



DISCIPLINARY ORDERS AND REGULATORY DECISIONS

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mr Alan James Proto [ACA] of
4 Church Steadings, Waverton, CHESTER, CH3 7QX.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 19 April 2016

Type of Member Member

Terms of complaint

The committee referred a formal complaint to the tribunal of the Disciplinary Committee following the finding of a prima facie case with respect to a complaint that:

Mr Alan Proto ACA while a director of 'A' Ltd demonstrated by his behaviour that he was unfit to be a director of a company. Full particulars of the matters alleged to have rendered him unfit are set out in the 'matters of unfitness' in the schedule to the undertaking given by Mr Proto under the Company Directors Disqualification Act 1986 and signed by him on 4 December 2014.

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

Hearing date

19 April 2016

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 Exclusion

Procedural matters and findings

Parties present Mr Alan Proto
The Investigation Committee (IC)

Represented Ms Joester of ICAEW represented the IC

Hearing in public or private The hearing was in public

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

Documents considered by the tribunal The tribunal considered the documents contained in the IC's bundle together with documents from the defendant

Issues of fact and law

1. Mr Proto was a director of 'A' Ltd from 1991. The principal activity of 'A' Ltd was the delivery of modern sustainable construction projects, bespoke exclusive house building, and the installation of residential and commercial renewable energy sources. The company went into administration on 16 January 2013 with the Estimated Statement of Affairs showing a total deficiency to unsecured creditors of £1.7m.
2. 'A' Ltd went into a creditor's voluntary liquidation in January 2014 with a total deficiency of £2.6m.
3. Disqualification proceedings were brought by the Secretary of State under Section 6 of the Company Directors Disqualification Act 1986. The proceedings were concluded in December 2014 when Mr Proto gave a disqualification undertaking not to be director of a company for a period of 12 years. The conduct leading to the disqualification was set out in a schedule of unfit conduct.

Schedule of Unfit Conduct

4. The Schedule of Unfit Conduct gives details of Mr Proto's actions. From December 2012 Mr Proto started to create false documentation and constructed a scheme to defraud the creditors of 'A' Ltd. In particular, Mr Proto:
 - Created documents in December 2012, dated June 2012, that purported to agree to sell two plots of land to a third party purchaser by no later than 30 December 2012.
 - Created documents in December 2012, dated June 2012, that purported to show that 'A' Ltd had guaranteed the obligations of 'B' to the third party purchaser to complete the construction of two houses.
 - Created documents in December 2012, dated July/August 2012, that the third party purchaser had threatened legal action against 'A' Ltd resulting in 'A' Ltd transferring its shareholding in 'B' to the third party purchaser.
 - Only set up the third party company in the British Virgin Islands, and became the ultimate beneficial owner in December 2012 when he purchased an off the shelf company incorporated in October 2012.
 - Created documents in December 2012, dated August 2012, that 'A' Ltd waived the debt due from 'B' as a precondition of the sale of 'A' Ltd's shareholding in 'B' in return for 'B' accepting A Ltd's liability to pay him £110,000.
 - Created documents in December 2012 showing that 'A' Ltd's shareholding in 'B' was transferred to the BVI registered company following approval by the 'A' Ltd's board. No such board meeting was held.
5. The consequences of the above transactions were that Mr Proto put himself in a better position by repaying/securing the repayment of 'A' Ltd's debt owed to him. 'B' owed 'A' Ltd at least £898,000 and Mr Proto sought to set off a loan of £150,000 he had taken and also created a further debt of £110,000 due to himself.

6. The case manager wrote to Mr Proto on 16 April 2015 asking for an explanation as to why he did not self report this matter to ICAEW, and for any explanations regarding his conduct relevant to our investigation.
7. Mr Proto said that he took full responsibility for his actions taken in December 2012. He stated that he became aware at this time that 'A' Ltd would not survive a change in Government legislation relating to solar panels.
8. Mr Proto explained that 'A' Ltd had a number of subsidiaries including 'C' Ltd. He was appointed as a director of 'C' Ltd on 5 February 2010. The principal activity of 'C' Ltd was the supply and installation of residential solar PV renewable energy systems throughout Southern England and Wales.
9. In 2012 there were changes to government legislation which reduced the rate of feed-in-tariffs to individuals and businesses that were generating their own energy. This had the effect of reducing demand for solar panels.
10. Mr Proto explained that the result of this was that 'C' Ltd entered into a Creditors Voluntary Administration (CVA) in August 2012.
11. From December 2012 Mr Proto started to create false documentation and constructed a scheme to defraud the creditors of 'A' Ltd as he anticipated that 'A' Ltd would be subject to an insolvency process in the same way that 'C' Ltd had been.
12. Mr Proto stated that he is ashamed of his actions which he appreciates were to benefit him at the expense of the creditors of 'A' Ltd. Mr Proto provided a copy of his CV and explained that prior to his actions which led to the directors' disqualification he had a successful career.
13. Mr Proto further explained that he has been suffering from mental illness and alcoholism since the collapse of his business in December 2012. He provided a copy of a letter from his Counsellor.
14. Mr Proto says that he recognises that he should no longer be a member of ICAEW, and that had he been thinking clearly he would have made ICAEW aware of his conduct. He has confirmed that he has no intention of working as an accountant again, and has provided a letter of resignation.

Conclusions and reasons for decision

15. The tribunal found the complaint proven on the defendant's admission.
16. The undertaking and the attached schedule (which is referenced in the wording of the undertaking) are conclusive evidence under Disciplinary Bye-law 7.2(b) of conduct falling under Disciplinary Bye-law 4.1(a). Further, Mr Proto himself admits the conduct in correspondence. By reason of his conduct, Mr Proto has brought discredit upon himself, the Institute and the profession of accountancy, and is therefore in breach of Disciplinary Bye-law 4.1(a).

Matters relevant to sentencing

17. Mr Proto did not have a prior disciplinary record.
18. Mr Proto addressed the tribunal in mitigation. He told the tribunal that:
 - a) He deeply regretted and did not seek to excuse his actions;

- b) He explained that the context for his actions were that he had been a very successful business man. His financial affairs had taken a hit when he got divorced and then his business was badly affected by the changes in the feed-in tariff. This led to a huge drop in profits and his downfall became inevitable on account of the very large salary requirements of his company. Through 2012, these affairs took a toll on his physical and mental health.
 - c) He has gone through a further relationship separation.
19. Mr Proto addressed the tribunal in relation to his limited means.
20. In addition, the tribunal noted that Mr Proto had admitted the complaint at the first opportunity and cooperated fully with the investigation by the IC.

Sentencing Order

21. The tribunal took into account it's *Guidance on Sentencing* and the above mitigation.
22. The tribunal was clear that given the dishonesty and fraud underlying the disqualification, there was no lesser penalty than exclusion that would be warranted. Mr Proto's conduct had fallen far below the acceptable standards of chartered accountants and would have seriously damaged the confidence the public placed in the profession.
23. In light of his limited means, the tribunal did not make any order for costs.

Decision on publicity

24. Publicity with names.

Non Accountant Chairman	Mr Richard Farrant	
Accountant Member	Mr Nigel Meredith FCA	
Non Accountant Member	Mr Nigel Dodds	
Legal Assessor	Ms Melanie Carter	027356

2 Mr Christopher David Salmon ACA of
1386 London Road, LEIGH-ON-SEA, ESSEX, SS9 2UJ

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 19 April 2016

Type of Member Member

Terms of complaint

Mr C D Salmon ACA failed to provide by 25 June 2015 the information, explanations and documents requested in a letter dated 10 June 2015 issued under Disciplinary Bye-law 13. Mr Christopher David Salmon is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(c)

because 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

19 April 2016

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;
- b) fine of £2600;
- c) costs of £2911.

Procedural matters and findings

Parties present Mr Christopher Salmon
The Investigation Committee (IC)

Represented Philip Sayle of counsel represented Mr Salmon
Ms Joester of ICAEW represented the IC

Hearing in public or private The hearing was in public

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

Documents considered by the tribunal The tribunal considered the documents contained in the IC bundle and documents provided by the defendant

Issues of fact and law

1. On 13 September 2010 a complaint was made to ICAEW by 'A' LLP relating to Mr Salmon's conduct regarding a deceased client's financial affairs.
2. Mr Salmon acted in the tax affairs of 'Mr B', who had a physical disability which restricted his verbal communication. Mr 'B' had been ill for some years and died on 17 June 2010.
3. Mr 'B's closest relation was a daughter, Mrs 'C', from whom he was estranged until just before his death. Mrs 'C' lives overseas and therefore Mr 'B' had no close family in this country.
4. During his lifetime Mr 'B' advanced monies to a number of people in the local community who he regarded as his friends. These monies are variously described as loans or gifts. Some of the recipients of the monies were clients of Mr Salmon. Mr 'B' also advanced monies of c£80,000 to Mr Salmon himself.
5. Mr Salmon was also made a beneficiary in Mr 'B's will. However, shortly before his death Mr 'B' was reunited with his daughter and drew up a new will, removing Mr Salmon as a beneficiary, and leaving the majority of his estate to his family.
6. Mr 'B' had owned a property, and during his lifetime had instructed a solicitor to transfer ownership of that property to an LLP owned by Mr Salmon and others. However, shortly before his death he had given written instructions to the solicitor that the transfer was not to take place. Despite these instructions, the transfer was effected after his death. The solicitor involved was subsequently struck off, and during the disciplinary proceedings he stated that he had acted on the instructions of Mr Salmon.
7. After Mr 'B's death Mr Salmon and two other beneficiaries challenged the new will, alleging that he had lacked capacity when he made his new will. Their legal claim was settled by mediation. Under the agreement reached in mediation Mr Salmon agreed that he would not oppose an Order propounding the new will. Under the agreement the property was also transferred back to Mr 'B's personal representatives.
8. The investigation of the original complaint is currently on hold, pending the result of these proceedings.

Complaint

9. On 21 April 2015 the case manager wrote to Mr Salmon confirming the position with the complaint and requesting further information from him. No response was forthcoming and so on 20 May he wrote again, requesting the information and indicating that if it was not provided within seven days he would issue a notice in accordance with Disciplinary Bye-law 13.
10. Mr Salmon did not reply to the letter of 20 May and the Head of Investigation therefore wrote to him on 10 June, under the provisions of Disciplinary Bye-law 13, formally requesting the information and setting out the provisions of the Bye-law to Mr Salmon and the consequences to him if he failed to respond. Again, no response was forthcoming from Mr Salmon within the specified time period and the matter was therefore referred to the Investigation Committee for consideration.
11. On 2 September, after receiving notification of the date of the Investigation Committee meeting, Mr Salmon responded to the complaint. Within the letter he states that 'I am told that I cannot divulge any of the contents of the Settlement Agreement' and attaches a letter from his solicitors, dated 30 June 2014, which advises him that he cannot disclose the

contents of the settlement agreement, because ‘this would be in breach of the Confidentiality Agreement.’

12. The Head of Investigation responded to Mr Salmon’s email on 8 September, confirming the questions that were asked of him, and stating that ‘These questions do not ask for a copy of the settlement agreement but confirmation of historical facts and copies of loan agreements’.
13. The Investigation Committee considered the complaint against Mr Salmon on 6 October and decided to defer the item so that Mr Salmon could produce a copy of the confidentiality agreement for their consideration. Mr Salmon produced a copy of the mediation agreement on 17 November.
14. The tribunal found that the Head of Investigation had made a valid request for information in his letter of 10 June. It further found that the mediation agreement does not prohibit Mr Salmon from providing the requested information.
15. The agreement covers the issue of confidentiality at paragraphs 18 to 23, and it does impose a duty of confidentiality upon participants. However, that duty is limited to information which arises ‘out of or in connection with the Mediation’. The information which is requested from Mr Salmon is not information which arose out of the mediation; rather it is all information that was available to him prior to the mediation.
16. Recently, Mr Salmon had indicated that he was going to take further legal advice which he had duly done. As a result, the required disclosure had now been made (the last information to be received being provided the day before the hearing).

