by the Audit Registration Committee, set out in a letter dated 3 April 2014, in respect of the following two audit reports issued by his firm, Phillip Cooper & Co:
   a. 'A' Limited - audit report signed on 29 September 2015
   b. 'B' Limited – audit report signed on 22 September 2015

Mr Phillip Cooper is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a

Disciplinary Bye-law 4.1a states:

4.1 "A member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student (all hereinafter referred to as 'respondent') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student at the time of the occurrence giving rise to that liability

> a. if in the course of carrying our professional work or otherwise he has committed any act or default likely to bring discredit on himself, ICAEW or the profession of accountancy."

Hearing date

24 September 2019

Previous hearing date(s)

None

Pre-hearing review or final hearing

Final Hearing

Complaint found proved

Yes

Sentencing order

A severe reprimand, and a financial penalty of £4,000. In addition, Mr Cooper should pay the costs of the Investigation Committee in the sum of £8,916.50. These sums are to be paid within 35 days.

Parties present

The Respondent did not appear and was not represented

Represented

Mrs Healy-Howell appeared on behalf of the Investigation Committee

Hearing in public or private

The hearing was in public

Decision on service

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

Documents considered by the tribunal

The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle

The Investigation Committee's (IC's) case

1. Phillip Cooper & Co applied for audit registration in February 2014. This was considered by a sub-committee of the Audit Registration Committee (ARC) on 2 April 2014. The sub-committee approved the firm's application, subject to the firm's agreement to arrange for external hot file reviews to be carried out in respect of its first two audits. The ARC can impose conditions and restrictions on a firm in respect of its audit registration. This may include the requirement to arrange and submit file reviews by an external reviewer, as it did in this case.

2. A hot file review is a review conducted after the financial statements have been finalised and the audit work completed, but before the audit report is signed, to check that the audit work is in accordance with the International Standards on Auditing (UK & Ireland), the APB's Ethical Standards, the audit regulations and the firm's procedures. This was explained to Mr Cooper in the letter from the ARC so that it was clear that a hot file review would be conducted prior to the audit report being signed.

3. The letter from the sub-committee required that the results of each hot file review be sent to ICAEW, within one month of its completion. The letter also explicitly stated that:

   'When planning and carrying out the audits, you must ensure that the additional time it will take to obtain the external hot file review, and to clear all the review points, is factored into the audit timetable to avoid any unexpected delays in concluding the audit'

4. Mr Cooper provided an assurance on 11 June 2014 advising that the first audit would be scheduled for Spring 2015, on the basis of which the audit application was formally approved on 12 June 2014.

5. During April to October 2015, the audit regulation department chased Mr Cooper for updates of when it would receive the hot file review results of the firm's first two audits. Mr Cooper submitted the results of a review conducted by 'C' Ltd, on the audit of 'A' Ltd, to ICAEW on 13 November 2015. The review itself had been conducted on 19 October 2015 and post-dated the date of the audit report, which was 29 September 2015. This therefore did not constitute a hot file review as the review was conducted by the external reviewer after the audit report had been signed.

6. The audit regulation department subsequently identified, through a routine search at Companies House, that the firm had also issued an audit report in respect of the accounts for 'B' Limited for the year ended 31 December 2014. Mr Cooper had not submitted a hot file review to ICAEW in respect of this audit.

'A' Limited

7. The Companies House stamp on the front of the abbreviated accounts of 'A' Limited for the year ended 31 December 2014 shows that they were filed on 30 September 2015. The accounts are shown on the Companies House website as uploaded on 13 October 2015. These accounts had been approved by the directors on 29 September 2015 and included an auditor's report dated the same day, which was signed by Mr Cooper.

8. Amended abbreviated accounts for 'A' Limited for the year ended 31 December 2014 were filed at Companies House on 19 January 2016, and recorded on Companies House as uploaded on 27 January 2016. These accounts included an audit report dated 6 November 2015 which had also been signed by Mr Cooper. Mr Cooper has commented that the amended accounts were filed to reflect slight amendments to the wording of two notes to the accounts, notably the inclusion of a tax reconciliation at note 6 to the accounts (this was in response to a point raised by the 'C' Ltd reviewer). This was verified to the original and amended filed accounts.

9. The 'C' Ltd reviewer conducted a review of the original 2014 'A' Limited accounts on 19 October 2015 which was 20 days after the audit report had been signed and after the accounts had been filed at Companies House. Mr Cooper said this was the earliest date available for the review to be completed. Mr Cooper said that he had approached 'C' Ltd to request a review towards the end of September, which was before the original audit report on the 'A' Limited 2014 accounts had been signed, but only provided a period of one-two weeks before the audit report was signed.

10. Mr Cooper also stated that a local accountant he knew, who had experienced similar reviews, informed him that it was much better to wait until the accounts and audit was completed before contacting a reviewer. Mr Cooper said he was waiting for the directors' final approval of the accounts before requesting the hot file review. Mr Cooper comments that the directors usually dealt with finalisation of the accounts promptly but this year was out of the ordinary.

'B' Limited

11. The abbreviated accounts of 'B' Limited for the year ended 31 December 2014 were filed at Companies House on 15 October 2015 and were included on the Companies House website, as uploaded on 23 October 2015. The accounts included an audit report signed by Mr Cooper dated 22 September 2015. Mr Cooper has confirmed that he did not arrange an external hot file review of this audit.

12. Mr Cooper has explained that 'B' Limited is the parent company of 'A' Limited and does not trade. While an audit report was issued on the 'B' Limited accounts, Mr Cooper concluded that a review of the audit would 'only show predominantly audit planning and conclusions without any significant substantive audit work. It was therefore considered that it would not show wide enough coverage of my firm's audit work to satisfy your requirements'.

13. Mr Cooper said that he did not consider it necessary to check the position with ICAEW and with hindsight, he now realises this was a mistake.

The Respondent's case

14. Mr Cooper's first representations are contained in his letter dated 30 April 2018. He confirmed that he had sent his firm's resignation as a registered auditor to ICAEW audit regulation and that he had no further representations to make. This resignation letter is also dated 30 April 2018.

15. On 1 November 2018 Mr Cooper provided further representations:

    1) Mr Cooper provided joint representations to cover the case against the firm and him personally.

    2) Mr Cooper does not dispute that he failed to obtain and submit to ICAEW the results of external hot file reviews in accordance with the ARC's requirements.

    3) He notes that the external review, albeit late, was initiated by himself without any outside prompting, and this was forwarded to ICAEW in the timeframe of within one month of completion. Mr Cooper states that his actions did not result in any harm, or potential harm, to his clients, their customers, financiers, or any other party.

    4) Mr Cooper notes the antiquity of the offences and the fact that all errors have been eliminated from future work and that all accounts, audits, reports etc have been completed on time. Mr Cooper states that this applies to the years ended 31 December 2015, 2016 and 2017 in respect of both companies. Mr Cooper states that this demonstrates that he has taken on board the mistakes and taken action to prevent them occurring again.

    5) Mr Cooper states that he has been a member of ICAEW since 1975 and has run his own practice for over 30 years, with no prior complaints. Mr Cooper also notes that he has now resigned as a registered auditor and that he will not reapply in the future.

    6) Mr Cooper reiterates that he has never disputed any of ICAEW's findings and has always been open about the information he provided.

Issues of fact and law

16. Mr Cooper has made full admission to the complaint made against him. The issue for the tribunal was whether, having regard to the evidence, the submissions, and the admission made, it was satisfied that "in the course of carrying out professional work or otherwise he had committed any act or default likely to bring discredit on himself, ICAEW or the profession of accountancy."

Conclusions and reasons for decision

17. The conditions imposed by the ARC were clearly set out in the letter dated 3 April 2014 and therefore Mr Cooper was fully aware of the condition imposed on his firm by the ARC. He also acknowledged and provided acceptance of this condition in his letter of 11 June 2014. Subsequent to these letters, Mr Cooper did not fulfil the requirement to arrange and submit hot file reviews before the audit reports were signed and filed, on the first two audits which were carried out ('A' Limited and 'B' Limited).

18. Whilst a review was obtained for 'A' Limited, this was performed after the audit report had been signed and accounts filed and therefore this does not constitute a hot file review, as was required, and consequently we are satisfied that Mr Cooper failed to comply with the assurance he gave to the ARC, together with the condition imposed by the ARC. The tribunal noted that Mr Cooper could have notified HMRC that there would be late filing of the accounts, and paid the appropriate penalty. This would have enabled him to obtain the hot file review before he signed the audit report. He did not do so.

19. Mr Cooper issued a separate audit opinion on the accounts of 'B' Limited; 'B' Limited is a separate entity to 'A' Limited. Whilst Mr Cooper states that the audit work conducted on 'B' Limited was predominantly planning and completion, this is still audit work and an audit opinion was still issued. The decision not to obtain a hot file review on this audit was a decision that should have been made by the ARC. Mr Cooper should have sought clarification from the audit regulation department if he was unsure about whether a hot file review was required for 'B' Limited.

20. We are satisfied that Mr Cooper should have made arrangements for an external reviewer to complete the hot file review in sufficient time so that the review was properly concluded before signing the audit report. Mr Cooper's statement that the 'C' Ltd reviewer was unable to complete the hot file review of 'A' Limited earlier is not an appropriate reason for failing to comply with the condition imposed by the ARC.

21. The condition imposed by the ARC was there for an important purpose, and was not complied with. The provision of an auditor's report is of great significance and engages the upholding of proper standards. We are accordingly satisfied that in the course of carrying out professional work or otherwise Mr Cooper committed an act or default likely to bring discredit on himself, ICAEW or the profession of accountancy.

Matters relevant to sentencing

22. Mr Cooper 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 general heading, Other Regulatory and Compliance Issues, para k. There had been a complete failure to comply with a condition or restriction imposed by the ARC. The starting point was accordingly exclusion and a category B financial penalty (£15,000).

23. The aggravating feature was that there was a breach of a clear statement of what was required by the ARC, and an agreement in writing to comply with that requirement. The mitigating features were that this was a one off event; there were no adverse financial consequences for the client or any third party; there was full co-operation by Mr Cooper; he is no longer registered as an auditor; a cold file review was carried out; and a full admission was made.

Sentencing Order

24. Having considered all of these factors, we concluded that a fair and proportionate sentencing order was a severe reprimand and a financial penalty. Some financial information was provided of a very unsatisfactory nature, with no supporting evidence. We had grave difficulties in accepting (without explanation) the asset statement or accepting Mr Cooper's description of his income. We accordingly decided, given the information provided, that the fair and proportionate financial penalty was the reduced figure of £4,000. We also order that the costs of £8,916.50 (which we scrutinised and found to be fair and reasonable) be paid by Mr Cooper.

Decision on publicity

25. Publication with name.

Non Accountant Chair	Mr Richard Jones QC
Accountant Member	Mr Martin Ward FCA
Non Accountant Member	Mrs Jane Rees

033734

4. Phillip Cooper & Co of
Hull, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 24 September 2019

Type of Member Member Firm

Terms of complaint

2. On 29 September 2015, Philip Cooper & Co issued an unqualified audit report on the financial statements of 'A' Limited for the year ended 31 December 2014, in breach of International Standard on Auditing (UK and Ireland) 700 'The Auditor's Report on Financial Statements', as the audit was incomplete.

3. On 19 January 2016, Philip Cooper & Co issued an unqualified audit report on the amended accounts of 'A' Limited for the year ended 31 December 2014 which stated that the financial statements had been prepared in accordance with the requirements of the Companies Act 2006 when this was not the case as the financial statements did not comply with the requirements of paragraph 4 of The Companies (Revision of Defective Accounts and Reports) Regulations 2008.

4. On 19 January 2016, Philip Cooper & Co issued an unqualified audit report on the financial statements of 'B' Limited for the year ended 31 December 2014 which stated that the financial statements had been prepared in accordance with the requirements of the Companies Act 2006 when this was not the case as the financial statements did not comply with section 399 of the Companies Act 2006*".*

Phillip Cooper & Co is therefore liable to disciplinary action under Disciplinary Bye-law 6.2a

Disciplinary Bye-law 6.2a states:

6.2 'A registered auditor shall be liable to disciplinary action under these bye-laws in any of the following cases:

a if it has committed a breach of any regulations issued by ICAEW in its capacity as a recognised supervisory body under the Companies Act 2006 and the Local Audit & Accountability Act 2014 and as a recognised accountancy body and prescribed accountancy body under the Irish Companies Act 2014, or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations.'

Hearing date

24 September 2019

Previous hearing date(s)

None

Pre-hearing review or final hearing

Final Hearing

Complaint found proved

Yes

All heads of complaint proven

Yes

Sentencing order

A reprimand, and a financial penalty of £1,000. The Respondent is to pay the costs of the Investigation Committee in the sum of £2,030.

Parties present

The respondent did not appear and was not represented

Represented

Mrs Healy-Howell appeared on behalf of the Investigation Committee

Hearing in public or private

The hearing was in public

Decision on service

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

Documents considered by the tribunal

The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle

The Investigation Committee's (IC's) case

1. Phillip Cooper & Co is a firm based in Hull with a sole practitioner, Mr Cooper. The firm only has two audit clients.

2. The Audit Registration Committee (ARC) decided to refer Mr Cooper and his firm to the investigation department following its meeting on 19 April 2016. Mr Cooper was advised of the matters referred to investigation on 26 April 2016. These were:

    - a breach of an assurance, given on 11 June 2014, on the basis of which the firm's audit registration was approved
    - the potential non-compliance with ISA 700 by signing an audit report on 29 September 2015, in respect of 'A' Limited for the year ended 31 December 2014, when the audit had not been completed
    - whether the firm had wrongly prepared entity only accounts rather than consolidated accounts in respect of 'B' Limited for the year ended 31 December 2014
    - whether the firm failed to qualify it's audit report in respect of 'B' Limited's non-compliance with the Companies Act 2006 because consolidated accounts were not prepared

    (The first bullet point is being considered against Mr Cooper as a separate matter.)

3. The firm provided an external review on the audit of 'A' Limited to the audit regulation department at ICAEW. The review showed that it had been conducted on 19 October 2015 in respect of the audit of 'A' Limited for the year ended 31 December 2014. The audit report of 'A' Limited had been signed on 29 September 2015.

4. A Hot File Review is a review conducted after the financial statements have been finalised and the audit work completed, but before the audit report is signed, to check that the audit work is in accordance with the International Standards on Auditing (UK & Ireland), the APB's Ethical Standards, the audit regulations and the firm's procedures. This review therefore did not constitute a hot file review as it had been conducted after the audit report had been finalised and signed.

5. The ARC was concerned that as the 'C' Ltd hot file review raised a number of concerns regarding the completion of the audit, it indicated that at the time that the audit report was signed (prior to the review being conducted) the audit was incomplete, in breach of ISA 700.

Complaint 1

6. International Standard on Auditing (UK and Ireland) 700 'The auditor's report on financial statements' ('ISA 700') (revised June 2013) states at paragraph 24 that:

    ''The auditor shall not sign, and hence date, the report earlier than the date on which all other information contained in a report of which the audited financial statements form a part have been approved by those charged with governance and the auditor has considered all necessary available evidence.'

Paragraphs A20 and A21 (Document 3) continue to state:

''The auditor is not in a position to form the opinion until the financial statements (and any other information contained in a report of which the financial statements form a part) have been approved by those charged with governance and the auditor has completed the assessment of all the evidence the auditor considers necessary for the opinion or opinions to be given in the auditor's report. This assessment includes events up to the date the opinion is expressed. The auditor, therefore, plans the conduct of the audit to take account of the need to ensure, before expressing an opinion on financial statements, that those charged with governance have approved the financial statements and any other accompanying other information and that the auditor has completed a sufficient review of post balance sheet events.

The date of the auditor's report is, therefore, the date on which the auditor signs the auditor's report expressing an opinion on the financial statements for distribution with those financial statements, following:

Receipt of the financial statements and accompanying documents in the form approved by those charged with governance for release;

Review of all documents which the auditor is required to consider in addition to the financial statements (for example the directors' report, chairman's statement or other review of an entity's affairs which will accompany the financial statements); and

Completion of all procedures necessary to form an opinion on the financial statements (and any other opinions required by law or regulation) including a review of post balance sheet events.'

7. The principal activity of 'A' Limited is the manufacture of injection moulded technical components. For the year ended 31 December 2014, the company generated turnover of £10.3m and a profit for the year of £1.2m. As at 31 December 2014, the company had net assets of £1.9m.

8. The Companies House stamp on the face of the abbreviated accounts of 'A' Limited for the year ended 31 December 2014 shows that the accounts were filed on 30 September 2015. The accounts are shown on the Companies House website as uploaded on 13 October 2015. These accounts had been approved by the directors on 29 September 2015 and included an auditor's report dated the same day, which was signed by Mr Cooper.

9. The firm's audit registration was subject to conditions and restrictions imposed by the ARC and effective from 3 April 2014. These conditions included a requirement for the firm to obtain and submit external hot file reviews to ICAEW. A 'C' Ltd reviewer conducted a review of the unabbreviated original 2014 'A' Limited accounts on 19 October 2015.

10. The review post-dated the date of the audit report, which was 29 September 2015. This therefore did not constitute a hot file review as it was conducted by the external reviewer after the audit report had been signed. Mr Cooper has confirmed on behalf of his firm that they had prepared draft financial statements for 'A' Limited in July 2015 for the company's review. However the review by the directors took significantly longer than anticipated.

11. Mr Cooper explained that the draft accounts were finally approved on 29 September 2015 because the directors had obtained some tax planning advice from a third party and were considering whether to take any action on it. In the event, they decided not to act on the advice they had received.

12. Mr Cooper said that the draft financial statements were approved by the directors of 'A' Limited on 29 September 2015 because the Companies House filing date was imminent. The accounts were filed on that date, before a hot file review had been conducted, to avoid a late filing penalty.

13. The firm considered that the audit work had been sufficiently completed by that date to enable them to conclude that the accounts showed a true and fair view before the audit report was signed, but before any hot file review had been completed.

14. The firm has explained that the 'C' Ltd reviewer was unable to complete the review until mid-October. They also stated that the points subsequently raised in the review performed by 'C' Ltd predominantly related to documentation of audit evidence rather than criticisms of the actual audit work performed. Mr Cooper said that he had completed the entire audit work and was therefore well aware of the audit evidence he had gathered by the date of signing and was satisfied to sign the audit report.

15. The 'C' Ltd review identifies a number of areas where the audit was incomplete at the time of the review and the matters that needed to be addressed before it was appropriate to issue an audit report. However, the firm had already issued its audit report on 29 September 2015, which was unknown to 'C' Ltd. It therefore follows that these points were outstanding and unfinished at the date the audit report was issued on 29 September 2015, given that the 'C' Ltd review was conducted on 19 October 2015. This is in breach of ISA 700 as set out at paragraph 2.1 of this report. The firm responded to the points raised in the hot file review under the heading 'completion'.

16. The 'C' Ltd review stated that there are 'several completion areas to finish' next to the heading 'stage of completion'. The specific issues that were identified as matters to be addressed are set out below. ICAEW has reviewed the audit file and concurs that these points had not been addressed.

Point raised by reviewer	ICAEW comment
Ensure all file sections record appropriate conclusions as to the stated audit objectives. At present, all that is shown on each of the section audit programmes is a 'planning conclusion'.	There is no evidence of final completion on file sections.
Ensure that informed management evidences their written agreement to all audit adjustments.	No audit adjustments recorded, therefore no written agreement required.
Naturally, in due course, complete and sign off all papers including: complete and sign off all items on A21 (RI review and conclusion); complete and sign off A23 (client meeting agenda points – including with informed management); evidence resolution of any queries and other points noted on file; complete and conclude upon A27 to A27.3 (errors and deviations); and complete and sign off A31 (audit completion checklist), A51 (written representations) and A52.1 to A52.4 (communication with management/those charged with governance).	No evidence that completion papers have been completed. The documents identified by the 'C' Ltd reviewer (A21, A23, A27-A27.3, A31, A51, A52.1-A52.4) were not completed and not signed off (Document 13).
Obtain and file an appropriate signed letter of representation. Ensure the template used covers accounting estimates.	The only letter of representation on file is dated 29 September 2015 (Document 14) which predates the date of the 'C' Ltd file review. This letter does include accounting estimates.
On A32, the disclosure checklist tailoring questions have been completed (section 1 of 15) but there are no entries in the other 14 sections of the checklist (use the arrows at the top of the page to move to these).	The full disclosure checklist from the file, shown at Document 15, is fully completed.
The final analytical review (A22, A71 and A71.1 refer) is not persuasive. A71.1 is simply a long list of various ratios, and A71 simply states that these are consistent with the previous year. This does not evidence the exercise of audit judgment. For example, A71.1 shows that stock days has risen from 31 (2012) to 39 (2013) to 45 (2014) which appears to warrant some specific explanation/comment.	No updates evident since 29 September 2015. The final analytical review is as stated by the 'C' Ltd reviewer (Document 16).
A41 (PBSE) should be updated to the date of the audit report. At present it shows a 'preliminary conclusion'. Ensure it is clear what records/information were examined to provide	No evidence of any update to PBSE work up to the date of the audit report (Document 17).

evidence as to PBSEs for the period to that date. A41 refers to post year end management accounts but none were seen on file.	
A42 (going concern) needs updating in due course, so it is clear what records/information formed the basis for management (and the auditors) considering the period of at least 12 months from the date of approval of the accounts. Audit step 19 states that the bank letter indicates no problems, but as already noted the bank letter simply confirms the year-end balance, so does not provide evidence one way or the other.	Going concern work programme is mostly dated 13 April 2015 and there is no evidence that the review points have been addressed (Document 18).

17. During the investigation ICAEW performed a review of the firm's audit files which comprised electronic and hard copy working papers. There were work programmes and lead schedules for all material balances and there was documented audit testing, on a sample basis, on fixed assets, debtors, cash and creditors. The concerns regarding the audit work therefore appear to be limited to the issues identified above that were not cleared before signing the audit report.

18. ICAEW's review concurs with the findings of the 'C' Ltd reviewer, with the exception of the letter of representation and full disclosure checklist which ICAEW found to have been fully completed. However it is not clear whether these two areas may have been addressed at a later date, after the 'C' Ltd review, to retrospectively address the reviewer's points. The dates in the audit files do not indicate that any of the work was completed/updated after the review had been conducted, but Mr Cooper has explained that following the review by 'C' Ltd, he did make some updates and amended the original sections of the audit working papers without changing the dates entered for the work done.

19. This indicates that the audit was incomplete at the time the audit report was signed. Mr Cooper's comment regarding updates made to the original working papers means that it is possible that he subsequently updated the letter of representation and the full disclosure checklist after the 'C' Ltd review so that they addressed the points raised by 'C' Ltd, and after the audit report had been signed. However it is not possible for ICAEW to confirm this and therefore the case is brought on the basis of the above.

20. Further to the 'C' Ltd review, amended abbreviated accounts for 'A' Limited for the year ended 31 December 2014 were filed at Companies House on 19 January 2016. These accounts included an audit report dated 6 November 2015, which had been signed by Mr Cooper on behalf of his firm.

21. Mr Cooper comments on behalf of his firm, that whilst amended accounts were filed for 'A' Limited following the completion of the review by 'C' Ltd, none of the reported figures actually changed in the final accounts dated 6 November 2015. The changes made following the review were only slight amendments to the wording of two notes to the accounts, notably the inclusion of a tax reconciliation at note 6 to the accounts, which was in response to a point raised by the 'C' Ltd reviewer. ICAEW has verified this and has concluded that the firm made no substantive changes to the accounts arising from the 'C' Ltd review.

Complaint 2

22. Statutory Instrument 2008 No. 373 'The Companies (Revision of Defective Accounts and Reports) Regulation 2008' ('SI 373') requires that, where revised accounts are prepared, certain matters need to be disclosed. These are set out at regulation 4(2)(a):

    (i) that the revised accounts replace the original annual accounts for the financial year (specifying it),

    (ii) that they are now the statutory accounts of the company for that financial year,

    (iii) that they have been prepared as at the date of the original accounts and not as at the date of revision and accordingly do not deal with events between those dates,

    (iv) the respects in which the original annual accounts did not comply with the requirements of the 2006 Act, and

    (v) any significant amendments made consequential upon the remedying of those defects.