Conclusions and reasons for decision

17. The tribunal found the complaint proven on the defendant’s own admission.
18. In failing to provide the information when required to do so by his regulator Mr Salmon has breached Disciplinary Bye-law 13 and is therefore in breach of Disciplinary Bye- law 4.1(c).

Matters relevant to sentencing

19. The tribunal took into account it’s *Guidance on Sentencing*.

Mr Salmon had no prior disciplinary record. Counsel for Mr Salmon addressed the tribunal in mitigation. He drew the tribunal’s attention to the fact that Mr Salmon had, in refusing to comply with the request for information, relied upon earlier legal advice. The conversation of 4 April 2016 with ICAEW, showed that he had recently instructed counsel who had in turn advised that the request of the regulator must be complied with. He had now admitted the complaint and Mr Salmon acknowledged and accepted the role of the regulator.

20. It was accepted that there had been a significant period of time between the two sets of legal advice. During that period he had been avoiding the issues. The tribunal were told that his approach to the underlying investigation would be entirely different in the future.
21. The tribunal took the view that Mr Salmon had had ample opportunity to take further legal advice (from at least since 19 November 2015) and had only done so very recently. The underlying complaints were potentially very serious and it was only very recently that all the information had been received. These were aggravating factors.

22. In all the circumstances, and taking into account Mr Salmon's mitigation, the tribunal decided that he should receive a reprimand and a fine. Mr Salmon had not provided information as to his means. He told the tribunal he accepted the need for a costs award in the sum claimed.

Sentencing Order

23. The tribunal decided to impose the following sanction
- a) A reprimand;
 - b) A fine of £2600,
 - c) Costs of £2911.

Decision on publicity

24. Publicity with names.

Non Accountant Chairman	Mr Richard Farrant	
Accountant Member	Mr Nigel Meredith FCA	
Non Accountant Member	Mr Nigel Dodds	
Legal Assessor	Ms Melanie Carter	028833

3 Mr Richard Peter Braysher FCA of

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 19 April 2016

Type of Member Member

Terms of complaint

Mr R Braysher FCA failed to provide by 16 November 2015 the information, explanations and documents requested in a letter dated 30 October 2015 issued under Disciplinary Bye-law 13.

Mr Braysher is liable to disciplinary action under Disciplinary Bye-law 4.1c namely 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

19 April 2016

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) Severe reprimand;
- b) Fine of £6,500
- c) Costs of £1,199
- d) Mr Braysher was ordered to produce the information requested in the DBL 13 letter dated 30 October 2015 within 28 days of this Order coming into effect.

Procedural matters and findings

Parties present The Investigation Committee (IC)

Represented Ms Dix of ICAEW represented the IC

Hearing in public or private The hearing was in public

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

Documents considered by the tribunal The tribunal considered the documents contained in the Investigation Committee's IC's bundle together with documents provided by the defendant

Findings on preliminary matters The tribunal decided that it was appropriate to proceed in the defendant's absence. Mr Braysher had recently corresponded and spoken with the IC indicating that he was aware of the tribunal date and intended to admit the complaint. He had mentioned health difficulties as a relevant factor behind his non-compliance with the letter of request. The case officer suggested he send in medical evidence, but none was received.

Issues of fact and law

1. Mr Braysher is a sole practitioner. He received a visit from QAD in 2006 and a number of concerning issues were identified which remained present at a visit in 2010. These matters were referred by the Practice Assurance Committee for investigation. A further QAD visit took place in 2014 and it was noted that some of the concerns from 2006 and 2010 had not been addressed.
2. The PAC on 2 July 2015 referred the following matters for investigation:
 - Mr R Braysher FCA failed to comply with previous assurances given to QAD.
 - Mr R Braysher FCA failed to comply with the Clients' Money Regulations.
 - Mr R Braysher FCA failed to comply with the Money Laundering Regulations.
 - Mr R Braysher FCA failed to advise clients in writing of the required engagement terms.
 - Mr R Braysher provided a loan to a client without considering appropriate safeguards.
3. They also stated that a further QAD visit should take place paid for Mr Braysher on 28 October 2015.
4. Mr Braysher was written to on 10 September 2015 by the case manager informing him that the Institute would be investigating the issues referred by the PAC and requesting information by 24 September 2015. This letter was also sent to his email address. A chase up letter and email was sent on 28 September 2015 requesting a reply by 12 October 2015. A letter and email referring to Disciplinary Bye-Law 13 was sent on 13 October 2015 requesting a reply by 27 October 2015. A formal notice of DBL 13 was sent on 30 October 2015 requesting a response by 16 November 2015. Mr Braysher has not responded to any of these letters.
5. QAD have confirmed that the follow up visit did not take place on 28 October 2015 as a member of Mr Braysher's team emailed stating that he was in hospital following the identification of an irregularity in his blood tests. The visit was re-arranged for 24 November 2015, but Mr Braysher sent a fax to QAD on 13 November 2015 stating again that he had undertaken some blood tests with had shown a "deficiency not yet identified", he had not yet dealt with the QAD issues and therefore would not have a further QAD visit and suffer the consequences. A further visit was scheduled for 16 or 17 February 2016. Mr Braysher stated that he was away the whole of February 2016. Further letters were sent which have not been responded to.

Conclusions and reasons for decision

6. The tribunal found the complaint proven on the defendant's own admission.
7. Mr Braysher has failed to respond to any letters or emails sent by the case manager following the referral by the PAC on 2 July 2015. He has responded to some letters from QAD but not provided any of the information requested by the case manager. He is in breach of Disciplinary Bye-law 13 and thereby Disciplinary Bye-law 4(1)(c).

Matters relevant to sentencing

8. The tribunal took into account its *Guidance on Sentencing*. Mr Braysher had a prior disciplinary record. On 3 October 2011 he had been severely reprimanded and ordered to pay a fine of £1280. This related to similar types of failings to those identified in the underlying matters under investigation. This previous disciplinary finding aggravated the current complaint.
9. Mr Braysher had not provided any mitigation.
10. The tribunal was of the view that the underlying matters were serious and some of the points raised by PAC were ongoing concerns from the earlier QAD visits in 2006 and 2010. It was unacceptable for Mr Braysher not to cooperate with an investigation by his regulator. The confidence in which the public hold the profession is reliant on the ICAEW monitoring and investigating failures in professional standards. Any further failure by Mr. Braysher in respect of these matters would inevitably raise a probability of exclusion.

Sentencing Order

11. The tribunal took into account its *Guidance on Sentencing* and imposed the following sanctions:
 - a) Severe reprimand;
 - b) Fine of £6,500;
 - c) Costs of £1,199;
 - d) Mr Braysher was ordered to produce the information requested in the DBL 13 letter of 30 October 2015 within 28 days of this Order coming into effect.

Decision on publicity

12. Publicity with names.

Non Accountant Chairman	Mr Richard Farrant	
Accountant Member	Mr Nigel Meredith FCA	
Non Accountant Member	Mr Nigel Dodds	
Legal Assessor	Ms Melanie Carter	031321

4 Mr Stephen James Shirtcliffe [ACA] of
26 Bladon Close, NOTTINGHAM, NG3 5FY.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint 16 March 2016

Type of Member Member

Terms of complaint

On 1 December 2015, ICAEW's Investigation Committee referred a formal complaint to the Disciplinary Committee against Mr Stephen James Shirtcliffe (the defendant).

- 1 Between 19 April 2013 and 7 August 2015 Mr Stephen James Shirtcliffe ACA failed to co-operate or comply with the requests of the liquidator of Shirtcliffe & Co Limited.
- 2 On 23 June 2014 Mr Stephen James Shirtcliffe ACA entered into an individual voluntary arrangement under the provisions of the Insolvency Act 1986.

Mr Stephen James Shirtcliffe is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(a) in respect of head 1, and 4.1(e) in respect of head 2.

Hearing date

16 March 2016

Previous hearing date

None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order Exclusion

Procedural matters and findings

Parties present Stephen James Shirtcliffe was not present.

Represented Mr Shirtcliffe was not represented. The Investigation Committee ("IC") was represented by Julia-Anne Dix.

Hearing in public or private The hearing was in public.

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

Documents considered by the tribunal The tribunal considered the documents contained in the IC's bundle together with a letter from the defendant to the Chief Executive Officer of ICAEW dated 4 February 2016.

The Investigation Committee's (IC's) case

1. The Defendant was a director of Shirtcliffe & Co Limited, which commenced trading as an accountancy practice, in public practice, in 2007. The company's business did not succeed and it ceased to trade on 30 November 2012 and a creditor petitioned for it to be wound up on 8 January 2013. A winding-up order was made on 25 February 2013. Mr 'A' of 'B' was appointed as the company's liquidator on 19 April 2013.
2. On 23 May 2013, the defendant was requested in a meeting with the liquidator's representative to provide information about his company's book debts, stock/WIP, office furniture and goodwill. None was produced and on 7 June 2013, the defendant was asked again to produce the information, in writing. On the same day, the defendant replied that the liquidator was wasting time by asking for such information in order to incur large fees. He did not provide the information requested at that time. The request was repeated on 9 September 2013, again without success.
3. On 29 August 2013, the liquidator sought to recover payments pursuant to Section 127 of the Insolvency Act 1986 (IA). The defendant disputed the request for payments.
4. The information originally requested on 23 May 2013 was not provided, despite reminders, so on 16 December 2013 the liquidator made an application to 'C' County Court for production of it. An Order was made on 6 January 2014 by District Judge 'Nicolle', whereby the defendant was ordered to provide the information sought within seven days of service of the Order. The defendant did not provide the information and a further Order was made by the Court on 21 February 2014, ordering production of information by 4.00pm on 7 March 2014. The defendant did not comply with that Order.
5. On 10 March 2014, the defendant wrote to the District Judge at 'C' County Court explaining that he was unable to comply with the Order of 21 February as the information sought did not exist. In his letter, the defendant asked the Court: *"...are District Judges paid some form of commission if they make up values for goodwill in order to try to support the unnecessary work of a wrongly-appointed [sic] Insolvency Practitioner?"*
6. In the same letter, the defendant wrote *"I will not be providing this information. District Judge 'Nicolle' was completely out of line for suggesting that I provide this to a rival accountancy practice, and her unprofessional excited tone at the prospect of me giving way such information just highlighted how wrong she was in making such a proposal."*
7. The defendant did not fully comply with the Court order but instead he enclosed with his letter to the Court an invoice for £15,000 for auditing services and made bizarre references to a solid gold statue of Buddha and a fifty-tonne truck which he valued at £10m each.
8. The Liquidator was compelled to report to creditors that the defendant had failed to comply substantially with the Court Orders and that the lack of funds in the estate meant that this could not be pursued further.
9. The defendant did, in partial compliance with the Court Order, provide an inventory of office furniture and equipment. However, he failed to provide books and records and he has failed to pay any court costs. The defendant's lack of co-operation with the liquidator is further shown by the liquidator's need to make two applications to the Court for production of information.