23. The amended accounts of 'A' Limited did not include a note explaining the requirements of SI 373. The full amended accounts, which include the audit report stating that the accounts have been prepared in compliance with the Companies Act 2006, were not filed at Companies House, and instead abbreviated accounts were filed (this was permitted). These amended abbreviated accounts also did not contain a note as required by SI 373. The cover page of the amended abbreviated accounts was annotated to state 'amended' but otherwise none of the information required by SI 373 was disclosed.

24. The firm has stated that the only changes between the original and amended sets of 'A' Limited accounts were minor changes to the wording of the notes to the accounts and the inclusion of a tax reconciliation at note 6. The only differences between the original and revised accounts are additional information in two notes in the revised accounts, being:

    a table of factors affecting the tax charge for the year in note 6 on taxation (note 7 in the full accounts) and

    additional other operating lease commitments with an expiry date of between 2 and 5 years which are disclosed in note 21 (note 22 in the full accounts).

25. The firm considered that, as all figures on the primary statements had not been amended, the additional disclosures required by SI 373 were not necessary.

26. Abbreviated accounts include a special auditor's report. The content of this audit report does not state that the accounts have been prepared in accordance with the Companies Act 2006, but instead states that the abbreviated accounts have been properly prepared from the full financial statements and that the company was entitled to deliver abbreviated financial statements. It is the full audit report that states the accounts have been prepared in accordance with the Companies Act 2006. Whilst the full accounts are not the set that has been placed on public record, the full accounts are required to be issued to members of the company, and these are the full accounts of the company; it is these accounts that the firm issues an audit opinion on. Consequently, as the firm failed to comply with SI 373 in both the full and abbreviated amended financial statements, this is in breach of the statement in the full audit report that the accounts were properly prepared in accordance with the Companies Act 2006.

Complaint 3

27. Preparation of consolidated accounts. Section 399 Companies Act 2006 gives exemption from the requirement to prepare group accounts to small groups but not medium sized groups. Section 399(2) (Document 5) specifically states:

    'If at the end of a financial year the company is a parent company the directors, as well as preparing individual accounts for the year, must prepare group accounts for the year unless the company is exempt from that requirement.'

28. Medium sized groups are therefore required to produce consolidated accounts, unless the company is exempt from the requirement in accordance with section 399 Companies Act 2006. Those exemptions include specific requirements in the following situations:

    company included in EEA accounts of a larger group,

    company included in non-EEA accounts of a larger group, and

    company none of whose subsidiary undertakings need to be included in the consolidation

29. Phillip Cooper & Co prepared single entity accounts for 'B' Limited. 'B' Limited is a parent company with 'A' Limited as its subsidiary company. None of the exemptions shown above apply to the 'B' group, and therefore consolidated accounts should have been prepared for 'B' Limited to show the position of both 'B' Limited and its subsidiary company, 'A' Limited.

30. To qualify as small, at the relevant time, a group of companies had to meet two out of three of the following conditions:

    aggregate turnover must not exceed £6.5m net

    aggregate gross assets must not exceed £3.26m

    the aggregate average number of employees must not be more than 50

31. The ‘B’ group is a medium sized group because it does not qualify for two of the three conditions as outlined above. All three thresholds set out above are exceeded by the subsidiary company ‘A’ Limited alone which, during the year ended 31 December 2014, generated turnover of £10.3m, had gross assets of £4.8m and had 103 employees. As ‘A’ Limited is a subsidiary company of ‘B’ Limited, it means that ‘B’ Limited also exceeded the thresholds and did not qualify for two of the three conditions outlined above. However, the firm only prepared single entity accounts for ‘B’ Limited and did not prepare consolidated accounts to show the position of the group as a whole.

32. The Respondent firm has stated that the non-preparation of consolidated accounts was a mistake. A file note on the audit file records the firm’s conclusion at the time that it was not considered necessary to prepare consolidated accounts because:

    ‘B’ Limited is the holding company of ‘A’ Limited and is non-trading

    The only transactions are dividends from its subsidiary and dividends paid to its shareholder

    It has no trade accounts with outside suppliers and has the same bank as its subsidiary

    The group accounts would merely restate the figures shown in ‘A’ Limited’s accounts

33. These are not appropriate reasons for failing to prepare consolidated accounts. The impact of the firm preparing and filing entity only accounts for ‘B’ Limited, as opposed to consolidated accounts, means that the accounts only represent the position of ‘B’ Limited as an individual entity. The main differences between the entity only accounts filed, and the consolidated accounts that should have been filed, are:

    The entity only balance sheet of ‘B’ Limited shows an investment of £750,000 – this investment relates solely to ‘A’ Limited and the balance would have been removed on consolidation.

    The entity only results of ‘B’ Limited do not include any of the trading results or year-end balances held by ‘A’ Limited.

    The entity only results of ‘B’ Limited include intragroup transactions and balances which would normally have been eliminated on consolidation. The balance sheet of ‘B’ Limited therefore still shows a creditor due to ‘A’ Limited of £163,874 (this would have been removed in the consolidated balance sheet), and the profit and loss account of ‘B’ Limited shows income of £782,000 received from ‘A’ Limited; again, this would have been removed in the consolidated profit and loss account.

34. It is the responsibility of the directors to ensure that the accounts comply with the Companies Act 2006. The auditor is required to audit and express an opinion on the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland) (ISAs). Applicable law in this instance is the Companies Act 2006. As the accounts were not prepared on a consolidated basis, as required by the Companies Act 2006, they did not comply with applicable law. In such circumstances, the auditor would qualify the audit report for failure of the entity to comply.

35. The 2014 ‘B’ Limited accounts did not comply with the Companies Act 2006 as they were prepared on an entity basis, as opposed to the consolidated position of the ‘B’ group. However, it is clear from the file note that the firm did give consideration to the requirement to consolidate the group position in the ‘B’ Limited accounts. It was this consideration that led the firm to conclude, incorrectly, that consolidated accounts were not required. The unqualified audit report issued by the firm was done so due to a lack of understanding, as opposed to a knowing breach of International Standard on Auditing (UK and Ireland) 700 ‘The independent auditor’s report on financial statements’.

‘A’ Limited

36. The firm issued an unqualified audit report on the accounts of ‘A’ Limited which enhanced the credibility of the financial statements and gave assurance to external users of the accounts that they were properly prepared and gave a true and fair view of the state of affairs of the company before the audit work was complete.

37. The auditor is required to obtain sufficient, appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion and complete all necessary procedures before the opinion is issued.

38. The firm breached ISA 700 by issuing an audit report on 29 September 2015 prior to completion of the audit. An external review of the file on 19 October 2015 identified outstanding matters to be addressed before an audit report could be issued. Our review of the file largely concurred with this view, with the exception of two items that appeared to be complete. The Respondent should have ensured that the audit work was complete before the audit report was issued and filed on public record.

39. Subsequently, amended abbreviated accounts for ‘A’ Limited were filed at Companies House. These accounts did not contain any note addressing the requirements of SI 373, nor did the full amended accounts. Consequently the accounts did not comply with the Companies Act 2006 but the audit report issued by the firm incorrectly states that the accounts were compliant. Whilst the changes made to the revised set of accounts were additions to the notes to the accounts, the amended accounts failed to comply with the requirements of SI 373 as there was no note addressing the requirements.

‘B’ Limited

40. The financial statements of ‘B’ Limited should have been consolidated to show the position of the group as a whole. However the firm failed to prepare consolidated financial statements for ‘B’ Limited for the year ended 31 December 2014, contrary to the requirements of section 399(2) of the Companies Act 2006.

41. The legislation relating to the preparation of group accounts for medium sized entities is a basic requirement which has been effective since 2008. It appears that the firm did give consideration as to whether consolidated accounts were required, but incorrectly concluded that consolidation was not required. This is a clear requirement of the Companies Act 2006 and the firm should have been fully aware of the exemptions available. The conclusion that consolidated accounts were not required was incorrect, and the Respondent firm should have been aware of this.

42. The failure to prepare consolidated accounts means that the full position of the group was not presented. 'A' Limited is the trading subsidiary and therefore the consolidated position of both 'B' Limited and 'A' Limited would not have shown significantly different results to that of 'A' Limited's own accounts. However medium group consolidated accounts also require further disclosures which are not required in small company accounts. The failure to prepare the correct accounts therefore means that some of the required disclosures were not presented.

Respondent Submissions

43. ICAEW sent a copy of the draft report with the wording of the complaints to the firm on 26 March 2018. The Respondent provided its representations on 30 April 2018. Mr Cooper confirmed, on behalf of the firm, that on 30 April 2018 he sent the firm's resignation as a registered auditor to ICAEW audit regulation, and that he had no further representations to make. This resignation letter is also dated 30 April 2018.

44. On 1 November 2018 Mr Cooper provided further representations:

    Mr Cooper provided joint representations to cover the case against the firm and himself personally.

    Mr Cooper does not dispute that he failed to obtain and submit to ICAEW the results of external hot file reviews in accordance with the ARC's requirements.

    He notes that the external review, albeit late, was initiated by himself without any outside prompting, and this was forwarded to ICAEW in the timeframe of within one month of completion. Mr Cooper states that his actions did not result in any harm, or potential harm, to his clients, their customers, financiers, or any other party.

    Mr Cooper notes the antiquity of the offences and the fact that all errors have been eliminated from future work and that all accounts, audits, reports, etc, have been completed on time. Mr Cooper states that this applies to the years ended 31 December 2015, 2016 and 2017 in respect of both companies. Mr Cooper states that this demonstrates that he has taken on board the mistakes and taken action to prevent them occurring again.

    Mr Cooper states that he has been a member of ICAEW since 1975 and has run his own practice for over 30 years, with no prior complaints. Mr Cooper also notes that he has now resigned as a registered auditor and that he will not reapply in the future.

    Mr Cooper reiterates that he has never disputed any of ICAEW's findings and has always been open about the information he provided.

Issues of fact and law

45. Bearing in mind the burden and standard of proof, we have to consider the evidence before us, the submissions, and the admissions made on behalf of the Respondent. We have to decide whether each of the complaints has been proved.

Conclusions and reasons for decision

46. We have had regard to all of the matters set out at Paragraph 45. We are satisfied that each of the complaints has been proved, and indeed the Respondent has made admissions to each complaint. In summary form, it is evident to us that an unqualified audit report was made for 'A' Limited when the audit was incomplete (Paragraph 16 above); an unqualified audit report on the amended accounts of 'A' Limited was made when the same was not compliant with the Companies Act 2006 (Paragraph 26 above); and an unqualified audit report on the financial statements of 'B' Limited was made when they did not comply with the Companies Act 2006 (Paragraph 31 above).

Matters relevant to sentencing

47. 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 general heading, Audit, para e. Unqualified auditor's reports had been provided, although our view was that the work was of a less seriously defective nature. The starting point was accordingly a reprimand and a financial penalty equal to half of the audit fee (£4,000) or a category C financial penalty (£10,000).

48. The mitigating features were that this was a one off event; there were no adverse financial consequences for the client or any third party; there was full co-operation by Mr Cooper; he is no longer registered as an auditor; and a full admission was made.

Sentencing Order

49. Having considered all of these factors, we concluded that a fair and proportionate sentencing order was a reprimand and a financial penalty. We took into account the separate complaint brought against Mr Cooper personally, arising out of the same audits, and our sentencing order in those proceedings. Mr Cooper, until his retirement from the Respondent firm, was a sole practitioner. Some financial information was provided by him of a very unsatisfactory nature, with no supporting evidence. We had grave difficulties in accepting (without explanation) the asset statement or accepting Mr Cooper's description of his income. We accordingly decided, given the information provided and the overall circumstances, that the fair and proportionate financial penalty was the reduced figure of £1,000. We also order that the costs of £2,030 (which we scrutinised and found to be fair and reasonable) be paid by the Respondent.

Decision on publicity

50. Publication with name.

Non Accountant Chairman	Mr Richard Jones QC
Accountant Member	Mr Martin Ward FCA
Non Accountant Member	Mrs Jane Rees

039665

5. Mrs Elizabeth Dawn Dearing ACA Mr X of
Beaconsfield, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 1 October 2019

Type of Member Member

Terms of complaint

1. Between 28th June 2017 and 8 May 2018 Mrs Elizabeth Dearing ACA failed to submit her CPD records for the year ended 31st October 2016 contrary to Principal Bye-Law 56c.