10. On 23 June 2014, the defendant entered into an Individual Voluntary Arrangement (“IVA”) with his creditors. This rendered the defendant liable to disciplinary action under Disciplinary Bye-law 4.2(d).
11. On 4 February 2016, the defendant wrote to the Chief Executive Officer of ICAEW making a number of “charges” and asking for various steps to be taken, including the payment of compensation to the defendant for “incompetence”, and alleging fraud against the liquidator of his company.

Issues of fact and law

12. In the absence of the defendant, the IC was put to proof of all the facts alleged in the complaint.
13. The tribunal found both heads of complaint proved and the complaint proved.

Conclusions and reasons for decision

14. The defendant had a duty to co-operate with the liquidator of his company. He failed to do so by not providing information properly sought from him, in spite of several proper requests. The defendant also had a duty to obey orders of the Court, which were made on the application of the liquidator. He failed to do that fully. This absence of co-operation meant that the liquidator was unable to perform his functions as fully as he would have liked, and the creditors of the company suffered detriment as a result.
15. Such conduct (which was without lawful excuse) is, self-evidently, entirely unacceptable for a member of ICAEW.
16. The defendant entered into an IVA, which automatically rendered him liable to disciplinary action.
17. The tribunal has no jurisdiction or power to determine the “charges” and other allegations made by the defendant in his letter to ICAEW dated 4 February 2016, and does not do so.

Matters relevant to sentencing

18. The tribunal considered the *Guidance on Sentencing* and saw no reason to depart from that. The tribunal was satisfied that no lesser penalty than the one imposed was appropriate.
19. Mitigating factors are (i) the defendant’s clean disciplinary record and (ii) his financial circumstances. These have reduced any financial penalty and costs award to nil.
20. Aggravating factors are: (i) the serious nature of the lack of co-operation, having regard to the reason why co-operation was required and the legal obligations imposed on the defendant regarding the need to co-operate; (ii) the aggressive tone and manner shown by the defendant to the liquidator; (iii) the attitude shown by the defendant to the Court; (iv) the adverse impact the lack of co-operation has had on the company’s creditors.
21. The tribunal has noted that pastoral assistance has been offered to the defendant but it was refused. The acceptance of such assistance, if it were to be offered again, together with proof of a clear willingness to act on that assistance, would be indications of rehabilitation. In the absence of any evidence, the tribunal was unable to take into account any possibility that the Defendant may have been, or continue to be, unwell at the material times.

Sentencing Order

1. Exclusion
2. No fine and no order as to costs

Decision on publicity

Publication with name.

Non Accountant Chairman

Mr Peter Williamson

Accountant Member

Mr Ian Walker FCA

Non Accountant Member

Mrs Jane Rees

Legal Assessor

Mr Dominic Spenser Underhill

023805

5 Mr George Alistair Pengelly FCA of
Star Cottage, Star Lane, Blackboys, Uckfield, East Sussex, TN22 5LD

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 27 April 2016

Type of Member Member

Terms of complaint

Complaint:

The matters identified by 'A' Ltd (006605) are:

- 1 Between in or around 2004 and in or around 2010 Mr G A Pengelly FCA deliberately misled his fellow directors in 'A' Ltd in that he:
 - A Failed to disclose letters of complaint not addressed to him, which he intercepted from:
 - i Mr and Mrs 'B' dated 12 November 2009;
 - ii Mr and Mrs 'C' dated 26 November 2009.
 - B Altered the internal records of 'A' Ltd to show that financial statements had been filed at Companies House in respect of the following companies when this was incorrect:
 - i 'D' Ltd for the year ended 31 October 2007;
 - ii 'E' Ltd for the year ended 31 January 2007;
 - iii 'E' Ltd for the year ended 31 January 2008.
 - C Failed to disclose that he paid personally Companies House late filing penalties he had caused to be incurred by:
 - i 'D' Ltd for the year ended 31 October 2007;
 - ii 'E' Ltd for the years ended 31 January 2007;
 - iii 'E' Ltd for the years ended 31 January 2008.
 - D Raised fictitious invoices that were never sent to clients in respect of the following clients of 'A' Ltd:
 - i 'E' Ltd
 - ii 'F' Ltd
 - iii 'G'
 - iv 'H' Ltd
 - v Dr 'I'
 - vi Mr 'J'
 - vii 'K'
 - viii 'L' Limited
 - ix 'M'
 - x 'N' Ltd
 - xi 'O'.
 - E Continued to act for 'P' Ltd until in or around 2010 contrary to a decision of 'A' Ltd to cease acting for the client on or around 19 November 2004.
- 2 In or around 2010 Mr G A Pengelly FCA advised Mr 'J' that a VAT claim on a property extension had been submitted to HM Revenue & Customs when no such claim had been submitted.

The further matters identified by Mr 'Q' (014051) are:

- 3 Mr G A Pengelly FCA failed to attend to the accountancy and taxation affairs of 'D' Ltd, in that he:
 - A Failed to file the following accounts with Companies House by the due date:
 - i year ended 31 October 2007 due 31 August 2008 filed on or around 24 April 2009;
 - ii year ended 31 October 2008 due 31 July 2009 filed on or around 23 October 2009.
 - B Filed the following accounts with Companies House:
 - i year ended 31 October 2006
 - ii year ended 31 October 2007
 - iii year ended 31 October 2008without obtaining the prior approval to the accounts of the director, Mr 'Q'.
 - C Between 15 April 2009 and on or around 26 October 2009 failed to notify Companies House of the change in the personal address of the director and company secretary.
 - D failed to file the companies VAT returns by the due date:
 - i Quarter ended 30 November 2007 due 31 December 2007
 - ii Quarter ended 29 February 2008 due 31 March 2008
 - iii Quarter ended 31 August 2008 due 30 September 2008.

Mr George Alistair Pengelly is therefore liable to disciplinary action under Disciplinary Bye-law 4.1 a

'...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'

in respect of complaints 1, 2 and 3b, and Disciplinary Bye-law 4.1b in respect of complaint 3a, c,d.

'...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

27 April 2016

Previous hearing date(s)

None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Procedural matters and findings

Parties present Mr George Alistair Pengelly
The Investigation Committee (the IC)

Represented	Ms Dix of ICAEW represented the IC
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 IC's bundle together with documents from the defendant

Issues of fact and law

1. Mr Pengelly was a director of 'A' Ltd until February 2010 when he resigned due to ill health. Around that time the firm realised that he had been suffering from work related stress and, unbeknown to his fellow directors he had not been completing work. The firm found that Mr Pengelly had altered internal records and hid complaints from clients to cover up that work was not being done. This was the basis of the firm's report under their duty to report misconduct which is reported as head 1.
2. Subsequently Mr 'Q' made a complaint against 'A' relating to delays in dealing with the accounting affairs of his company, 'D' Ltd. Although Mr 'Q' insisted that his complaint was against the firm, ICAEW also opened a case on the same matters against the engagement principal responsible, Mr Pengelly and this is reported as head 2.
3. Mr Pengelly admits to various delays, to altering the firm's internal records and misleading his fellow directors. He acknowledges that he was responsible for the delays in respect of 'D' Ltd. Mr Pengelly argues that his conduct was the result of ill health caused by work related stress.

First head of complaint – Issues identified by 'A' Ltd

4. Mr 'R', on behalf of 'A' Ltd, notified ICEAW that the firm had identified a number of shortcomings by a former director, Mr Pengelly. He stated that Mr Pengelly had recently been off work due to stress and depression, subsequently he resigned as a director on 12 February 2010. The issues identified were:
 - A number of letters of complaint regarding poor service by Mr Pengelly had been intercepted by him and not disclosed to the other directors, contrary to the firm's complaints procedure.
 - Late completion of accounts leading to filing penalties, some of which Mr Pengelly paid personally.
 - Alteration of the firm's systems to show accounts completed and submitted when this was not the case.
 - The raising of a number of invoices which he ultimately admitted he had '*invoiced early*' but which were, in effect, '*fictitious invoices*'.
 - Mr Pengelly continuing to act for a client despite the directors of 'A' Ltd agreeing that the firm would no longer act.
 - Insufficient work and advice in respect of a client's VAT self-build claim and indicating to the client that he would receive a VAT refund when none was due.

Head 1 A i) – Mrs ‘B’s complaint

5. Mrs ‘B’ wrote a letter of complaint to Mr ‘R’ on 12 November 2009 setting out the poor service she had received. The poor service had led her to change accountants. Mrs ‘B’ wrote a reminder letter on 10 January 2010, noting she had not received a response, which came to the attention of Mr ‘R’. He acknowledged her letter on 12 January 2010 saying that he had not been aware of the earlier letter and was instigating a review of the files. Mrs ‘B’ replied that the earlier letter had been marked for Mr ‘R’s attention. Mr ‘R’ sent a follow-up letter on 18 January 2010 apologising for poor service and enclosing a letter from Mr Pengelly where he acknowledged that the delays in dealing with their affairs were entirely Mr Pengelly’s fault. Mr Pengelly admits that he intercepted the letter of complaint from Mrs ‘B’.

Head 1 A ii) – Mrs ‘C’s complaint

6. A similar situation occurred with clients Mr and Mrs ‘C’. A letter was sent by Mr Pengelly dated 16 November 2009, confirming that the late filing of the company’s accounts would incur a penalty, which he would ensure was paid on their behalf. They responded to Mr Pengelly on 17 November 2009 expressing concern at the delays that had occurred. They followed this up with a letter dated 26 November 2009 to Mr ‘R’, noting that Mr Pengelly had not responded to their last letter, but, again, Mr ‘R’ did not see this letter. The clients sent a copy on 14 January 2010 which reached Mr ‘R’. Mr Pengelly admits intercepting this complaint letter.

Head 1 B i) – Altering Records of ‘D’ Ltd

7. A print from ‘A’ Ltd’s practice management system for ‘D’ Ltd showed that the 2007 accounts had been completed on 20 November 2008. However, the system had been incorrectly completed as the actual filing date according to Companies House was not until 24 April 2009. Mr Pengelly admits altering the record to conceal the delay.

Head 1 B ii) & iii) - Altering Records of ‘E’ Ltd

8. In the case of ‘E’ Ltd, the practice management system showed the 2007 accounts were shown as completed on 20 November 2008 but these were not actually filed at Companies House until 23 February 2010 by Mr ‘R’. The 2008 accounts, shown as filed on 3 November 2009, were not filed until 23 February 2010, again by Mr ‘R’.

Head 1 C – Paying late penalty notice personally

9. Mr Pengelly has admitted that he paid the late filing penalties personally and failed to disclose this to his fellow directors.

Head 1 D – Fictitious Invoices

10. Mr Pengelly provided a schedule of invoicing to his colleagues on 5 February 2010. A number of the invoices were marked as having been invoiced early or needed to be re-invoiced. When challenged by Mr ‘R’, Mr Pengelly replaced this schedule with another schedule. Mr Pengelly describes the initial invoices for 11 clients as ‘*fictitious*’ and that credit notes were required pending new invoices being raised.

Head 1 E – Continuing to act for ‘P’ Ltd

11. On 19 November 2004 Mr Pengelly wrote to ‘P’ Ltd to advise that ‘A’ Ltd would no longer be acting for the company. This is recorded on the firm’s practice management system. The client emailed Mr Pengelly’s personal email address on 14 February 2010, which was forwarded to ‘A’ Ltd by Mr Pengelly’s wife which shows that Mr Pengelly had continued to

act. There was a court order requiring inspection of the accounts files. Mr 'R' stated to Mrs Pengelly on 15 February 2010 that Mr Pengelly was instructed to resign from acting in 2005 (actually 2004) and he identified that no fees have been raised with regard to the client, nor accounts submitted in the firm's name. Therefore, it seems that Mr Pengelly had continued to act in a personal capacity. This had not been made clear to the client and the firm thus they had no option but to comply with the order for solicitors to come and inspect the papers. In the circumstances it was noted that Mr Pengelly would need to attend court personally.

Second head of complaint – Misleading Mr 'J'

12. Mr 'J' was sent an invoice on 19 March 2010 for a VAT claim. He responded explaining that Mr Pengelly had confirmed to him on numerous occasions that a VAT reclaim on a property extension had been lodged with HM Revenue & Customs and that it was simply a case of awaiting the cheque. Mr 'R' responded on 21 July 2011 explained that although the client had delivered the necessary papers, no VAT claim had been lodged and, in fact, the claim could not be made under VAT legislation.

Third head of complaint – Issues identified by Mr 'Q'

13. Mr 'Q' engaged the services of 'A' Ltd in June 2002, the engagement partner was Mr Pengelly. The firm was engaged to look after all compliance matters, including the filing of accounts with Companies House and VAT. However, the latest accounts that he had received were for the year ended 2006 and the consequent lack of information had presented difficulties for him in establishing whether he should de-register for VAT. Mr 'Q' believes the accounts for the years 2002 to 2008 were all submitted late as were the changes in the director's and company secretary's address.
14. Due to these failures Companies House wrote to Mr 'Q' on 6 February 2009 and 10 October 2009 proposing removal of the company from the register. 'U' and 'T' wrote to Mr 'Q' advising that the company's facilities had been withdrawn due to the proposed striking off of the company.
15. Mr 'Q' wrote to Mr Pengelly on 5 July 2009 questioning which accounts had been filed, noting that he was awaiting an explanation for what had occurred. He was also awaiting confirmation that the director's change of address had been registered. Mr Pengelly wrote by email on 15 October 2009 apologising for the poor service, which he states *'has not been either the service that you require or deserve'* and adding that *'I have spent the afternoon putting into place a system that will address all of your concerns'* and *'as the bottleneck was myself, this solution then resolves the position'*.
16. A meeting that Mr 'Q' had requested with Mr Pengelly and Mr 'R', was cancelled by Mr Pengelly who stated Mr 'R' was unavailable. Mr 'Q' subsequently informed Mr Pengelly on 24 November 2009 that he had appointed new accountants, 'S' Ltd. Mr 'Q' stated, *'I am sure you are aware of my reasons for doing this but I do not want to jeopardise our personal relationship'*.
17. Although the delays caused difficulties for Mr 'Q', there were only two significant material issues being the late filing of the accounts for the years 2007 and 2008. However, the accounts were completed and no errors have been reported. There is no issue over the quality of the work that had been undertaken. Mr 'Q' has not paid any penalties, as any such penalties were paid by Mr Pengelly.

Head 3 A – Failure to file accounts by due date

18. Mr 'R's investigation and report broadly confirm the filing issues identified by Mr 'Q':
- The 2007 accounts due at Companies House on 31 August 2008 had not been filed until 24 April 2009, for which a penalty almost certainly arose but was not on file. These and were filed with HM Revenue & Customs on the same date, incurring a penalty of £200.
 - The 2008 accounts due at Companies House on 31 August 2009 were filed on 23 October 2009, incurring a penalty of £375. They had been filed at HM Revenue & Customs on time. ng to file company accounts by due date.
19. The firm sent to Mr Pengelly a copy of Mr 'R's report and a series of questions, which identified the late filing penalties. On 2 March 2010 Mr Pengelly answers that the delays were entirely his fault and that there was '*no rational explanation*'. Mr Pengelly acknowledges that he altered the firm's systems and confirms that he had paid all fines and penalties arising personally, although the final Companies House penalty of £375 had been paid by both him and Mr 'Q', but Mr 'Q' had since been refunded. On 15 March 2010 Mr Pengelly states that he believed that all the accounts and the tax thereon were correct and that he did not believe any VAT surcharges had arisen. In response to questions put on behalf of the firm's professional indemnity insurers Mr Pengelly confirmed on 27 April 2010 that the penalties paid had been £1,500 and £375 to Companies House.

Head 3 B – Failing to get prior approval of accounts

20. Mr 'Q' has confirmed that Mr Pengelly did not obtain his prior approval of the accounts submitted to Companies House for the years ending in 2006, 2007 and 2008.

Head 3 C – Failed to notify Companies House of change of details

21. Mr Pengelly admits that he failed to notify Companies House the change of addresses for the director and company secretary.

Head 3 D – Failure to submit VAT returns by due date

22. The firms investigation revealed that three VAT returns had not been served by the due date. However the payment of the VAT due had been made on time. Consequently, Mr Pengelly must have completed the records on time and advised the client to make payment by the due date, even if the returns were completed later, which would explain why no VAT surcharges were charged.

Conclusions and reasons for decision

23. The tribunal found the complaint proven on the defendant's own admission.
24. Mr Pengelly's actions under heads 1, 2 3b meant that clients received a poor service and there were in some cases financial consequences for his failures. He also undermined the reputation of his firm as many of these clients instructed new accountants. Members of the public expect their accountants who deal with their financial affairs to be open, reliable and competent. By misleading his directors and by altering records and intercepting complaints he has brought discredit upon himself, the Institute or the profession as this was likely to undermine the public confidence in accountants.
25. The failings identified under head 3a,c and d were to such an extent that he brought discredit upon himself, the Institute or the profession of accountancy.

26. In light of the above, Mr Pengally was in breach of Disciplinary Bye-law 4(1)(a) and (b).

Matters relevant to sentencing

27. Mr Pengally has no prior disciplinary record. Mr Pengally had written to the IC with mitigation and also addressed the tribunal at the hearing:
- a)** Mr Pengally states that he initially worked to a good standard but that pressure of work caused deterioration in his performance over time.
 - b)** As a result of the administrative burden of being a director (he had multiple roles and found it difficult to stand up to the at times unreasonable demands of the firm), Mr Pengally says that attendance to his own clients suffered and to deal with the pressures he worked longer and longer hours that meant he became less effective '*to the point where the decisions I made were not rational*'. Mr Pengally also explains that, as a result of these pressures, in the past two years of his time at 'A' Ltd he began to drink heavily, which he believed others at 'A' Ltd were aware of.
 - c)** Mr Pengally had been under considerable personal pressures. His wife had had triplets in January 2004. Mr Pengally's mother and father died within a few years of that. At the time of the above difficulties Mr Pengally was also working long hours. His hours increased over the years, and by 2007 he says he was doing 70 hours plus per week. Mrs Pengally believes that these family issues were the start of Mr Pengally's difficulties, but they were compounded by work pressures. Mrs Pengally had raised this with Mr Pengally's partners in 2007 but little changed and the firm had failed to support him.
 - d)** Mr Pengally has provided a report from his doctor and from his counsellor supporting his medical difficulties (stress and depression).
 - e)** Mr Pengally is now employed on a part-time basis (and his employer is fully aware of these matters).
 - f)** The tribunal was shown testimonials from a family friend and a work colleague.
 - g)** Mr Pengally addressed the tribunal as to his means.

Sentencing Order

28. The tribunal took into account it's *Guidance on Sentencing* and Mr Pengally's extensive mitigation. It was accepted that Mr Pengally had been under intolerable pressure (work and personal) which had affected his health and professional judgements. It appeared moreover that the firm, 'A' Ltd should have taken steps to protect and support him and Mr Pengally's clients. Mr Pengally had insight into the deficiencies in his practice and appeared to have taken steps to put these matters behind him.
29. The tribunal also took into account that these matters had been hanging over his head for a considerable amount of time. There was at least two years when the matters were under investigation but for reasons outside of his control the case could not proceed.
30. The complaint was aggravated however on the basis that the matters were repeated and had extended over a lengthy period of time. The failings were serious and he had attempted to cover matters up from the firm.

31. The starting point for this complaint would have been a severe reprimand. Given however the mitigation and the length of time this had taken to come to a hearing, the tribunal considered that there should be no further action (no penalty). Mr Pengally had suffered enough.
32. Mr Pengally was ordered to pay costs of £2,000 in 12 monthly instalments. The first payment of £185 should be made by 1 July 2016, and then £165 per month thereafter.

Decision on publicity

33. Publicity with names.

Non Accountant Chairman

Mr Richard Farrant

Accountant Member

Mr Martin Ward FCA

Non Accountant Member

Ms Martha Maher

Legal Assessor

Ms Melanie Carter

014051

6 Mr Robert Daniel Walsh FCA of
1 Abacus House, Newlands Road, Corsham, Wiltshire, SN13 0BH

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 3 May 2016

Type of Member Member

Terms of complaint

1. Mr Robert Walsh FCA inaccurately completed the 2009, 2010, 2011, 2012 and 2013 annual returns for his firm, Clear Vision Accountancy Ltd, in that he stated that cold file reviews had been conducted when this was not the case.
2. In or around January 2012 Mr Robert Walsh FCA accepted appointment as reporting accountant for 'B' but failed to apply customer due diligence measures as required by regulation 7 of The Money Laundering Regulations 2007.
3. In or around August 2013 Mr Robert Walsh FCA accepted appointment as reporting accountant for 'A' but failed to apply customer due diligence measures as required by regulation 7 of The Money Laundering Regulations 2007.
4. On 4 January 2012 Mr Robert Walsh FCA signed an accountant's report, which was submitted to the Solicitors Regulation Authority, in respect of 'B' for the period ended 10 July 2011 but failed to:
 - a. examine the accounting records of the practice and ensure he directed the completion of the checks and tests required under Rule 39 of the Solicitors Accounts Rules.
 - b. examine the accounting records of the practice at the offices of 'B' when there were no exceptional circumstances to prevent this as required by Rule 37 of the Solicitors Accounts Rules.
5. On 19 August 2013 Mr Robert Walsh FCA signed an accountant's report, which was submitted to the Solicitors Regulation Authority, in respect of 'A' for the period ended 28 February 2013 but failed to:
 - a. examine the accounting records of the practice and ensure he directed the completion of the checks and tests required under Rule 39 of the Solicitors Accounts Rules.
 - b. examine the accounting records of the practice at the offices of 'A' when there were no exceptional circumstances to prevent this as required by Rule 37 of the Solicitors Accounts Rules.

If proven, the member may be liable to disciplinary action under Disciplinary Bye-law 4.1(b)

In that 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

03 May 2016

Previous hearing date(s)

None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes, on admission.

All heads of complaint proven Yes.

Sentencing order (i) Reprimand (ii) fine of £1,300

Procedural matters and findings

Parties present Robert Daniel Walsh was present.

Represented Mr Walsh was not represented. The Investigation Committee (IC) was represented by Annabel Joester.

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 IC's bundle as well as the defendant's Regulation 13 answers and a statement of his means.

The Investigation Committee's (IC's) case

1. The defendant is one of two directors of Clear Vision Accountancy Ltd ("the firm") and is its Audit Compliance Principal as well as the engagement principal on work carried out under the Solicitors Accounts Rules.
2. In September 2008, ICAEW's Quality Assurance Department (QAD) visited the firm. The firm received another QAD visit on 4 and 5 September 2014 when it had three audit clients and one client which was a firm of solicitors. The QAD reviewer reviewed two of the audit clients and the solicitors firm which was subject to the Solicitors Accounts Rules.
3. The QAD reviewer noted (i) that the firm had not conducted any cold file reviews since September 2008 but that it had confirmed in six recent annual returns that it had performed and recorded cold file reviews and (ii) that the audit of the solicitors firm under the Solicitors Accounts Rules had been poorly controlled or reviewed and two unusual transactions had not been verified.
4. The defendant was responsible for completing and submitting the annual returns.