   Mrs Elizabeth Dawn Dearing is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c

A member, provisional member, foundation qualification holder provisional foundation qualification holder or CFAB student (all hereinafter referred to as 'respondent') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student at the time of the occurrence giving rise to that liability:

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

Hearing dates	1st October 2019
Previous hearing dates	N/A
Pre-hearing review or final hearing	Final hearing
Complaint found proved	Yes, by admission
Sentencing order	Reprimand; Costs of £3,674.67

Procedural matters and findings

Parties and representation	The Investigation Committee was represented by Mrs Sonia Stean The Respondent was present and was not represented
Hearing in public or private	The hearing was in public, save for some personal mitigation
Decision on service	The Tribunal was satisfied that service was in accordance with regulations 3 and 5 of the Disciplinary Committee Regulations

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

Preliminary matters

1. On 10th September 2019 the Chairman granted the Respondent's application for matters of mitigation to be heard in private.

The Investigation Committee's case

2. The Respondent has been a member of the ICAEW since 1988. As a member she is required, pursuant to Principal Bye-law ('PBL') 56, to certify annually that she has complied with the Continuing Professional Development ('CPD') regulations.

3. On 7th June 2017 the Learning and Professional Development Department ('LPD') of the ICAEW requested the Respondent to submit her CPD records for 2015 by 28th June 2017. She failed to do so. A chasing email was sent on 5th July 2017. In the absence of a response the matter was referred to the Professional Conduct Department ('PCD') of the ICAEW.

4. The PCD sent a letter to the Respondent on 14th August 2017. On 21st September 2017 the Respondent telephoned the PCD saying she had had a particularly bad year due to upheavals at work [PRIVATE]. She was given an extension of time until 2nd October 2017.

5. The Respondent failed to comply with that deadline. After further chasing letters on 8th and 30th January 2018 the Respondent phoned the ICAEW Professional Standards Department on 13th February 2018. She again mentioned her personal circumstances and was given a one week extension until 20th February 2018.

6. The Respondent still failed to comply. On 9th March 2018 the Respondent was informed that the matter would be reported to the Investigation Committee. She was given a final chance to submit her records on 12th April 2018 but again failed to do so.

7. The matter was referred to the Investigation Committee who referred the matter to the Disciplinary Committee.

8. The Respondent finally submitted her 2016 CPD record on 31st July 2019.

9. The ICs case was that the Respondent had breached PBL 56.c and she is 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

10. The Respondent admitted the complaint.

11. The Respondent stated in telephone calls to the LPD that 2016 had been a particularly difficult year due to personal circumstances including caring responsibilities, working commitments [PRIVATE].

12. In her oral submissions to the Tribunal the Respondent acknowledged her responsibility to carry out CPD and stressed she had always taken her CPD responsibilities seriously. She told that Tribunal that she had completed the CPD for 2016 but she had failed to document it. She acknowledged her responsibility to provide records when required and accepted that her failure to do so in this case had been repeated and sustained over a period of time.

13. The Respondent addressed the Tribunal on her personal circumstances. [PRIVATE]. She told the Tribunal of the demanding nature of her job compounded by a lengthy commute due to the relocation of her office. She accepted that she had 'buried her head in the sand' and apologised for her failing.

Conclusions and reasons for decision

Matters proved by admission

14. The tribunal found the complaint proved by admission.

Matters relevant to sentencing

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

16. The Tribunal had regard to ICAEW's *Guidance on Sanctions* ('GDS'). The starting point where a member fails to submit evidence of CPD undertaken when requested to do so is a severe reprimand and a category D financial penalty.

17. The Tribunal accepted that it should reduce the level of sanction in light of the exceptional nature of her personal mitigation. In addition the Respondent had, albeit belatedly, submitted her CPD documentation.

18. The Tribunal considered the appropriate sanction was a reprimand. It considered that to additionally impose a fine would be unduly punitive in the particular circumstances of the case.

19. The IC applied for costs in the sum of £3,674.67. The Tribunal saw no reason why the Respondent should not meet these costs and made an order in that sum.

Sentencing order

20. Therefore, in the Tribunal's view the appropriate and proportionate sanction was to reprimand the Respondent.

21. The Tribunal ordered the Respondent to pay costs of £3,674.67.

Decision on publicity

22. The Tribunal directed that a record of this decision shall be published, subject to redacting personal mitigation in accordance with the Chairman's decision, and that the Respondent shall be named in that record.

Non- Accountant Chair	Mrs Mary Kelly
Accountant Member	Mr Jon Newell FCA
Non- Accountant Member	Miss Jane Rees
Legal Assessor	Mr Andrew Granville Stafford

040541

6. Mr Wing Yuen Fung ACA of
Hong Kong SAR

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 1 October 2019

Type of Member Member

Terms of complaint

That from 7th February 2019 until 6 March 2019, Mr Wing Yeun Fung ACA has failed to respond in full to a letter dated 6 February 2019 issued under Disciplinary Bye-Law 13.

Mr Wing Yuen Fung is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c

Disciplinary Bye-Law 4.1 'A member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student (all hereinafter referred to as 'respondent') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student at the time of the occurrence giving rise to that liability:

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

Hearing dates	1st October 2019
Previous hearing dates	N/A
Pre-hearing review or final hearing	Final hearing
Complaint found proved	Yes
Sentencing order	Severe reprimand Fine of £5,000.00 Order to comply with DBL 13 request by 22.10.19 Costs of £3,093.42

Procedural matters and findings

Parties and representation	The Investigation Committee was represented by Mrs Sonia Stean 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 5 of the Disciplinary Committee Regulations

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

Preliminary matters

23. The Respondent has been a member of the ICAEW since 2004. He is resident in and practises in Hong Kong. He is also a member of the Hong Kong Institute of Certified Public Accountants (HKI).

24. Notice of the hearing was sent by post to the Respondent on 2nd September 2019. The notice was sent to his registered address. The Tribunal was satisfied that service had been effected in accordance with Regulations 3 and 5 of the Disciplinary Committee Regulations ('DCR').

25. A copy of the notice was also sent to the Respondent's email address. On 2nd September 2019 an officer of the HKI confirmed that she had spoken to the Respondent and that the email address was the Respondent's current email address.

26. No response had been received to the notice of hearing. The Respondent had not completed and returned the Regulation 13 Answers.

27. 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

28. On 12th September 2014 the ICAEW was notified by HKI that the Respondent had been the subject of disciplinary action by its Disciplinary Committee for breaching its Fundamental Principles of Professional Behaviour and Professional Competence and Due Care. The HKI ordered that the Respondent's practising certificates be cancelled for a period of 12 months and ordered him to pay a fine and costs.

29. On 4th October 2016 the ICAEW requested correspondence and documents in relation to the finding made by the HKI. No response was received from the Respondent.

30. Between 10th November 2016 and 6th February 2019 six further requests for information relating to the HKI disciplinary matter have been made to the Respondent by post and email. The IC relied on the formal requests for information pursuant to Disciplinary Bye-law ('DBL') 13 made by letter and email on 6th February 2019. There has been no response at all from the Respondent.

31. On 2nd July 2019 a formal complaint was referred by the IC to this Committee.

32. DBL 13 gives the IC the power to require a member to provide such information as it considers necessary to enable it to perform its functions. It is a breach of duty for a member not to comply with such request within 14 days.

The Respondent's case

33. The Respondent provided no response to the complaint.

Conclusions and reasons for decision

Decision on complaint

34. The Tribunal was satisfied that a request for information pursuant to DBL 13 was made on 6th February 2019 and had not been complied with by the Respondent. The Tribunal noted that the address on the letter matched the Respondent's registered address. A copy of the 6th February 2019 notice was also sent by email to the address which HKI confirmed is the Respondent's email address.

35. The Tribunal therefore found the complaint proved.

Matters relevant to sentencing

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

37. In the absence of any engagement by the Respondent there were no other matters of mitigation for the Tribunal to take into account.

38. The Tribunal had regard to ICAEW's *Guidance on Sanctions* ('GDS'). The starting point for sanction where there has been no response at all to a DBL 13 request is a severe reprimand and a category D fine (£5,000). The Tribunal considered there was no reason to depart from the starting point.

39. The Tribunal also ordered the Respondent to comply with the DBL 13 request within 21 days.

40. The IC applied for costs in the sum of £3,093.42. The Tribunal considered that it was appropriate to order the Respondent to pay these costs in full.

Sentencing order

41. Therefore, in the Tribunal's view the appropriate and proportionate sanction was to severely reprimand the Respondent and in addition impose a fine of £5,000.

42. The Tribunal ordered the Respondent to provide a full response to the requests in the DBL 13 letter dated 6th February 2019 by no later than 22nd October 2019.

43. The Tribunal ordered the Respondent to pay costs of £3,093.42.

Decision on publicity

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

Non -Accountant Chair	Mrs Mary Kelly
Accountant Member	Mr Jon Newell FCA
Non -Accountant Member	Miss Jane Rees
Legal Assessor	Mr Andrew Granville Stafford

045688

7. Mr Timothy John Vogel FCA of
Swaffham, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 1 October 2019

Type of Member Member

Terms of complaint

5. Mr T J Vogel FCA failed to provide by 25 January 2019 the information, explanations and documents requested in a letter dated 9 January 2019 issued under Disciplinary Bye-law 13.

   Mr T J Vogel FCA is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c

Disciplinary Bye-Law 4.1 provides that 'A member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student (all hereinafter referred to as 'respondent') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student at the time of the occurrence giving rise to that liability: . . .

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

Hearing dates	1st October 2019
Previous hearing dates	N/A
Pre-hearing review or final hearing	Final hearing
Complaint found proved	Yes
Sentencing order	Reprimand Fine £1,000 Order to comply with DBL 13 request by 15.10.19 Costs £2,489.67

Procedural matters and findings

Parties and representation	The Investigation Committee was represented by Mrs Sonia Stean The Respondent was present and was not represented
Hearing in public or private	The hearing was in public

Decision on service	The Tribunal was satisfied that service was in accordance with regulations 3 and 5 of the Disciplinary Committee Regulations
Documents considered by the Tribunal	The Tribunal considered the documents contained in the Investigation Committee's bundle

The Investigation Committee's case

45. The Respondent has been a member of the ICAEW since 1996.

46. The Professional Conduct Department (PCD) of the ICAEW received a complaint from a former director of a limited company, 'Company A'. The complainant alleged that the Respondent had acted as accountant for the company and had failed to provide documents and information required by the complainant.

47. The PCD wrote to the Respondent on 21st November 2017 asking him for a reply to the complaint. A further and more detailed request for information was sent by the PCD on 3rd January 2018 and a chasing letter was sent on 26 January 2018. There was no response from the Respondent and on 14th February 2018 he was warned that if he did not reply he would receive a formal request for information under Disciplinary Bye-law 13.

48. Disciplinary Bye-law ('DBL') 13 gives the IC the power to require a member to provide such information as it considers necessary to enable it to perform its functions. It is a breach of duty for a member not to comply with such request within 14 days. That formal request was sent on 29th March 2018 by post and email.

49. The Respondent replied by email the same day. The Respondent said that the complainant had never been a client of his. He confirmed that his firm had been engaged as accountants by Company A but he said that at the time of their engagement the complainant was no longer a Director. The Respondent said that there had been litigation between the complainant and Company A. The current director and the sole shareholder of Company A was not happy for him to release the information the complainant was seeking out of concern it would be used against the company in further litigation.

50. The Respondent also said that he had replied to PCD on 24 November 2017 and 10th January 2018. The IC's case was that the PCD had never received any such replies. Although the Respondent has been asked to provide copies of those replies he has failed to do so.

51. A further letter requesting information was sent by the PCD on 1st June 2018. The letter required the Respondent, amongst other things, to explain why dormant accounts were filed for an associated company, 'Company B', in 2017 and to provide his firm's letter of engagement with that company.

52. The Respondent replied by email on 15th June 2018 saying he had responded to 'every single one' of the PCD's letters. He also said that legally he did not have to provide the information requested and also there was a court order preventing him from doing so. The complainant disputes that there is any court order prohibiting the Respondent from disclosing the information and documents sought and the Respondent has not supplied a copy of any such order to the PCD.

53. Formal requests for information were made pursuant to DBL 13 by post and email to the Respondent on 2nd August 2018 and 25th October 2018. A reply was received on 15th November 2018 from the Respondent. The IC's case was that this reply provided limited information and although it referred to documents being attached or sent in hard copy by post no such enclosures were received by the IC.

54. A further letter and email was sent to the Respondent requesting the outstanding information on 23rd November 2018. In the absence of any response to that a further formal request under DBL 13 was made to the Respondent on 9th January 2019 by post and email. In the absence of a response from the Respondent this complaint was referred to the Disciplinary Committee.

55. The DBL 13 request dated 9th January 2019 required the Respondent to answers questions and produce documents falling under three headings. The first related to his responses to PCD correspondence and in particular his claim in his email of 29th March 2018 that he had replied on 24th November 2017 and 10th January 2018. The second related to the work he had done as accountant for Company A, including providing working papers in relation to the accounts for the year ended 31st October 2016 and explanations relating to items in those accounts. The third related to Company B. The Respondent was a director and a shareholder of this company. The questions related to his involvement with this company in these capacities and in relation to its accounts.

The Respondent's case

56. The Respondent denied the complaint.

57. The Respondent accepted he had not sent a reply to the letter of 9th January 2019. However, he referred the Tribunal to his previous emails dated 29th March 2018, 15th June 2018 and 15th November 2018. He also produced to the Tribunal a copy of a letter he said he sent to the Tribunal on 30 August 2018, although he accepted that the IC's position was that this letter had not been received by the PCD.

58. The Respondent submitted that he had already answered all the questions asked in the 9th January 2019 letter in previous correspondence. In relation to the requests for information regarding Company A he said he did not have any documents or working papers which he could produce as he did not prepare them. He said the requests for information regarding Company B were fishing requests and the complainant had not made any complaint against him relating to Company B.

Conclusions and reasons for decision

Decision on complaint

59. The Tribunal reminded itself that the burden of proving the complaint was on the IC and the standard of proof to be applied was proof on the balance of probabilities.

60. The Tribunal first considered whether the factual allegation in the complaint, namely that the Respondent had failed to provide the information, explanations and documents requested in the notice of 9th January 2019, had been proved. Given that it was not in dispute that the Respondent did not reply to that letter, the Tribunal was satisfied that this part of the complaint was proved.

61. The Tribunal then considered whether that failure amounted to a breach of DBL 13.

62. The Tribunal was satisfied that the requests for information, explanations and documents in the 9th January 2019 letter were proper requests to make. The Tribunal noted that this letter was not a simple repetition of all previous requests, and had been tailored in light of previous answers given by the Respondent. Whilst some of the questions had received some sort of answer previously from the Respondent, the Tribunal was satisfied that it was appropriate to ask the Respondent at that stage in the process for a full explanation in relation to the matters raised in the letter.

63. The Tribunal noted that the Respondent accepted he had not been as proactive as he could have been in dealing with the PCD's requests and had become annoyed with the process. This, however, did not provide an excuse for failing to respond to this letter. The Tribunal was satisfied that the Respondent was under a professional duty to provide a full reply to the letter of 9th January 2019 and he failed to do so. This in the Tribunal's view amounted to a breach of DBL 13, and accordingly rendered the Respondent liable to disciplinary action under DBL 4.1.c.

64. The Tribunal therefore found the complaint proved.

Matters relevant to sentencing

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

66. In mitigation the Respondent said his actions were not borne out of a deliberate refusal to respond to the ICAEW, but out of a belief that he had responded. The Respondent accepted in light of the Tribunal's finding that this belief was incorrect and that he had made a mistake. He stressed the unusual nature of the engagement with this particular client and emphasised that it was not a situation which was likely to repeat itself. For those reasons he submitted that it was not necessary to visit this complaint with a stringent penalty.

67. The Respondent provided a statement of his financial circumstances to the Tribunal.

68. The Tribunal had regard to ICAEW's *Guidance on Sanctions* ('GDS'). The starting point where there has been a response to a DBL 13 request but not all information has been provided is a severe reprimand and a category E fine (£3,000). Where the response has been difficult and tedious rather than calculated to obstruct the starting point is a reprimand and a category F fine (£1,000).

69. In the circumstances the Tribunal considered that the appropriate and proportionate sanction was a reprimand and a fine of £1,000.

70. The Tribunal also ordered the Respondent to provide a full response to PCD to the requests A, E, F, G, H and I in the letter of 9th January 2019 within 14 days.

71. The IC applied for costs in the sum of £2,489.67. The Tribunal considered it was appropriate to order the Respondent to pay these costs in full.

Sentencing order

72. The Tribunal reprimanded the Respondent and fined him £1,000.

73. The Tribunal ordered that by no later than 15th October 2019. the Respondent provide to the PCD by recorded delivery a full response to paragraphs A, E, F, G, H and I of the letter of 9 January 2019 (including providing copies of any enclosures or documents referred to).

74. The Tribunal ordered the Respondent to pay costs of £2,489.67.

Decision on publicity

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

Non- Accountant Chair	Mrs Mary Kelly
Accountant Member	Mr Jon Newell FCA
Non- Accountant Member	Miss Jane Rees
Legal Assessor	Mr Andrew Granville Stafford

045780

8. Mr Gary White of
of Chelmsford, United Kingdom

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 11 September 2019

Type of Member	Member
Date of Disciplinary Tribunal Hearing	4-8 February and 20-21 May, 2019
Date of Appeal Panel Hearing	11 September 2019

Terms of complaint found proven before the Disciplinary Tribunal

Head of Complaint 1, A

On or before 6 January 2012 Mr G White approved the submission of form CT600 for 'A' Limited for the year ended 31 March 2010, when he knew the form understated the financial position of 'A' Limited because it stated taxable profit for the year to be £200,000 lower than the profit shown in the abbreviated accounts filed at Companies House on 23 December 2010.

Head of complaint 2, A

On or before 18 December 2012, Mr G White approved the financial statements of 'A' Limited for the year ended 31 March 2012 when he knew the accounts understated the financial position of 'A' Limited, as profit for the year was £140,000 lower than the share of profit allocated from 'B' LLP for the same period.

Head of complaint 3, A

On or before 28 March 2013 Mr G White approved the submission of form CT600 for 'A' Limited for the year ended 31 March 2012, when he knew the form understated the financial position of 'A' Limited as taxable profit for the year was £140,000 lower than the share of profit allocated from 'B' LLP for the same period.

Appeal against finding?	No
Appeal against Sentencing order?	No
Appeal against Costs?	Yes
Decision of Appeal Panel	The appeal was dismissed.

Procedural matters and findings

1 The Appellant appeared in person, and ICAEW was represented by Ms Silpa Tozar

2 The hearing was in private

3 There were no preliminary applications

Grounds of appeal

4 The sentencing order that the Appellant contribute £40,000 to the costs of ICAEW should have been made in a much lower sum, because the proceedings were not nearly as complex as claimed by ICAEW, which in particular should have restricted itself to in-house advice and representation, without duplication of effort, and at far lower cost

Decision

5 The appeal was dismissed and the Appellant ordered to pay £3,487 towards the costs of ICAEW

Reasons for decision

6 The Appellant Mr Gary White FCCA, and an affiliate of ICAEW subject to its discipline, appeals against the sentencing order of the Disciplinary Committee made on 21 May 2019 that he (like each of his two co-Respondents) contribute £40,000 (one third) towards ICAEW's total recoverable costs, which the Disciplinary Committee summarily assessed at £120,000. ICAEW had incurred costs of nearly £200,000, but restricted its claim to something over £151,000 (including £37,000 for counsel's advice, and representation at the hearing). The Disciplinary Committee thus reduced this claim by about one fifth. The Appellant contends that this sentencing order was excessive and oppressive, on the general ground that the proceedings were not nearly as complex as claimed by the Institute, which in particular should accordingly have restricted itself to in-house advice and representation at far less cost.

7 The Appellant's contention is thus one of principle. Indeed, on an appeal of this nature it needs to be stated that our function is not to rehear and determine afresh the decision on the application for costs to be paid by the Appellant made by the Disciplinary Committee, which had heard and accordingly had a fuller understanding of the proceedings than we could possibly have. Rather, our function is restricted to reviewing the decision and reasons of the Disciplinary Committee, and granting relief only if we consider that they were in any respect clearly wrong in their approach or conclusions. To be fair, the contrary has not been suggested.

8 The case against the Appellant and the 2 other Respondents which the Disciplinary Committee found proved was that they had in concert under-reported the taxable profits of a company controlled by them, in one tax year by £200,000, and in another by £140,000, when they knew or ought to have known that this was unjustified, and for their own financial advantage.

9 The Disciplinary Committee had before it a 24 page detailed Report dated 7 August 2017 and signed by Miss Jessica Sutherland-Mack, a professional standards legal adviser employed by the Institute. Opening and hearing of evidence was from 4 to 8 February, and continued on 20 May 2019, a total of 6 days. Each side called an expert witness. The Defence produced a hearing bundle of several hundred pages. Closing submissions were heard on 21 May 2019.

10 The transcript of oral closing submissions for the Institute by Mr Mark Vinall of counsel (called in 2002), supplementing written closing submissions and a flowchart (neither of which was provided to us) is 8 pages in length. The transcript of oral closing submissions by Ms Fiona Horlick QC (called 1992, and QC 2019) representing the Appellant and the other two Respondents, is over 15 pages.

11 We have paid attention to how Ms Horlick QC summarised in closing the defence of her clients including the Appellant. She said in her closing submissions [page AC 62] that it was important that the Disciplinary Committee should not lose sight of what she called "the situation on the ground" at the time of the alleged defaults, including both the general financial crisis of 2008 and the disputes that had arisen in particular relating to the deteriorating cash flow of the company, and of the evidence of "how shambolic was the financial control" of a company. She said [page AC 62]:

> "So in summary the LLP was formed between two sets of people who did not know each other and had not worked together. There were different practices in different locations and it did not work, either economically, or in terms of streamlining or merging. They never integrated and there were very serious personality clashes. There was never, you might think, a relationship of trust in the beginning, perhaps because that is something that is something that needs to be built up by long association. Whatever residual trust there might have been between Romford and Chelmsford broke down completely. Again, in summary, the business, despite employing 30 or 40 people and continued to build [sic], lost money hand over fist. They had to be borrowing and had to keep on injecting cash. And yet – you may think very strangely – it reported profits."

Ms Horlick considered it appropriate to develop these general points in some detail and at some length, and we do not for a moment make or imply any criticism of Ms Horlick for doing so.

12 In applying for costs in accordance with a written Summary [page AC 88], Mr Vinall for the Institute said [page AC 79]:

> "… in outline, this is a matter which is complex in a number of respects, both in terms of the number of respondents, but also in terms of the way it had been defended. It has not simply been a focused examination of the state of mind of these respondents. There has been … very extensive evidence, and in particular the recast accounts, which have required very careful consideration, both by the lawyers and by the experts, in order to allow this case to be presented to the Tribunal".

13 In answer Ms Horlick QC produced and relied upon a written analysis by "an expert costs lawyer within Kingsley Napley", her Instructing Solicitors, [page AC 78], which has not been produced to us. However, we can see from Mr Vinall's reply starting at [page AC 84] that he relied upon the defence having presented "a moving target", and sought to refute complaints of duplicated effort, excess hours spent, and the attendance of Miss Sutherland-Mack at the hearing. Ms Horlick QC did not in terms submit that the case was other than complex.

14 The fact that the Disciplinary Committee in its Conclusions and Reasons for Decisions simply held that the Appellant knew that the profit figures were understated, without finding it necessary to analyse the arguments advanced by Ms Horlick QC, does not mean that the case was otherwise than complex. ICAEW had already made allowance for change of personnel leading to duplication of effort. We see no reason to conclude that any delay in holding the hearing increased the costs.

15 In deciding that the costs claimed should be reduced by about one fifth, the Disciplinary Committee did not give detailed reasons, but we do not consider that the Disciplinary Committee can be criticised for adopting a 'broad brush' approach.

16 In short, we consider that there is no justification for contending that the case lacked complexity to the extent that the Disciplinary Committee should have reduced the costs of somewhat over £151,000 claimed by the Institute to less than the £120,000 to which they did reduce them; or that the Institute should have been content with in-house representation, when the Respondents themselves had engaged leading counsel (albeit newly elevated to that status). The appeal is dismissed.

17 In the course of the hearing the Appellant raised his ill health since the hearing before the Disciplinary Committee. He had not previously raised change of circumstances as a ground of appeal, and we declined to consider it as such, but he is entitled to raise such issues if so advised when ICAEW seeks to recover the costs the subject of his appeal.