First head of Complaint

5. Pursuant to Regulation 3.20 of the Audit Regulations, the defendant ought to have monitored, at least once a year, how effective his firm was at complying with the Audit Regulations in what is known as an Audit Compliance Review. The second part of such a

review concerns cold file reviews, which are, in summary, reviews of completed audit work. The defendant completed and submitted Annual Returns for the firm for the years 2009 to 2013 which stated that cold file reviews had been carried out. In fact, none had been, and had not been since 2008.

6. The defendant admitted the breaches but explained that he mistakenly believed that the reference to cold file reviews was not confined to audit files, but any files.

Second and Third Heads of Complaint

7. In August 2013, the firm was approached by another professional firm to sign an Accountant's Report under the Solicitors Accounts Rules for one of their clients. In fact, it had done this once before for the same firm but for another of its clients. On each occasion, the firm in general and the defendant in particular relied, wrongly, on the anti-money laundering compliance of the referring firm when, in order to comply with Regulation 7 of the Money Laundering Regulations 2007, they ought to have carried out their own due diligence procedures.

Fourth and Fifth Heads of Complaint

8. As mentioned above, the defendant firm was asked to sign Accountant's Reports for Solicitors Accounts Rules audits carried out by another firm ("the referring firm"). Rule 37 of those Rules stipulates that (in the absence of exceptional circumstances) a reporting accountant must examine the records at the solicitors' office. The defendant and the firm did not do this, although they did check that the referring firm had attended the office. Nevertheless, the defendant had no involvement at all in the work which was carried out. In the case of the first referral, the defendant did not render a fee, and told the tribunal that he was doing this as a favour for a friend. The second referral, from the same referring firm, was charged a small fee of £375.
9. Rule 39 of the Solicitors Accounts Rules requires the reporting accountant to examine the accounting records and carry out certain tests. Because the defendant did none of the work, he failed to comply with Regulation 39.
10. For all these reasons, the defendant has breached DBL 4.1(b).

Issues of fact and law

11. Because the defendant admitted the complaint, there were no issues of fact or law to determine.
12. The tribunal found the complaint proved.

Conclusions and reasons for decision

13. The defendant has admitted a series of serious regulatory failings: failing accurately to complete an Annual Return on six occasions, failing to carry out cold file reviews annually for the same period, failing to comply with the Money Laundering Regulations and failing to comply with the Solicitors Accounts Rules. Regulatory non-compliance of this kind, over this period of time is professional misconduct and requires sanction.

Matters relevant to sentencing

14. The tribunal considered the *Guidance on Sentencing* and saw no reason to depart from that. It was also satisfied that not lesser penalty than the one given was appropriate.
15. There was persuasive mitigation. The defendant had a clean disciplinary record; he admitted the complaint immediately, and was at all times co-operative with the IC in the investigation of the complaint. He has not sought to excuse himself or blame others. The first head of complaint was repetitive in nature, with what was in effect one error replicated on six occasions. The breaches of the Money Laundering Regulations resulted from an inaccurate and misplaced belief (on these facts) that the defendant could rely on the due diligence of the referring firm and did not have to record that he was doing so. The breaches of the Solicitors Accounts Rules (which occurred on two occasions) were described as the misplaced wish to help out a friend, and would never be repeated. In fact, the defendant and the firm no longer carry out SAR work at all. While the regulatory breaches are undoubtedly serious, the tribunal noted that no third party has been affected adversely and the tribunal is satisfied that there is little risk of them being repeated. The firm no longer carries out that kind of work, and systems have been improved to ensure cold file reviews are undertaken.

Sentencing Order

- (i) Reprimand
- (ii) Fine of £1,300
- (iii) Costs of £3,524

Decision on publicity

Publication with name.

Non Accountant Chairman

Mr Richard Farrant

Accountant Member

Mr Martin Ward FCA

Non Accountant Member

Ms Mary Kelly

Legal Assessor

Mr Dominic Spenser Underhill

028733

7 Mr Andrew Richard Nicholson FCA of
Shieling, The Orchard, Staverton, Daventry, Northamptonshire, NN11 6JA.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 3 May 2016

Type of Member Member

Terms of complaint

Mr A Nicholson FCA failed to adhere to the requirements of the order made by the Disciplinary Tribunal on 8 December 2015 in that he failed to:

1. Produce to the Investigation Committee (IC), within 30 days of the sending of the decision to Mr Nicholson:
 - (a) A detailed list of what information he has and the information itself;
 - (b) A detailed list of what information he does not have, an explanation for why and an indication of where he thinks it may be obtained;
2. Write to 'A', copied to the IC, within the same period, consenting to them releasing information to the IC and asking them to do so as soon as possible.
3. Arrange a meeting with the case officer within the same period, which meeting subject to the case officer's availability is to take place by 29 January 2016.

Mr Andrew Richard Nicholson is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(c) because 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

03 May 2016

Previous hearing date(s)

None

Pre-hearing review or final hearing Final Hearing.

Complaint found proved Yes, on admission.

All heads of complaint proven Yes.

Sentencing order (i) Severe reprimand; (ii) remedial order to meet case officer within 21 days

Procedural matters and findings

Parties present Andrew Richard Nicholson.

Represented	Mr Nicholson was not represented. The Investigation Committee (IC) was represented by Annabel Joester.
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 a quantity of documents supplied by Mr Nicholson on the day of the hearing.

The Investigation Committee's (IC's) case

1. Two former clients of the defendant made a complaint against him. ICAEW asked the defendant to produce some information and some documents in order to investigate those complaints. The defendant failed to produce them and, as a result, a letter was sent to him by ICAEW under Disciplinary Bye-Law 13. The defendant failed to respond to that letter and a formal complaint was preferred against him ("the first ICAEW complaint"): in short, the first ICAEW complaint was that the defendant failed to respond to a DBL 13 Notice.
2. The hearing of the first ICAEW complaint took place on 8 December 2015, where the defendant was present and where he admitted the complaint. The defendant was severely reprimanded, he was fined and was ordered to pay costs. In addition, the tribunal made a remedial order, in which the defendant was ordered to produce the information and documentation sought by the IC within 30 days of the Record of Decision of the first ICAEW complaint being sent to the defendant. In addition, a meeting between the defendant and ICAEW's case officer was to take place by 29 January 2016. The defendant received the Record of Decision of the first ICAEW complaint by post on or about 10 December 2015 and in any event, by email, no later than 17 December 2015. At the very latest, the information and documentation which the Defendant had to provide should have been provided by 9 January and no later than 16 January 2016.
3. The defendant contacted the case manager at ICAEW on 26 January 2016 by telephone in order to arrange a meeting to pass over the required information and documentation. A date was agreed of 9 February 2016. The defendant cancelled that meeting, on 8 February, citing work commitments. By a letter dated 9 February 2016, the defendant said he would provide the outstanding information and documents by 22 February 2016; however, he failed to do so.
4. The defendant's failure to comply with the remedial order of the Disciplinary tribunal in the first ICAEW complaint comprises a breach of DBL 4.1.(c).

Issues of fact and law

5. The defendant admitted the complaint and there were no issues of fact or law to determine.
6. The tribunal found the complaint proved.

Conclusions and reasons for decision

7. The defendant has admitted to a failure to comply with an order made against him by the Disciplinary Committee of ICAEW. That order concerned the production of information and documentation which would enable ICAEW to investigate two complaints made against

him. That order also came about after repeated earlier unsuccessful attempts by ICAEW to obtain this information and documentation from the defendant.

8. This conduct is not acceptable, appropriate or fair because it deprives (or at least significantly postpones) ICAEW's proper means by which complaints can be investigated against a member. A member of ICAEW is accountable to ICAEW and it is not for him or her to choose whether or not to comply, or when to comply, with its lawful requests for information and documents.

Matters relevant to sentencing

9. The tribunal considered the *Guidance on Sentencing* and saw no reason to depart from that. After considering mitigating and aggravating factors, the tribunal was satisfied that no lesser penalty than the one made in respect of the first ICAEW complaint should be made in respect of this one.
10. On the day of the hearing, the defendant produced a quantity of documentation which was passed to the IC's representative and copies were provided to the tribunal. It was not possible in the time allowed either for the IC or the tribunal to assess whether the production of this material satisfied (albeit very late) the order of 8 December 2015, although the IC's legal representative noted with caution that it may do so. However, the tribunal noted that it appeared that Paragraphs 1(a) and (b) and Paragraph 2 of the complaint had not been complied with, by reviewing the material in their possession.
11. The defendant explained that he had not sat on matters, and had obtained the written material before he contacted the case officer on 26 January but did not send it to the ICAEW because he had planned to hand it over at the meeting. As to the meeting taking place after 29 January 2016, that was because of the case officer's inability to meet beforehand. The defendant stated that he had tried to contact the case officer on 16 February 2016 in order to arrange another meeting, although the case officer has no recollection or note of that call.
12. The tribunal does not accept this as satisfactory mitigation. The defendant has a history of failing to provide information and documentation about two complaints made against him. He has been ordered by a disciplinary tribunal to produce that, but failed to do so; his reason is that he chose not to do so, but to wait until a meeting took place. The defendant had no right to make that choice. In any event, the defendant was unable to explain why the documentation he said he had collated in January 2016 was not provided until 3 May 2016, on the day of the hearing of this complaint.
13. The defendant also cited pressures of work as a reason for his lateness; this was not a satisfactory ground for mitigation, given the large amount of time that had elapsed from the first occasion ICAEW requested the information and documentation.

Sentencing Order

1. Severe reprimand
2. Costs of £1,199.

In addition, the Defendant is **ordered** to meet with the case officer within 21 days from 3 May 2016 (that is, no later than 24 May 2016) to agree what, if any, information is still required and to set deadlines for the provision of that information.

Costs of £1,199 shall be paid in twelve instalments, payable on the first day of each month. The first instalment shall be in the sum of £99 and the remaining eleven instalments shall be in the sums of £100. The first payment shall be made on 1 July 2016.

Decision on publicity

Publication with name.

Non Accountant Chairman

Mr Richard Farrant

Accountant Member

Mr Martin Ward FCA

Non Accountant Member

Ms Mary Kelly

Legal Assessor

Mr Dominic Spenser Underhill

032423

8 Mr Howard Robert Hill of
Farringdon Place, 20 Farringdon Road, LONDON, EC1M 3AP.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 3 May 2016

Type of Member Former Member

Terms of complaint

From 14 February 2011 to 6 May 2011, Mr Hill knowingly obtained personal data of several individuals without consent and to which he had no legitimate entitlement.

Mr Howard Hill is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a, because:-

“...in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy”

Hearing date

03 May 2016

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 Exclusion

Procedural matters and findings

Parties present Howard Robert Hill was not present.

Represented Howard Robert Hill was not represented. The Investigation Committee (IC) was represented by Annabel Joester.

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 IC's bundle together with evidence of Mr Hill's means.

Preliminary matters

Mr Hill was not a Chartered Accountant, or a full member of ICAEW, but an affiliate member of the ICAEW. As such, he is liable to disciplinary action in the same way as a full member of the ICAEW, pursuant to Regulation 11 of the Regulations governing the use of the description "Chartered Accountants". Regulation 11 states that the Disciplinary Bye-laws of ICAEW apply to affiliate members.