Chairman	Mr Peter Susman QC
Non Accountant Member	Ms Zip Jila
Accountant Member	Mr Anthony Hemus
Accountant Member	Mr David Kaye
Non Accountant Member	Mrs Maureen Brennan

Record of Decision of a Tribunal of the Disciplinary Committee on 4-8 February 2019 and 20 – 21 May, 2019

Mr Gary White FCCA of Chelmsford, United Kingdom, an affiliate of the Institute of Chartered Accountants in England and Wales

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 4-8 February and 20 – 21 May 2019

Terms of complaint

Head of Complaint 1

A. On or before 6 January 2012 Mr G White approved the submission of form CT600 for 'A' Limited for the year ended 31 March 2010, when he knew the form understated the financial position of 'A' Limited because it stated taxable profit for the year to be £200,000 lower than the profit shown in the abbreviated accounts filed at Companies House on 23 December 2010.

or in the alternative

B. On or before 6 January 2012 Mr G White approved the submission of form CT600 for 'A' Limited for the year ended 31 March 2010, when he should have known the form understated the financial position of 'A' Limited because it stated taxable profit for the year to be £200,000 lower than the profit shown in the abbreviated accounts filed at Companies House on 23 December 2010.

Head of complaint 2

A. On or before 18 December 2012, Mr G White approved the financial statements of 'A' Limited for the year ended 31 March 2012 when he knew the accounts understated the financial position of 'A' Limited, as profit for the year was £140,000 lower than the share of profit allocated from 'B' LLP for the same period.

   or in the alternative

B. On or before 18 December 2012, Mr G White approved the financial statements of 'A' Limited for the year ended 31 March 2012 when he should have known the accounts understated the financial position of 'A' Limited, as profit for the year was £140,000 lower than the share of profit allocated from 'B' LLP for the same period.

Head of complaint 3

A. On or before 28 March 2013 Mr G White approved the submission of form CT600 for 'A' Limited for the year ended 31 March 2012, when he knew the form understated the financial position of 'A' Limited as taxable profit for the year was £140,000 lower than the share of profit allocated from 'B' LLP for the same period.

   or in the alternative

B. On or before 28 March 2013 Mr G White approved the submission of form CT600 for 'A' Limited for the year ended 31 March 2012, when he should have known the form understated the financial position of 'A' Limited as taxable profit for the year was £140,000 lower than the share of profit allocated from 'B' LLP for the same period

If proven, the member (sic) may be liable to disciplinary action under Disciplinary Bye-law 4.1a for heads of complaint 1A, 2A, 3A and under Disciplinary Bye-law 4.1b for heads of complaint 1B, 2B and 3B**.**

Disciplinary Bye-law 4.1a states: "if in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy."
Disciplinary Bye-law 4.1b states: "if he has performed his professional work or the duties of his employment, or conducted his practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, the Institute or the profession of accountancy"

Hearing date

4-8 February and 20- 21 May 2019

Previous hearing date(s)

None

Pre-hearing review or final hearing	Final Hearing
Complaints found proved	1a, 2a, 3a
Sentencing order	Reprimand and fine of £3,000 and ordered to pay costs of £40,000

Parties present	Gary White, represented by Fiona Horlick of counsel instructed by Julie Norris of Kingsley Napley LLP Also present were co-Respondents, Mr 'C' and Mr D, represented by Fiona Horlick of counsel instructed by Julie Norris of Kingsley Napley LLP The Investigation Committee of ICAEW was represented by Mark Vinall of counsel, instructed by Jessica Sutherland-Mack of the ICAEW legal department.
Hearing in public or private	The hearing was in public but certain parts of the evidence were heard in private
Documents considered by the Tribunal	The Tribunal considered the documents contained in the Investigation Committee's (IC's) bundle (together with together with 4 volumes of evidence submitted by Kingsley Napley LLP on behalf of the Respondent and two co-Respondents, Mr 'C' and Mr 'D', together with additional evidence served immediately before and during the first day's Tribunal hearing.
Findings on preliminary matters	In response to an enquiry from the Panel, the IC submitted Mr White, an affiliate of ICAEW, was liable to the provisions as to discipline set out in the bye-laws of the Institute by virtue of paragraph 12A(c) of the Supplemental Charter of the Institute of 21 December, 1948. No point was taken on this submission by Ms Horlick and the Tribunal agreed to assume jurisdiction to hear the complaints against Mr White. Heads of Complaint 1, 2 and 3 denied**.**

Background

1. 'A' Limited was a corporate member of the limited liability accountancy partnership 'B' LLP carrying on business in Essex. Its sole source of income was its share of the profit of 'B' LLP

2. At all material times, Mr White was a partner of 'B' LLP and a director/shareholder of 'A' Limited, based in Chelmsford. Mr 'C' and Mr 'D' were members of 'B' LLP and directors/shareholders of 'A' Limited, based in Chelmsford. Mr 'E', the joint managing partner of 'B' LLP, was based at 'B' LLP's Romford office.

3. The timeline in relation to the filing of 'A' Limited's financial statement and corporation tax returns ("CT600s") was as follows:

   3.1 On 23 December 2010, 'A' Limited filed abbreviated financial statements for FY2010 at Companies House.

   3.2 On 24 December, 2011, 'A' Limited filed abbreviated financial statements for FY2011 at Companies House.

   3.3 On 6 January 2012, Mr Harris submitted 'A' Limited's CT600 corporation tax return for FY 2010.

3.4 On 18 January 2012 Companies House received undated amended accounts for 'A' Limited for FY2011.

3.5 On 2 November 2012, Mr 'F', Finance Partner of 'B' LLP, submitted 'A Limited's CT600 corporation tax return for FY2012.

3.6 On 18 December 2012, 'A' Limited filed abbreviated accounts for FY2012 at Companies House.

3.7 On 28 March 2013, Mr White submitted 'A' Limited's CT600 corporation tax return for 2012.

3.8 On 20 January 2014, 'A' Limited filed amended abbreviated financial statements for 2010, dated 16 January 2012.

4. The profit shares due to 'A' Limited reported 'B' LLP's financial statements for FY2010 and FY2012 were higher than the profit share income reported by 'A' Limited in the corresponding year by £200,000 and £140,000 respectively. The filed Company financial statements for FY2010 reported profits that were £200,000 higher than 'A' Limited's corporation tax return (CT600) for FY2010.

The Investigation Committee's (IC's) case

5. The IC sought to prove, in respect of the each of the three 'A' Limited documents, the CT600s for FY2010 and FY2012 and the abbreviated accounts for FY2012 –

5.1 That it understated 'A' Limited's financial position for the relevant financial year.

5.2 That it was approved by Mr White.

5.3 When Mr White approved that document, that he knew that it understated 'A' Limited's financial position.

5.4 If he did not, that Mr White should have known at the time he approved the document, that it understated 'A' Limited's financial position.

5.5 That profit was reduced and as a result the tax was understated because adjustments were made to the accounts of 'A' Limited. The total amount of monies understated is £340,000.

6. The IC relied on the financial statements and tax returns submitted and filed as above and on correspondence passing between members of 'B' LLP, contained in the bundle of documents numbered from 1- 1046 submitted on behalf of the IC.

7. The IC called Mr 'E' to give oral evidence. He submitted three written statements as his evidence in chief and was cross-examined on behalf of Mr White and his co-Respondents.

8. Mr 'E''s evidence was to the effect that 'B' LLP suffered from the recession from 2009, and was responsible for the cost of annuity payments for retired former partners. Turnover reduced by approximately 15% compared to the turnover of the previous separate practices which had merged to form 'B' LLP. In March 2010, in addition to existing annuities for ex-partners of one of the previous practices, 'B' LLP accepted further financial responsibility, in the form of a 10 year annuity to another retiring partner, Mr 'G', which amounted to £150,000 per annum. In December 2011 the firm found itself unable to pay staff wages and partner drawings. The partners considered whether to put the business into formal administration or continue to trade.

9. Additional funding for ‘B’ LLP was made available by Messrs ‘E’, ‘C’, ‘D’ and White who collectively owned in excess of 90% of the practice’s equity. Mr ‘E’ provided £40,000 directly into ‘B’ LLP while Mr ‘C’, Mr White and Mr ‘D’ obtained a loan of £100,000 from a client of ‘B’ LLP, which they personally guaranteed. The loan from the client was provided to ‘A’ Limited for onward lending to ‘B’ LLP.

10. Mr ‘E’ states that he spoke to Mr ‘C’ on 8 October 2013 and asked Mr ‘C’ about the tax affairs of ‘A’ Limited and whether it had sufficient funds to meet tax liabilities. Mr ‘C’ replied that ‘A’ Limited had monies available for when HMRC wanted them. Mr ‘E’ states he found this an unsatisfactory response.

11. Mr ‘E’ states that on 9 October, 2013 he asked Mr ‘F’ again whether ‘A’ Limited needed additional monies from ‘B’ LLP to pay tax. Mr ‘E’ states that Mr ‘F’s response was that “’A’ Limited’s tax was their problem and he had nothing to do with it.” This, and Mr ‘C’s response, caused Mr ‘E’ to look at ‘A’ Limited’s accounts.

12. Mr ‘E’s review included ‘A’ Limited’s accounts and corporation tax computations for the years ended 31 December 2010 to 2012. He identified inconsistencies in the information he reviewed. He reviewed the tax computation for ‘A’ Limited’s 2012 accounts and did not understand why the chargeable tax liability was so low. The profit recorded in the financial statements was £97,115. He then compared the annual accounts of ‘A’ Limited with ‘B’ LLP accounts and discovered a discrepancy between the profit share allocated from ‘B’ LLP of £299,063 and the profit share disclosed in the accounts of ‘A’ Limited of £159,063. The profit share recorded in the accounts of ‘A’ Limited was lower by £140,000.

13. Mr ‘E’ reviewed entries in the nominal ledger of ‘A’ Limited and identified an adjustment of £140,000. Mr ‘E’ found journals which removed some of the profit share out of the income account and credited it to other creditors.

14. Mr ‘E’ also checked the 2011 ‘A’ Limited accounts and found that the profit share allocated of £72,676 corresponded with ‘B’ LLP accounts. However ‘A’ Limited’s comparative figures, in the 2011 accounts, for 2010 suggested a lower profit than he expected. He compared the share of 2010 profit in the comparatives to the 2011 accounts with the filed 2010 Company accounts. He found that the share of profit in the comparative figures at £157,948 was £200,000 lower than the profit share of £357,948 disclosed in the 2010 Company accounts which were filed at Companies House in December 2010.

15. In summary Mr ‘E’ found that the profit share reported in ‘B’ LLP partnership tax returns for 2010 and 2012 as profit share for ‘A’ Limited exceeded the reported income in ‘A’ Limited’s tax return. He concluded that ‘A’ Limited had understated income by £200,000 during the year ended 31 March 2010, and a further £140,000 in respect of the year ended 31 March 2012. It appeared to Mr ‘E’ that corporation tax liabilities of at least £70,000 for ‘A’ Limited had been under declared to HMRC.

16. Mr ‘E’ said that the profit share in ‘A’ Limited’s accounts for FY2011 agreed with the corporate member’s profit share in ‘B’ LLP’s accounts for that year. Mr ‘F’ submitted the 2011 corporation tax return for ‘A’ Limited, whereas Mr ‘C’ submitted the C600 for FY2010 and Mr White that for FY2012. This is confirmed by an electronic return, copied in the documentary evidence. Mr White states in his witness statement, tendered in evidence, that,

> *“I recognise that I should have paid more attention to the accounts that were being submitted rather than relying on the work of my colleagues. I saw the accounts of ‘A’ Limited before they were submitted, however, I did not scrutinise or question the bases of the figures in the accounts. I accept that I should have done this*”.

17. ‘A’ Limited approved its accounts for FYE 31 March 2010 on 22 December 2010 and filed abbreviated accounts signed by Mr ‘C’ and Mr White at Companies House on 23 December 2010. Those accounts were consistent with the accounts of ‘B’ LLP and both showed ‘A’ Limited received a profit share from ‘B’ LLP of £357,948. The account showed that ‘A’ Limited made a net profit of £301,521.

18. The CT600 was filed nine months late and the tax computation filed showed “profit per financial statements” of £101,520, which was £200,000 less than the profit shown in ‘A’ Limited’s original financial statements. The figure of £101,520 was shown in the amended accounts for ‘A’ Limited for FY2010 which accompanied the CT600. The amended accounts, however, were not sent to Companies House, which Mr ‘C’ described in his witness statement as a “clerical oversight on the part of the directors of ‘A’ Limited”.

19. The differences arise out of a £200,000 provision, made against ‘A’ Limited’s share of the profits of ‘B’ LLP but the IC alleges that this provision was not clearly stated as such in the accounts and indeed is difficult to identify.

20. The filed accounts and tax return for the LLP for 2010 were not amended, despite the fact that the time limit for doing so had not yet expired.

21. Ms ‘H’ FCA, a forensic accountant and partner in ‘I’ LLP gave expert evidence on behalf of the IC and noted that the original ‘A’ Limited financial statements for FY2010 shows a debt owed to ‘A’ Limited of £129,800, representing the profit share owed to ‘A’ Limited by ‘B’ LLP. In the amended FY 2010 financial statements, this debt was eliminated.

22. The original ‘A’ Limited financial statements for FY2010 show creditors due after more than one year of £654,894; whereas the amended balance sheet shows a figure of £725,094, an increase of £70,200. Most of this increase represents the balance of the provision of £200,000.

23. The original ‘A’ Limited financial statements for FY2010 shows creditors falling due within one year of £406,003, whereas the amended FY2010 balance sheet shows a figure of £367,891. The difference of £38,112 represents the reduction in corporation tax liability as a result of the reduction in ‘A’ Limited’s anticipated profit share from ‘B’ LLP.

24. The adjustment described above had the effect of reducing ‘A’ Limited’s profit after tax for FY 2010 by £162,888. This reduction is reflected in the P/L reserves figure which was reduced from £649,960 to £488,071.

25. Similarly, the IC relies on the mismatch between ‘B’ LLP accounts and ‘A’ Limited’s accounts for FY2012: ‘B’ LLP’s P/L account for FY2012 shows a profit share payable to ‘A’ Limited of £299,063; ‘A’ Limited’s P/L account for the same period shows profit share income from ‘B’ LLP of only £159,063, a difference of £140,000.

26. ‘A’ Limited made a further £140,000 provision in 2012 which, as in the 2010 accounts, is not easy to identify in the accounts. Ms ‘H’ stated that “the additional provision of £140,000 in FY2012, together with the [2010] provision of £200,000 is likely to have been reflected in the creditors falling due after more than one year figure of £636,177. The financial statements do not show a breakdown of this figure and therefore I cannot state this definitively”.

27. Mr White sent a number of letters to the ICAEW, signing some and others over his “pp” signature, jointly with Mr ‘D’ and Mr ‘C’, beginning on 30 December 2013 setting out and expanding on the reasons for the provisions made in the ‘A’ Limited accounts for 2010 and 2012. In the letter dated 30 December 2013, they write,

"We enclose a copy of the amended full Accounts for the year ended 31 March 2010 as signed and formally approved by the Board. These were the Accounts which support the CT600 which was submitted in January 2012. ... In December 2011, when we revised the Accounts the seriousness of the significant uncertainties as to the future of the Accountancy practice had become apparent. We felt that the situation had existed in March 2010 and that accordingly the 2010 Accounts as previously filed at Companies House were incorrect as they did not reflect the true and fair position of the Company".

28. Further detailed explanations were offered in a letter to ICAEW dated 22 January 2014, signed by Mr 'C' and Mr 'D' and over a "pp" signature for Mr White, which states,

> *At the end of December [2011] we found ourselves unable to pay staff wages and partner drawings and we became extremely worried as to the viability of the business ....Whilst we did not go into a major investigation of the prior periods ... we believed that part of the allocated profits in respect of WIP made to the Company ['A' Limited] were overstated. We took this into account when making the provisions.*
>
> *We also considered that there was the real possibility that billings were raised in Romford in advance of work being down. Whilst we had no proof of this we felt that the extent of the cash outflows arising in the accounting year to 31 March 2011 were disproportionate to the position in March 2010 and that there was likely to be a timing difference between the two years. We took this into account when allocating provisions to the 2010 period.*
>
> *We then assessed the impact of the business going into administration. We concluded that there was a real danger of this despite our best efforts and commitment to ensure its survival ...this would have severely affected the value and recoverability of WIP as well as the collection of debtors resulting in substantial trading losses which would have been allocated to the company resulting in the repayment of profits previously allocated".*

29. In a letter to ICAEW dated 31 March 2014, with which Mr White confirmed over his signature that he was in agreement, the £200,000 provision in the amended 2010 accounts was divided up as follows:

> Overstatement of WIP: £65,000 provision *"for the company's share of the overstatement of £100k" and £135,000 provision "to reflect the uncertainties surrounding 'B' LLP business and the impact it would have on the Company at the time ... there was a serious threat that the business would be put into administration, the impact of this would be that the debts and WIP would have been substantially unrecoverable leading to losses arising in the partnership. The company would have then effectively have had an overdrawn account with 'B' LLP leading it to have to repay funds".*

30. In a letter to ICAEW (not signed by Mr White) dated 18 November, 2015, having received the IC's draft Report, Mr 'C' advanced, for the first time, the impact on the accounts of the lease of the Chelmsford office which he said was an "onerous lease at above market rental with unutilised space that wasn't needed in a depressed market".

31. It is noteworthy that Mr White did not refer in his evidence to the "onerous lease" or its impact on the financial statements of the company or 'B' LLP.

Defence Case

32. Mr White put in a written witness statement and gave oral evidence to the Tribunal. He said he was "out and about" on business for the practice more than often than he was in the office. He explained that the partners saw management accounts which were often challenged and he himself had challenged them occasionally. They tended to be very profit and loss-based with no consolidation or balance sheet accounting to give the partners sight of the firm's overall liabilities, including the annuities. Mr 'E' had told them "not to worry about them".

33. He felt he should have known more about the overall picture of the practice. But judging by the amounts the partners had to put into the practice, there was a very sudden and severe drop in profitability; turnover dropped and with it, profitability.

34. He explained that when Mr 'G' retired, turnover "dropped like a stone". The assumption was that Mr 'G' was not engaged in much chargeable work and he had accepted it. Mr White had a "gut feeling" there was something wrong with the accounts for 2010 and that it was wrong that one person leaving could cause so much deterioration. He felt that 'B' LLP's accounts were overstated but had not done the analysis that, with hindsight, he should have done.

35. The provision for £200,000 in the 2010 'A' Limited accounts was discussed and he agreed to it. The impetus for the provision was the potential of the firm going into administration and the provision would cover any repayment of profit share and debt write-offs.

36. He did not remember a meeting to discuss the provision of £140,000 in the 2012 accounts, but knew there was a provision and supported it.

37. In cross-examination, Mr White says he couldn't remember seeing the corporation tax demand but knew that the provision in the accounts would reduce the amount of tax they would have to pay. He admitted that he did not have FRS12 in mind when agreeing to the provisions.

38. Mr White explained in his witness statement and in his oral evidence [private].

Conclusions and reasons for decision

39 The Tribunal had regard to the corporation tax returns (CT600) for 'A' Limited financial years 2010 and 2012 and the financial statements for 'A' Limited for FY2012, submitted on 18 December 2012. The Tribunal was satisfied on the basis of Mr White's own evidence that he had seen the 'A' Limited accounts before they were submitted and was aware of the provisions as well as the reasons for them being made. He said he fully supported those provisions, given the circumstances at the time and the potential for repayment of profits shares allocated from 'B' LLP. The evidence indicated a discrepancy between the figures for taxable profits contained in the 'A' Limited CT600s for FYs 2010 and 2012 and in the

financial statements submitted to Companies House for 2012 compared, in the case of the 2010 tax return, with the profit shown on the abbreviated accounts filed at Companies House on 23 December 2012 and compared with the share of profit allocated from 'B' LLP to 'A' Limited for the same period; and in the case of the 2012 accounts and CT600, compared with the share of profit allocated from 'B' LLP to 'A' Limited for the same period.

40. In the case of the 2010 tax return, the taxable profit for the year was stated to be £200,000 lower than the profit shown on the abbreviated accounts filed at Companies House and the share of profit allocated from 'B' LLP to 'A' Limited for the same period. Mr White said he was shown copies of the accounts and the estimated provisions and associated workings. He remembered having an informal conversation with Mr 'C' and with Mr 'F' where the specific figure [of £200,000] was discussed and he remembers agreeing to it.

41. In the case of the 2012 Accounts and CT600, the stated profit (and taxable profit) for the year was £140,000 lower than the share of profit allocated from 'B' LLP to 'A' Limited for the same period. In that case, he could not remember whether he had had any conversations with Mr 'C' of Mr 'F' regarding the provision for £140,000 although he did know they contained a provision.

42. The Tribunal had to decide whether, irrespective of Mr White's intentions at the time the accounts were prepared, the returns and accounts were in fact understated. It is Mr White's case that they were not, and that they justified the provisions made.

43. It is common ground that there was no explanation for the "provisions" in either the 2010 returns or the 2012 accounts and that the provisions in both were not transparent and are not at all easy to identify, provisions being made against various lines of the accounts without consideration of any necessary disclosures to HMRC, nor UK GAAP. There is no contemporary evidence documenting the calculations made in respect of either the 2010 or 2012 provisions.

44. The Tribunal was satisfied that Mr White's explanation that the provisions were made because of the fear that the firm was in a critical state in 2010 and 2012 and that he feared that the profit shares for himself and his partners were at risk might be sincere but not the risk of clawback but he knew neither explanation would justify the provisions made in those accounts in any event. The Tribunal accepted an additional explanation, argued by the IC, for the action taken by Mr White and his partners to reduce the profits figure in both the 2010 and 2012 returns and accounts was to reduce the amount of corporation tax liability for 'A' Limited and thus avoid the need for them to provide funds for 'A' Limited with which to pay the corporation tax due. Any "clawback" of monies that Mr White and his partners had invested in 'B' LLP that might be required, in the event of administration or liquidation was a contingent liability which could not be made the subject of a provision in the accounts under FRS12.

45. The Tribunal found, on a balance of probabilities that the tax returns for FY2010 and 2012 and the accounts for FY2012 submitted on 28 December 2012 were understated. The Tribunal found that Mr White knew that the profit figures in those financial statements were understated.

46. The Tribunal found Heads of Complaint 1a, 2a and 3a proved.

Matters relevant to sanction

47. The Tribunal had regard to the Institute's *Guidance on Sanctions*, effective from 1 April 2019. The Tribunal took the view that the misconduct proved under Heads 1a, 2a and 3a fell within Section 17 of the Guidance, Misconduct as a Company Director, and, within that section, under paragraph d (Approval of defective accounts).

52. The Tribunal took the view that in respect of all the Heads of Complaint proved against Mr White and taking into account all the circumstances of the case which had been brought out in evidence and in submissions made in the hearing they fell within the "less serious" category.

53. The Tribunal took into account a number of mitigating factors in Mr White's case –

- The matter had reached the Investigations Committee principally as a result of a very acrimonious partnership dispute between the Chelmsford partners and Mr 'E' who was the complainant.
- No clients of the practice had been affected and there was no significant resulting loss to the Revenue as the partnership had subsequently made good the shortfall in corporation tax.
- [Private].

- The Tribunal took into account the statements in support of Mr White submitted by him to the Tribunal and his lack of any disciplinary record.

Sentencing Order and Costs

54. The Tribunal ordered Mr White to be reprimanded and to pay a Category E fine of £3,000.

55. The IC claimed costs in the sum of £151,070.75 to be split equally between the three Respondents.

56. Counsel for the Respondents contended that the costs claimed were substantially inflated, notably in relation to the pre-Tribunal work carried out by Institute staff, external counsel instructed by the Institute and by the expert witness, Ms 'H'.

57. The Tribunal had careful regard to the sums claimed and the reductions already made by the IC in the schedule of costs but nevertheless determined that some of the sums claimed, particularly the 191 hours claimed by Ms 'H' in her preparation and report writing at £445 an hour, were excessive as was the claim for some of the preparatory work carried out over five years leading up to the Tribunal hearing. The Tribunal determined that overall, £120,000 was a more appropriate figure to order the Respondents to pay. Accordingly it awarded the IC that sum, and ordered Mr White to pay one third as his contribution to the Institute's costs namely, £40,000.

Decision on publicity

58. The Tribunal directed that a record of this decision shall be published and Mr White shall be named in that record but directed that all matters relating to the details of Mr White's health shall not be published.