The Investigation Committee's (IC's) case

1. Section 55 of the Data Protection Act 1998 provides:
 - "1. A person must not knowingly or recklessly, without the consent of the data controller:
 - a. Obtain or disclose personal data or the information contained in personal data, or
 - b. Procure the disclosure to another person of the information contained in personal data."
2. In 2007, the Defendant was employed by 'A' Ltd as a director, and his role was to set up and head the Business Investigation Unit. Part of the Unit's function was to obtain intelligence and information about individuals and firms where litigation was contemplated or in progress. At this time, the defendant was not a member of ICAEW and he was not at any time a Chartered Accountant.
3. In June 2010, the defendant was promoted within 'A' Ltd to salaried partner and after that he became an affiliate member of ICAEW.
4. A bidding process was instigated by the 'B' for the future use of the Olympic Stadium once the London Olympic Games ended in 2012. 'C' submitted a bid, as did 'D'. 'D' was the successful bidder. 'C' wanted to investigate the bidding process in which it was unsuccessful and instructed 'A' Ltd to investigate it. The defendant headed up this instruction at 'A' Ltd. The defendant enlisted the services of Mr 'E' and Mr 'F' to act as agents in that investigation and to carry out the defendant's instructions.
5. From 14 February 2011 to 6 May 2011, the defendant and his agents accessed unlawfully the personal data of ten individuals from 'D', the local Council and 'B', including their bank statements, mobile phone records and emails. In addition, they accessed, in one case, details of where a child of one of the individuals went to school and that child's birth certificate. Surveillance was carried out, as well as the accessing of credit reports. The unlawful accessing of this data was for personal gain.
6. On 9 December 2011, the defendant's activities were reported by 'A' Ltd to ICAEW after they were discovered. The defendant left 'A' Ltd in December 2011. On 8 November 2013, the defendant (as well as Messrs 'E' and 'F' were convicted in a Crown Court of unauthorised assessable processing by a data controller, in contravention of Section 55 of the Data Protection Act 1998. The defendant was fined £100,000 and ordered to pay a victim surcharge of £15.00. This was an indictable offence. The Judge described the defendant as having "full control" over this project. The Judge told the defendant in his sentencing remarks that "You engaged others to do your dirty work for you. You did this for financial gain." The Judge also told the defendant "It was your intention from the outset to gain financial information by means which you knew to be unlawful."

7. The defendant has been convicted of an indictable offence. Pursuant to Disciplinary Bye-law (DBL) 7.1(a), that conviction is conclusive evidence of the commission by the Defendant of an act which breaches DBL 4.1 (a).
8. For these reasons, the defendant is in breach of Disciplinary Bye-law (DBL) 4.1 (a).

Issues of fact and law

9. The factual issues to be determined are whether from 14 February 2011 to 6 May 2011, the defendant knowingly obtained personal data of several individuals without consent and to which he had no legitimate entitlement and, if those facts are determined, whether they constitute a breach of DBL 4.1 (a).
10. The tribunal found the complaint proved.

Conclusions and reasons for decision

11. The tribunal relied on DBL 7.1 to establish the proof, through the defendant's conviction of an indictable offence on 8 November 2013, that between 14 February 2011 and 6 May 2011 the Defendant knowingly obtained personal data of several individuals without consent and to which he had no legitimate entitlement. That conviction constitutes a breach of DBL 4.1(a).
12. The defendant has breached DBL 4.1(a) because he has committed an indictable offence and also because of what he did that gave rise to the offence. There is another aspect to this matter which is of concern to the tribunal, as well as the illegality. The defendant engaged himself and others in the unlawful collection of personal data, including data about a child at school, in order, as the sentencing Judge put it "*to find ways of discrediting [the victims] and of levelling allegations of dishonest conduct against them.*" Those allegations had "*no basis*". This was wholly unacceptable conduct by a member or affiliate member of ICAEW.
13. The unlawful obtaining of personal data belonging to others, to which the defendant had no right, and the criminality which it represented, must be recognised by an appropriate penalty.

Matters relevant to sentencing

14. The tribunal considered the *Guidance on Sentencing* and saw no reason to depart from that. It was also satisfied that no lesser penalty than the one made should be imposed.
15. The tribunal noted as mitigating factors (i) the defendant's clean disciplinary record; (ii) the defendant's prompt admission of guilt in the Crown Court proceedings and (iii) the defendant's conviction was spent as at 20 December 2014.
16. Furthermore, in his letter to ICAEW dated 2 December 2015, the defendant has also expressed his remorse and expressed his apologies to all concerned; he has also described the very negative effects his conviction has had on his family members, who played no part in his actions.
17. An aggravating factor is the harm which the defendant's actions caused to others, whom the Judge described as "victims" of his wrongdoing. In his sentencing remarks the Judge told the defendant:

“Those whose privacy is unlawfully intruded upon feel and are entitled to feel a sense of violation. It is clear that in ways to which I will return that in this case a number of people were subjected to intrusion are were [sic] greatly affected by it; emotionally, for some, financially, and for others in terms of reputational damage.

“...In short, what you did caused and continues to cause real harm to a significant number of people. You did these things for reward and you carried out your acts with considerable persistence and practising considerable deceit.”

Sentencing Order

Exclusion

Costs of £4,000.

Decision on publicity

Publication with name.

Non Accountant Chairman

Mr Richard Farrant

Accountant Member

Mr Martin Ward FCA

Non Accountant Member

Ms Mary Kelly

Legal Assessor

Mr Dominic Spenser Underhill

005175

9 Mr James Preston Bradney of
Bramley House, 8 Kings Road, Headcorn, Kent, TN27 9QU

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 10 May 2016

Type of Member Former Member

Terms of complaint

1. Mr James Bradney was a partner of 'A' LLP, a partnership engaged in public practice that had an administration order made against it on grounds of insolvency on 1 July 2011.
2. Between 29 January 2009 and 1 September 2010 Mr James Bradney conspired with Mr 'B' to dishonestly transfer monies totalling £825,019 from five companies over which he was appointed administrator to the bank accounts of 'A' LLP (in which he was a partner).

If proven, the former member may be liable to disciplinary action under Disciplinary Bye-law 4.1e in respect of head one and Disciplinary Bye-law 4.1a in respect of head two because

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' and '...if any of the circumstances set out in paragraph (2) exist with respect to him.

Hearing date

10 May 2016

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 Exclusion from membership

Procedural matters and findings

Parties present The Investigation Committee (IC)

Represented Ms Thorp of the ICAEW represented the IC

Hearing in public or private The hearing was in public

Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service
Documents considered by the tribunal	The tribunal considered the documents contained in the IC's bundle, including written representations made by the defendant.
Findings on preliminary matters	The tribunal decided to proceed in the defendant's absence on the grounds that he had indicated by way of an email dated 4 May 2016 that he was content for the case to proceed in his absence.

Issues of fact and law

1. 'A' LLP and 'C' LLP operated as insolvency practices and were engaged in public practice and traded from premises in London, Tunbridge Wells and Bedford.
2. 'C' LLP was dependent on 'A' LLP for premises, staff, and computer systems. All accounting functions were provided by 'D' LLP an external accounting firm based in the same premises as 'A' LLP. Mr 'B' of 'D' LLP had day to day control of the accounting function for both businesses and Mr Bradney was also a designated member of 'D' LLP.
3. It was intended that 'A' LLP and 'C' LLP would merge with effect from 1 July 2011. This required 'D' LLP to prepare the final accounts for 'A' LLP and 'C' LLP as at 30 June 2011. On 22 June 2011 it was discovered by that Mr Bradney had misappropriated funds from a number of insolvent estates that he was appointed over. Mr Bradney had falsely represented to the other members of 'A' LLP that these funds were held on deposit accounts. Mr 'B' had assisted with the misapplication of funds and in the manipulation of 'A' LLP and 'C' LLP's management accounts.
4. Mr 'B' also confirmed to the other members of 'A' LLP and 'C' LLP that 'C' LLP had never been registered for VAT and it was estimated that there was an undisclosed liability of up to £600,000. Further in order to disguise the misapplication of monies from insolvent estates and non-payment of VAT to HMRC he had prepared false management accounts which had been presented to the members. These accounts did not properly disclose the profits, assets or liabilities of 'A' LLP and 'C' LLP.
5. The police, regulators, bond holders and insurers were immediately notified by the members. After taking advice from 'E' LLP, the members of both firms decided that 'A' LLP and 'C' LLP should be placed in administration. On 1 July 2011 Mr 'F' and Ms 'G', partners at 'E' LLP, were appointed joint administrators.
6. Mr 'I' was subsequently appointed as the successor office holder to the insolvent estates that Mr Bradney was appointed over and provided assistance to the police with their enquiries. Mr 'I' confirmed the monies were drawn from the following five insolvent estates:

Estate	Joint appointee	£
'H'	Mr 'N' (a former member of 'A' LLP - now retired)	235,000
'J'	Mr 'N'	190,019
'K'	Mr 'O'	75,000
'L'	Mr 'P'	265,000

'M'	Mr 'P'	60,000
Total		<u>825,019</u>

7. Mr Bradney and Mr 'B' were subsequently charged and on 24 February 2014 they both pleaded guilty to the offence of conspiracy to commit fraud by abuse of trust on an agreed basis of plea. Mr Bradney was sentenced to 42 months imprisonment and Mr 'B' to 32 months. In addition both were made the subject of disqualifications under the Company Directors Disqualification Act 1986, with Mr 'B' being disqualified for five years and Mr Bradney for seven years. No confiscation proceedings were taken against Mr 'B' as the Crown was satisfied he made no personal gain.
8. Mr Bradney was made subject to a confiscation order of £46,257.
9. Due to the events described above Mr Bradney was made bankrupt and therefore ceased to be a member. Disciplinary Bye-Law 6A allows former members to be disciplined for actions whilst they were a member.

Conclusions and reasons for decision

10. The tribunal found the complaint proven on the defendant's own admission.

First head of complaint

11. Mr Bradney was a partner of a firm engaged in public practice that had an administration order made against it on grounds of insolvency. Therefore by virtue of Disciplinary Bye-Law 4.2f he is in breach of Disciplinary Bye-Law 4.1e.

Second head of complaint

12. Mr Bradney's conviction under Disciplinary Bye-Law 7 is conclusive evidence of his part in the conspiracy to defraud five estates by transferring a total of £825,019.
13. The first transfer took place on 29 January 2009 and last on 1 September 2010 and are detailed in the basis of plea. It was accepted that Mr Bradney had instigated the transfers at short notice when there was no other source of funds to meet the companies' liabilities. Mr Worrall then amended the accounts to conceal the transfers.
14. The sentencing remarks made by Judge Griffiths-Jones QC state that the fraud:
 - Took place over a 19 month period between 2 February 2009 and 1 September 2010.
 - The sum of £825,019 was transferred from five administration estates.
 - Mr Bradney and Mr 'B' hid the amount of tax and other liabilities owed by 'A' LLP and 'C' LLP from the other members and manipulated the management accounts to hide their wrong doing.
 - Mr Bradney drew over £280,000 for personal expenditure.
15. The conviction for conspiracy to commit fraud by abuse of position is conclusive evidence of an act or default likely to bring discredit on Mr Bradney, the Institute or the profession of accountancy for the purposes of Disciplinary Bye-Law 4.1a. Mr Bradney pleaded guilty and was convicted of a serious offence which warranted a custodial sentence of 42 months.

16. The tribunal found that Mr Bradney's actions were likely to bring discredit to the Institute, himself and the profession of accountancy. He was accordingly in breach of Disciplinary Bye-law 4(1)(a).