Chairman	Mrs Rosalind Wright QC
Accountant Member	Mr Martin Ward FCA
Non Accountant Member	Mr Nigel Dodds

018252

9. Mr John Arthur Hollingsworth FCA

Consent order made on 16 October 2019

With the agreement of Mr John Arthur Hollingsworth FCA of Telford, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £2,100 and pay costs of £2,670 with respect to a complaint that:

1. Mr John Hollingsworth FCA incorrectly completed the 'A' Ltd's 2016 and 2017 ICAEW annual returns by not disclosing 'B' Ltd as a connected entity.

2. On 20 December 2017, Mr John Hollingsworth FCA issued an audit report in the trading name of his firm, 'B' Ltd, in respect of the financial statements of 'C' Ltd for the year ended 31 March 2017 when the firm was not a registered auditor, contrary to section 1213 of the Companies Act 2006.

045270

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10. Miss Tracy Joanne Whittaker

Consent order made on 16 October 20199 September 2019

With the agreement of Miss Tracy Joanne Whittaker of Manchester, United Kingdom, the Investigation Committee made an order that she be reprimanded, fined £1,050 and pay costs of £3,132 with respect to a complaint that:

Between 30 December 2015 and 31 October 2016 Miss T J Whittaker as supervisor of the Individual Voluntary Arrangements of Mr and Mrs 'X' failed to issue completion certificate in a timely manner.

035863

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11. Mr Simon David Hulme ACA

Consent order made on 16 October 2019

With the agreement of Mr Simon David Hulme ACA of Cheadle, United Kingdom, the Investigation Committee made an order that he be severely reprimanded and pay costs of £1,642 with respect to a complaint that:

1. On 9 August 2012 Mr Hulme ACA drove a motor vehicle after consuming alcohol in excess of the prescribed limit.

2. On 30 October 2013 Mr Hulme ACA drove a motor vehicle after consuming alcohol in excess of the prescribed limit.

047774

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12. MacIntyre Hudson LLP

Consent order made on 16 October 2019

With the agreement of MacIntyre Hudson LLP of Milton Keynes, United Kingdom, the Investigation Committee made an order that the firm be reprimanded, fined £700 and pay costs of £1,605 with respect to a complaint that:

1. Between 1 January 2016 and 19 September 2016, 12 audit reports were issued on behalf of MacIntyre Hudson LLP that were signed by one of the firm's principals who did not hold the relevant ACCA practising certificate, contrary to Audit Regulation 4.02.

2. Between 20 September 2016 and 10 January 2017, 16 audit reports were issued on behalf of MacIntyre Hudson LLP that were signed by one of the firm's principals who did not hold the relevant ACCA practising certificate, contrary to Audit Regulation 4.02.

3. Between 2 July 2016 and 9 December 2016, MacIntyre Hudson LLP was in breach of Audit Regulation 2.03a in that a principal in the firm, having been suspended from ACCA membership, did not hold ICAEW audit affiliate status.

039644

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13. Mr James Edward Billingham

Consent order made on 16 October 2019

With the agreement of Mr James Edward Billingham of Epsom, United Kingdom, the Investigation Committee made an order that he be reprimanded and pay costs of £1,080 with respect to a complaint that:

On 19 August 2018 Mr James Billingham drove a motor vehicle after consuming alcohol in excess of the prescribed limit.

045824

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14. Mr Nicholas James Warden ACA

Consent order made on 16 October 2019

With the agreement of Mr Nicholas James Warden ACA of Stratford-upon-Avon, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £5,600 and pay costs of £2,880 with respect to a complaint that:

1. Between 13 November 2015 and 16 August 2016, Mr Nicholas Warden ACA failed to comply with Clients' Money Regulation 10 as funds were received from two clients were not paid immediately into a client bank account. The details are set out in Appendix 1.

2. Mr Nicholas Warden ACA failed to comply with Clients' Money Regulation 21 as funds were withdrawn from the client bank account for three clients, which were greater than the credit balances held for those clients. The details are set out in Appendix 2.

038703

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15. Evans & Partners

Consent order made on 21 October 2019

With the agreement of Evans & Partners of Bristol, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £6,230 and pay costs of £3,737 with respect to a complaint that:

1. Between February 2013 and 31 March 2014 Evans & Partners failed to comply with paragraph 7 of The Money Laundering Regulations 2007 as the firm failed to apply customer due diligence measures on all clients.

2. Between 1 February 2013 and 31 March 2014 Evans & Partners failed to comply with regulation 21 of the Clients' Money Regulations because, on 18 occasions, they caused or permitted funds to be withdrawn from the firm's Clients' Wages Bank Account which were greater than the credit balances held for those clients (details set out in Appendix 1).

3. Between 1 December 2012 and 31 March 2014 Evans & Partners failed to comply with regulation 11 of the Clients' Money Regulations in that on 9 occasions the firm paid funds, totalling £73,920, into the Clients' Wages Bank Account in order to make payments for the partners' tax liabilities (details set out in Appendix 2).

4. Between 5 December 2012 and 31 March 2014 Evans & Partners failed to comply with regulation 13 of the Clients' Money Regulations as the firm failed to ensure that where money of any one client in excess of £10,000 was held by the firm for more than 30 days, the money was paid into a separate designated client bank account on 2 occasions (as set out in Appendix 3).

045979

16. Evans & Partners Limited

Consent order made on 21 October 2019

With the agreement of Evans & Partners Limited of Bristol, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £5,460 and pay costs of £6,043 with respect to complaints that:

1. Between 1 April 2014 and 16 August 2016 Evans & Partners Ltd failed to comply with paragraph 7 of The Money Laundering Regulations 2007 as the firm failed to apply customer due diligence measures on all clients.

2. Between 19 June 2014 and 1 August 2018 Evans & Partners Ltd failed to comply with regulation 21 of the Clients' Money Regulations because, on 29 occasions, they caused or permitted funds to be withdrawn from the firm's client account which were greater than the credit balances held for those clients (details set out in Appendix 1).

3. Between 30 July 2014 and 30 September 2017, Evans & Partners Ltd failed to comply with regulation 11 of the Clients' Money Regulations in that:

    a) On four occasions in May 2016, the firm paid its own funds, totalling £54,785.09 in to the Clients' Wages bank account to administer the payment of net salaries to its own employees; and/or

    b) On eight occasions, the firm paid funds into the Client Wages Bank Account order to make payments for the director's tax liabilities (details set out in Appendix 2).

4. Between 15 April 2014 and 6 August 2018 Evans & Partners Ltd failed to comply with regulation 13 of the Clients' Money Regulations as the firm failed to ensure that where money of any one client in excess of £10,000 was held by the firm for more than 30 days, the money was paid into a separate designated client bank account on 19 occasions (as set out in Appendix 3).

5. Evans & Partners Ltd failed to comply with regulation 25 of the Clients' Money Regulations in that it did not ensure that the following reconciliations of its client bank accounts had been made once in every five weeks:

    a) The Client Wages account (incorporating its 'X' designated client accounts) for the period 1 April 2016 to 30 June 2016; and

    b) The Tax Refund account for the period 1 April 2016 to 31 August 2016.

039628

17. Forshaws Accountants Limited

Consent order made on 21 October 2019

With the agreement of Forshaws Accountants Limited of Southport, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £5,650 and pay costs of £7,070 with respect to a complaint that:

1. Forshaws Accountants Ltd allowed themselves to be associated with Overpayment Relief Claims made by 'Mrs A' for the 2011/12 and 2012/13 tax years when they should have known that they were incorrect.

2. Forshaws Accountants Ltd prepared 'Mrs A's' tax return for the 2013/14 tax year, which was incorrect because it omitted her income and gains from the 'B'.

3. Forshaws Accountants Ltd prepared 'Mrs A's' tax return for the 2014/15 tax year, which was incorrect because it included a deduction to the Capital Gains Tax payable for legal and professional fees which were not deductible expenses for tax purposes".

033661

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18. Mr Martin James Palmer FCA

Consent order made on 21 October 2019

With the agreement of Mr Martin James Palmer FCA of Alderley Edge, United Kingdom, the Investigation Committee made an order that he be severely reprimanded and pay costs of £1,190 with respect to a complaint that:

On 19 December 2013 Mr Martin James Palmer FCA was found to have driven a motor vehicle dangerously.

046828

INVESTIGATION COMMITTEE FIXED PENALTY ORDERS

19. Mr James Smith

Penalty order made on 22 October 2019

Under Disciplinary Bye-law 14A the Investigation Committee has exercised its powers under delegation to consider this complaint by way of fixed penalty.
With the agreement of Mr James Smith, the Investigation Committee ordered that Mr James Smith, of Lancashire, United Kingdom be reprimanded with respect to a complaint that:

> On 22 March 2016, Mr James Smith entered a train for the purpose of travelling without having with him a valid ticket entitling him to travel, contrary to byelaw 18(1) and 24 of the Railway Byelaws made under Section 219 of the Transport Act 2000 by the Strategic Railway Authority and confirmed under schedule 20 of the Transport Act 2000.

050735

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20. Mr Dean Ward

Penalty order made on 18 October 2019

Under Disciplinary Bye-law 14A the Investigation Committee has exercised its powers under delegation to consider this complaint by way of fixed penalty.
With the agreement of Mr Dean Ward, the Investigation Committee ordered that Mr Dean Ward, of Blackburn, United Kingdom, be reprimanded, and a fixed penalty with respect to a complaint that:

> On 12 December 2014 Mr Dean Ward drove a motor vehicle after consuming alcohol in excess of the prescribed limit.

050919

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21. Mr Michael Barker

Penalty order made on 29 October 2019

Under Disciplinary Bye-law 14A the Investigation Committee has exercised its powers under delegation to consider this complaint by way of fixed penalty.
With the agreement of Mr Michael Barker, the Investigation Committee ordered that Mr Michael Barker, of South Yorkshire, United Kingdom, be reprimanded, and a fixed penalty with respect to a complaint that:

> On 14 June 2017 Mr Michael Barker was convicted of driving a motor vehicle with an alcohol level above the legal limit.

050895

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22. The Orange Partnership Ltd

Penalty order made on 25 September 2019

Under Disciplinary Bye-law 14A the Investigation Committee has exercised its powers under delegation to consider this complaint by way of fixed penalty.
With the agreement of The Orange Partnership Ltd, the Investigation Committee ordered that The Orange Partnership Ltd, of Kenilworth House, 1st Floor, 46 Park Road, Kenilworth, Warwickshire, CV8 2GF be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied and a fixed penalty of £1,080.44 representing a financial penalty equal to the fees saved of £1,543.48 to which a discount of 30% has been applied with respect to a complaint that:

1. The Orange Partnership Ltd, following a QAD visit on 1 May 2012, confirmed that:

   '*We wish to continue to use the logo. Therefore, John Taylor has been sent an application form to fill in to obtain affiliate status.*

   Action: Completed form to be submitted by 11/5/12'

   but at a subsequent QAD cyclical visit conducted on 7 June 2018 it was found this matter had not been addressed.

2. Between 13 January 2009 and 19 August 2018, The Orange Partnership Ltd failed to comply with Regulation 6 governing the use of the description 'Chartered Accountants', as it described itself as a firm of Chartered Accountants when not eligible to do so because a director of the company, Mr John Taylor, was not a member or affiliate member of ICAEW.

047922

REGULATORY PENALTY ORDERS

Audit Registration Committee

ORDER – 21 AUGUST 2019

23. Publicity statement

Bairstow & Atkinson, Halifax, United Kingdom, has agreed to pay a regulatory penalty of £1,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Licensed Practice Handbook paragraphs 2.08f and 2.08b for failing to comply with an undertaking given to ICAEW to arrange and submit the results of an external cold file review of an ATOL reporting accountant engagement, and failing to reply to ICAEW correspondence.

048795

Audit Registration Committee

ORDER – 9 OCTOBER 2019

24. Publicity statement

AJP Corporate Accountants Ltd, Bury, United Kingdom,has agreed to pay a regulatory penalty of £3,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 3.20 and 6.06 for failing to comply with an undertaking to arrange for external cold file reviews to be carried out at least once every three years since 2015 and for the incorrect completion of its 2017 and 2018 ICAEW annual returns.

051163

Audit Registration Committee

ORDER – 21 AUGUST 2019

25. Publicity statement

Wesley Pemberton LLP, London, United Kingdom, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.20 for failing to have external cold file reviews carried out on the 2016 and 2017 audits of its only audit client in these years.

050088