Matters relevant to sentencing

17. Mr Bradney did not have a prior disciplinary record. Mr Bradney in his written representations expressed his regret for his actions and the damage and loss it had caused to other parties. He accepts that his career as a chartered accountant and an insolvency practitioner has ended. He says that both he and Mr 'B' had believed that 'A' LLP would be profitable and that these were 'short term measures' and the monies plus interest would eventually be repaid. Mr Bradney also comments that Mr 'B' had acted under his instructions. The transfers from the insolvent estates were presented to Mr 'B' as a 'fait accompli' and the day before essential costs such as wages and salaries were due to be paid.
18. The tribunal took into account Mr Bradney's mitigation and that, other than in relation to this matter, he was of good character.
19. It was however an aggravating factor that large amounts of money were involved and that 'A' LLP and 'C' LLP had gone into administration with all employees being made redundant as a result of his dishonesty. Mr Bradney's dishonest conduct calls into question his fitness to remain a member of ICAEW and his actions as a partner were a serious breach of trust. As an administrator of the five companies he had a positive duty to safeguard the funds of the estates and to protect their interests and those of the creditors. The public are entitled to have complete confidence in the integrity and honesty of those within the profession and his conduct was incompatible with his continued membership within the ICAEW.
20. In all the circumstances, the tribunal were of the view that no lesser penalty than exclusion from membership was warranted.
21. The tribunal took into account Mr Bradney's means in considering an appropriate costs order.

Sentencing Order

22. The tribunal took into account its *Guidance on Sentencing*. It decided to exclude Mr Bradney from membership. As a confiscation order had been made, the tribunal did not impose a fine.
23. In light of his limited means, the tribunal reduced Mr Bradney's contribution to the costs to those which were attributable to the hearing date (not including therefore the costs of the investigation). Thus, it ordered Mr Bradney to pay £300 in costs. If he applies for time to pay, the tribunal recommended that this be allowed.

Decision on publicity

24. Publicity with names.

Non Accountant Chairman

Mr Peter Williamson

Accountant Member

Mr Philip Coleman FCA

Non Accountant Member

Ms Mary Kelly

Legal Assessor

Ms Melanie Carter

006146

10 Mr Michael Worrall of
7 Heathtolt Cottages, Park Lane, Maplehurst Horsham, West Sussex, RH13 6LL. UK

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 10 May 2016

Type of Member Former Member

Terms of complaint

Between 29 January 2009 and 1 September 2010 Mr Michael Worrall conspired with Mr 'B' to dishonestly transfer monies totalling £825,019 from five companies over which Mr 'B' was appointed as administrator to the bank accounts of 'A' LLP.

Mr Michael Worrall is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a.

because

in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy'

Hearing date

10 May 2016

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 Exclusion from membership

Procedural matters and findings

Parties present The Investigation Committee (IC)

Represented Ms Thorp of ICAEW represented the IC

Hearing in public or private The hearing was in public

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

Documents considered by the tribunal The tribunal considered the documents contained in the IC's bundle, including written representations made by the defendant

Findings on preliminary matters

The tribunal decided that it was appropriate to proceed in the defendant's absence. There had been a letter dated 4 May 2016 from Mr Worrall to the ICAEW indicating that he was aware of the hearing date and that he did not intend to attend.

Issues of fact and law

1. Mr Worrall was a salaried partner of 'D' LLP who prepared management and financial accounts for 'A' LLP and 'C' LLP. 'D' LLP was based in the same premises as 'A' LLP in Tunbridge Wells. Mr Worrall of 'D' LLP had day to day control of the accounting functions of 'A' LLP and 'C' LLP. Mr 'B' was also a designated member of 'D' LLP.
2. 'A' LLP and 'C' LLP operated as insolvency practices and were engaged in public practice and traded from premises in London, Tunbridge Wells and Bedford. The main executive members of 'A' LLP were Mr 'B' (also an ICAEW member) and Mr 'R' and there were four fixed profit share members of 'A' LLP. 'A' LLP was a member of 'C' LLP with two other individual members.
3. It was intended that 'A' LLP and 'C' LLP would merge with effect from 1 July 2011. This required 'D' LLP to prepare the final accounts for 'A' LLP and 'C' LLP as at 30 June 2011. On 22 June 2011 it was discovered by Mr 'O' and Mr 'R' of 'A' LLP that Mr 'B' had misappropriated funds from a number of insolvent estates that he was appointed over. Mr 'B' had falsely represented to the other members of 'A' LLP that these funds were held on deposit accounts. Mr Worrall had assisted with the misapplication of funds and in the manipulation of 'A' LLP and 'C' LLP's management accounts.
4. Mr Worrall also confirmed to the other members of 'A' LLP and 'C' LLP that 'C' LLP had never been registered for VAT and it was estimated that there was an undisclosed liability of up to £600,000. Further in order to disguise the misapplication of monies from insolvent estates and non-payment of VAT to HMRC he had prepared false management accounts which had been presented to the members. These accounts did not properly disclose the profits, assets or liabilities of 'A' LLP and 'C' LLP.
5. The police, regulators, bond holders and insurers were immediately notified by the members. After taking advice from 'E' LLP, the members of both firms decided that 'A' LLP and 'C' LLP should be placed in administration. On 1 July Mr 'F' and Ms 'G', partners at 'E' LLP, were appointed joint administrators.
6. Mr 'B' and Mr Worrall were subsequently charged and on 24 February 2014 they both pleaded guilty to the offence of conspiracy to commit fraud by abuse of trust on an agreed basis of plea. Mr 'B' was sentenced to 42 months imprisonment and Mr Worrall to 32 months. In addition both were made the subject of disqualifications under the Company Directors Disqualification Act 1986, with Mr Worrall being disqualified for five years and Mr 'B' for seven years. No confiscation proceedings were taken against Mr Worrall as the Crown was satisfied he made no personal gain.

Conclusions and reasons for decision

7. The tribunal found the complaint proven on the defendant's own admission.

The complaint

8. Mr Worrall's conviction under disciplinary bye-law 7 is conclusive evidence of his part in the conspiracy to defraud five estates by transferring a total of £825,019. The first transfer took place on 29 January 2009 as detailed in the basis of plea. It was accepted that Mr 'B'

instigated the transfers at short notice when there was no other source of funds to meet the companies' liabilities. Mr Worrall then amended the accounts to conceal the transfers. The Crown accepted the basis of plea which stated Mr Worrall made no personal gain and had co-operated from the outset. It was agreed in the basis of plea that Mr Worrall also prepared the management accounts of the 'A' and 'C' firms in order to obscure the liabilities for PAYE and VAT.

9. The sentencing remarks made by Judge Griffiths-Jones QC state that the fraud:
 - Took place over a 19 month period between 2 February 2009 and 1 September 2010.
 - The sum of £825,019 was transferred from five administration estates.
 - Mr 'B' and Mr Worrall hid the amount of tax and other liabilities owed by 'A' LLP and 'C' LLP from the other members and manipulated the management accounts to hide their wrong doing.
10. Judge Griffiths-Jones QC accepted that Mr Worrall played a lesser role in the fraud which was reflected in his lesser sentence than Mr 'B'.
11. Mr Worrall has indicated in his correspondence that he admits the complaint against him and he offered his resignation in July 2013 which was not accepted due to the ongoing disciplinary investigation. However Mr Worrall stopped paying his subscription in December 2013 and was not kept in membership. He is therefore a former member. Disciplinary Bye-law 6A allows former members to be disciplined for actions whilst they were a member.
12. The conviction for conspiracy to commit fraud by abuse of position is conclusive evidence of an act or default likely to bring discredit on Mr Worrall, the Institute or the profession of accountancy for the purposes of Disciplinary Bye-law 4.1a. Mr Worrall pleaded guilty and was convicted of a serious offence which warranted a custodial sentence of 32 months.

Matters relevant to sentencing

13. Mr Worrall did not have a prior disciplinary record. Mr Worrall in his written representations reiterated his regret for his actions and the damage and loss it had caused to other parties. He accepts that his career as a chartered accountant has ended. Mr 'B' had commented during the investigation into his misconduct that Mr Worrall had acted under his instructions. He states that Mr Worrall was under extreme pressure and was very loyal to him. The transfers from the insolvent estates were presented to Mr Worrall as a 'fait accompli' and the day before essential costs such as wages and salaries were due to be paid.
14. The tribunal took into account Mr Worrall's mitigation (including the matters set out in his letter of 4 May 2016) and that, other than in relation to this matter, he was of good character. He had not made any personal gain from these matters.
15. It was however an aggravating factor that large amounts of money were involved and that 'A' LLP and 'C' LLP had gone into administration with all employees being made redundant as a result of his dishonesty. Mr Worrall's dishonest conduct calls into question his fitness to remain a member of ICAEW and his actions as a partner were a serious breach of trust. The public are entitled to have complete confidence in the integrity and honesty of those within the profession and his conduct was incompatible with his continued membership within the ICAEW.

16. In all the circumstances, the tribunal were of the view that no lesser penalty than exclusion from membership was warranted.
17. The tribunal took into account Mr Worrall's means in considering an appropriate costs order.

Sentencing Order

18. The tribunal took into account its *Guidance on Sentencing*. It decided to exclude Mr Worrall from membership. The tribunal did not impose a fine on the basis of the lesser part played by Mr Worrall in the fraud and, as reflected in the fact that no confiscation order had been made, that he had made no personal gain.
19. In light of his limited means, the tribunal reduced his contribution to the costs to those which were attributable to the hearing date (not including therefore the costs of the investigation). Thus, it ordered Mr Worrall to pay £300 in costs. If he applies for time to pay, the tribunal recommended that this be allowed.

Decision on publicity

20. Publicity with names.

Non Accountant Chairman

Mr Peter Williamson

Accountant Member

Mr Philip Coleman FCA

Non Accountant Member

Ms Mary Kelly

Legal Assessor

Ms Melanie Carter

006147

APPEAL COMMITTEE PANEL ORDERS

11 Robert Clow & Co Ltd of

Hartfield Place, 40-44 High Street, NORTHWOOD, MIDDLESEX, HA6 1BN.

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 4 May 2016

Type of Member	Firm
Date of Disciplinary Tribunal Hearing	12 January 2016
Date of Appeal Panel Hearing	4 May 2016

Terms of complaint found proven before the Disciplinary Tribunal

Robert Clow & Co. Ltd. failed to check how Mr 'A' (their client) had calculated income and expenses arising from his profession which resulted in them both being incorrectly stated in the tax returns prepared by the firm on his behalf in particular:

- (i) Allowable expenses incurred by him in connection with his profession in the period ended 1 May 2005 to 30 April 2006 were over-stated.
- (ii) He had in respect of the period ended 1 May 2005 to 30 April 2006 miscalculated income from his profession because he had calculated his income on a cash basis when section 42 of the Finance Act 1998 required his income to be calculated on an accruals basis;
- (iii) He had in calculating his income from his profession omitted to include work in progress of £12,089 for the year ended 30 April 2006 when the Urgent Issues Task Force 40 statement required work in progress to be included.

Robert Clow & Co. Ltd. is therefore liable to disciplinary action under Disciplinary Bye-law 5.1b. namely it:

'...performed its professional work, or conducted its practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on itself, the Institute or the profession of accountancy'

Sentencing Order

The tribunal made no order but the firm was fined £1,500 and ordered to pay costs of £9,000.

Appeal against finding? No

Appeal against Sentencing order? No

Appeal against Costs Yes

Decision of Appeal Panel

The costs order was reduced to £6,500 and no order made as to the costs of the appeal

Reasons for decision

Procedural matters and findings

- 1 Ms Theresa Thorpe represented the Investigation Committee and Mr Robert Clow the Appellant company
- 2 The hearing was in public
- 3 No preliminary application was made.

Grounds of appeal

- 4 The costs order did not properly apportion the costs between those relating to the Appellant company and those relating to the former partnership whose complaint had also been before the Disciplinary Committee.
- 5 The amount of the costs was disproportionate in relation to the seriousness of the complaint and the penalty imposed.

Decision

- 6 The amount of costs ordered against the Appellant would be reduced to £6,500
- 7 There would be no order as to the costs of the appeal.

Reasons for decision

- 8 The Panel agreed that some attempt should have been made by the Disciplinary Committee to apportion costs even though costs (and penalty) awarded against the former partnership could not, for technical reasons, be recoverable.
- 9 The Panel was satisfied that the Investigation Committee's costs had been genuinely incurred and was aware that the amount claimed before the Disciplinary Committee was itself a reduction from the total amount incurred. The Panel also took into account that the Disciplinary Committee's award was itself a reduction of the reduced costs claimed. Nevertheless, having regard to the very low amount of the fine and taking a global view of the costs award made, the Panel felt that the award was disproportionately high and reduced it.
- 10 In the circumstances and given no application for costs, no order was made for the costs of the appeal.

Chairman
Accountant Member
Accountant Member
Non Accountant Member
Non Accountant Member

Mr Richard Mawrey QC
Mr Richard Lea FCA
Mr Lee Manning FCA
Mrs Maureen Brennan
Mr Geoff Baines

006606

12 Mr George Edward Moore of
Le Pont De Vaux, MILLAC, 86150, FRANCE

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 4 May 2016

Type of Member	Member
Date of Disciplinary Tribunal Hearing	1 September 2015
Date of Appeal Panel Hearing	4 May 2016

Terms of complaint found proven before the Disciplinary Tribunal

1. Between 1 November 1998 and 28 November 2014 Mr George Moore FCA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.
2. Between 26 March 2014 and 28 November 2014 Mr G Moore FCA failed to provide a response in writing to issues notified to him on 5 March 2014 following a QAD visit as required by Practice Assurance Regulation 15.
3. Between 1 September 1998 and 28 November 2014 Mr G Moore FCA failed to ensure that all new clients are informed in writing of the name of the principal to be contacted if they wish to make a complaint and the client's right to complain to ICAEW contrary to Disciplinary Bye-law 11.1.
4. Between 1 September 2006 and 28 November 2014 Mr G Moore FCA failed to notify clients, in writing, of the basis on which fees will be rendered as required to paragraph 240.2b of The Code of Ethics.

Mr Moore is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c

'...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'

in respect of heads 1, 2 and 3 and Disciplinary Bye-law 4.1a and he is liable to disciplinary action under Disciplinary Bye-law 4.1a

'...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' in respect of head

Sentencing Order

Excluded from membership, fined £5,750 and pay costs of £2,775.

Appeal against finding?	Possibly
Appeal against Sentencing order?	Possibly
Appeal against Costs	Yes

Decision of Appeal Panel

The appeal was dismissed

Reasons for decision

Procedural matters and findings

- 1 Ms Annabel Joester represented the Investigation Committee. The Appellant was not represented and did not appear.
- 2 The hearing was in public
- 3 On 23 September 2015 the Appellant requested permission to proceed with the appeal without prior payment of the costs ordered.
- 4 On 30 September 2015 permission was granted by the Chairman.

Grounds of appeal

- 5 The email which stood as the Appellant's notice of appeal failed to disclose any coherent ground of appeal against any part of the Disciplinary Committee's order.

Decision

- 6 The appeal was dismissed. No costs were sought by the Investigation Committee.

Reasons for decision

- 7 The appeal document did not set out any triable ground of appeal.
- 8 It was clear from the material before the Panel that the Appellant admitted all the facts from which the complaints arose and that he had no intention of amending his ways or abiding by the Bye-laws of the Institute. The exclusion order of the Disciplinary Committee was the only one which could have been made in the circumstances. The fine was fair and the costs awarded minimal.
- 9 In the circumstances the appeal was hopelessly misconceived.

Chairman
Accountant Member
Accountant Member
Non Accountant Member
Non Accountant Member

Mr Richard Mawrey QC
Mr Richard Lea FCA
Mr Lee Manning FCA
Mrs Maureen Brennan
Mr Geoff Baines

023890

INVESTIGATION COMMITTEE CONSENT ORDERS

13 Mr Don Fisher FCA

Consent order made on 17 May 2016

With the agreement of Mr Don Fisher of 311 Winston House, 2 Dollis Park, Finchley, London, N3 1HF, the Investigation Committee made an order that he be reprimanded, fined £1,725 and pay costs of £980 with respect to a complaint that:

Mr Don Fisher FCA, following a QAD visit on 12 April 2007, confirmed on behalf of his firm that:

‘Over the course of the next 12 months, as each client agreement is renegotiated, each Fixed Price Agreement will be amended to include the required wording re complaints.’

but at a subsequent QAD cyclical review conducted on 10 June 2015 it was found this matter had not been addressed.

030918

14 Dr Vanessa Davis FCA

Consent order made on 19 May 2016

With the agreement of Dr Vanessa Tanith Westgarth Davis of 8 Parklands Court, Gateshead, Tyne and Wear, NE10 8YJ, the Investigation Committee made an order that she be reprimanded, fined £2,600, return client’s fees of £600, and pay costs of £3,205 with respect to a complaint that:

Dr Vanessa Davis FCA incorrectly completed the tax returns of Mr ‘A’ for the years ended 5 April 2012 and 5 April 2013 as she incorrectly accounted for two chargeable gains on the sale of shares in X Limited and Y Limited.

028843

15 Smith Pearman Limited

Consent order made on 24 May 2016

With the agreement of Smith Pearman Limited of Hurst House, High Street, Ripley, Woking, Surrey, GU23 6AY, the Investigation Committee made an order that the firm be reprimanded, fined £2,000 and pay costs of £3,468 with respect to a complaint that:

Smith Pearman Ltd continued appointment as auditor for X Ltd, and signed audit reports for the following year ends, in breach of Audit Regulation 3.02, in that the firm failed to ensure that the audit engagement partner documented his consideration of the auditor’s objectivity and independence on a timely basis as required by paragraph 54 of APB Ethical Standard 1:

Year end 25 March 2008 – signed 20 January 2009
Year end 25 March 2009 – signed 1 September 2009

027165

16 Wilkins Kennedy LLP

Consent order made on 2 June 2016

With the agreement of Wilkins Kennedy LLP of Athenia House, 10-14 Andover Road, Winchester, Hampshire, SO23 7BS, the Investigation Committee made an order that the firm be severely reprimanded, fined £18,000 and pay costs of £3,634 with respect to a complaint that:

4. On 27 September 2012 Wilkins Kennedy LLP issued an unqualified audit report on the financial statements of X Ltd for the year ended 31 December 2011 when the audit was not conducted in accordance with:
 - a. International Standard on Auditing (UK and Ireland) 570 'Going concern' in that the firm failed to obtain sufficient appropriate audit evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial statements; and
 - b. International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:
 - the transfer of shares in Y Ltd; and
 - the impairment of the investment in Z Ltd.
5. On 27 September 2012 Wilkins Kennedy LLP issued an unqualified audit report on the financial statements of Z Ltd for the year ended 31 December 2011 when the audit was not conducted in accordance with:
 - a. International Standard on Auditing (UK and Ireland) 570 'Going concern' in that the firm failed to obtain sufficient appropriate audit evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial statements; and
 - b. International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:
 - the transfer of shares in Y Ltd; and
 - the recoverability of the debt due from X Ltd.
6. On 27 September 2012 Wilkins Kennedy LLP issued an unqualified audit report on the financial statements of Y Ltd for the year ended 31 December 2011 when the audit was not conducted in accordance with:
 - a. International Standard on Auditing (UK and Ireland) 570 'Going concern' in that the firm failed to obtain sufficient appropriate audit evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial statements; and

- b. International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of the recoverability of the debt due from X Ltd.

025720

17 No publication of name

Consent order made on 2 June 2016

With the agreement of a member the Investigation Committee ordered that the member pay costs of £680 with respect to a complaint that:

On 6 January 2015 a member entered into an Individual Voluntary Arrangement within the provisions of the Insolvency Act 1986.

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

029735

18 RSM Tenon Audit Ltd

Consent order made on 17 June 2016

With the agreement of Tenon Audit Ltd, subsequently known as RSM Tenon Audit Ltd of 25 Farringdon Street, London, EC4 4AB, the Investigation Committee made an order that the firm be severely reprimanded, fined £17,500 and pay costs of £8,068 with respect to a complaint that:

- 1 On 27 July 2009, Tenon Audit Limited issued an unqualified audit report, on the financial statements of X Limited for the year ended 31 March 2009 in breach of Audit Regulation 3.10, as the audit had not been conducted in accordance with:
 - i. International Standards on Auditing (UK & Ireland) 500 'Audit Evidence' in that the firm failed to obtain, and document, sufficient appropriate audit evidence in respect of accrued income; and,
 - ii. International Standards on Auditing (UK & Ireland) 315 'Understanding the entity and its environment and assessing the risks of material misstatement' in that the firm failed to obtain, and document, a proper understanding of the company and its internal controls sufficient to identify and assess the risks of material misstatement to the financial statements whether due to fraud or error, and sufficient to design and perform further audit procedures

to be able to draw reasonable conclusions on which to base the audit opinion.

- 2 On 19 April 2011, RSM Tenon Audit Limited issued an unqualified audit report, on the financial statements of X Limited for the period ended 30 September 2010 in breach of Audit Regulation 3.10, as the audit had not been conducted in accordance with:

- i. International Standards on Auditing (UK & Ireland) 500 'Audit Evidence' in that the firm failed to obtain and document sufficient appropriate audit evidence in respect of accrued income; and,
- ii. International Standards on Auditing (UK & Ireland) 315 'Understanding the entity and its environment and assessing the risks of material misstatement' in that the firm failed to obtain, and document, a proper understanding of the company and its internal controls sufficient to identify and assess the risks of material misstatement to the financial statements whether due to fraud or error, and sufficient to design and perform further audit procedures".

to be able to draw reasonable conclusions on which to base the audit opinion.

021069

REGULATORY DECISIONS

AUDIT REGISTRATION COMMITTEE

ORDER – 18 MAY 2016

19 Publicity Statement

Nicholas Ng and Company Ltd, 201 Lordship Lane, London, SE22 8HA, has agreed to pay a regulatory penalty of £6,350, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.11d and 6.06, for failing to notify the ICAEW of the appointment of a director in 2008 and for the incorrect completion of its 2009-2015 annual returns.

032737

ORDER – 18 MAY 2016

20 Publicity Statement

Roberts Toner LLP, Melbourne House, 44-46 Grosvenor Street, Stalybridge, Cheshire, SK15 2JN, has agreed to pay a regulatory penalty of £1,613, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.03a, 2.11c and 6.06 for failing to notify ICAEW within 10 business days of changes to its members, failing to ensure a member appointed in 2014 held affiliate status and the incorrect completion of its 2015 annual return.

009279

INVESTMENT BUSINESS COMMITTEE

ORDER

21 Publicity Statement

The DPB licence of ACAWELL Accountancy, Office 118, Boundary House, Cricket Field Road, Uxbridge, UB8 1QG, was withdrawn on 29 April 2016 under DPB regulation 2.18 for failure to submit the 2014 and 2015 annual returns.

032541

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