



DISCIPLINARY ORDERS AND REGULATORY DECISIONS

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mr Stephen Mark Boden[ACA] of
18 Leeds Road, Kippax, LEEDS, LS25 7HQ.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 4 October 2016

Type of Member Member

Terms of complaint

1. Between 1 January 1996 and 9 October 2015 Mr S M Boden ACA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51a.
2. Between 1 January 1996 and 9 October 2015 Mr S M Boden ACA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.
3. On 11 November 2010 Mr S M Boden ACA signed a 'Statement of independence and confidentiality and confirmation of fit and proper status' whilst employed at S S Limited when he knew that the information he had included in section E of that statement was incorrect, in that he stated that he had no outside business interests or directorships, when this was not the case.
4. Between 8 December 2008 and 12 November 2010 Mr S M Boden ACA failed to comply with Paragraph 280.3b of Code of Ethics (effective 1 September 2006 to 31 December 2010) in that he loaned a client, Mr N, monies totalling £2,093,519.45.
5. Between 31 January 2011 and 10 December 2013 Mr S M Boden ACA used software registered to S S Limited to provide services to his own private clients whilst in the employment of S S Limited when not authorised to do so.
6. On the following occasions, Mr S M Boden ACA misled S S Limited that he was attending Doctors' appointments when he knew this was incorrect as he was visiting his own private clients:
 - a. 23 February 2012 when Mr Boden visited B P;
 - b. 17 October 2012 when Mr Boden visited B P;
 - c. 5 June 2013 when Mr Boden visited C I; and
 - d. 1 October 2013 when Mr Boden visited Z.

Mr Boden is therefore liable to disciplinary action as follows:

On heads 1 and 2 - Disciplinary Bye-law 4.1.c in that 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.

On heads 3, 4, 5 and 6 - Disciplinary Bye-law 4.1.a in that he has...in the course of carrying out his 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

04 October 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 (i) Exclusion;
(ii) Fine of £18,000;
(iii) Costs of £7,065.67

Procedural matters and findings

Parties present Mr James Francis for 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 Investigation Committee's (IC's) bundle together with regulation 13 answers provided by Mr Boden.

The Investigation Committee's (IC's) case

1. The defendant was employed by S S Limited, a firm of accountants, from February 1987. He remained an employee until his employment ceased in January 2014 following a compromise agreement settled between the parties.
2. On the 11 August 2003 the defendant became the director of a company, then called S H Limited. At the time the defendant assumed control, the company's principle activity changed to the provision of tax and accountancy services. On the 24 November 2009 the company changed its name from S H Limited to SMB (Leeds) Limited. It is apparent that the defendant traded as an accountant through this company while he remained an employee of S S Limited.
3. The existence of this company (and the defendant's provision of services through it) was first brought to the attention of S S Limited in early 2014 when the defendant was suspended from the practice. Having conducted an internal investigation S S Limited reported to ICAEW the information which forms the complaints alleged against the defendant. Correspondence from the defendant indicates that he accepts the complaints.

Complaint one and two – engaging in public practice without a PC or PII

4. Principle Bye-Law 51 states:

“Subject as may be provided in the regulations, a member shall be entitled to engage in public practice in the United Kingdom or any other member state of the European Economic Area only if he holds a current practicing certificate.”

5. Within the dates alleged in complaints one and two, ICAEW Council issued two statements on engaging in public practice. The first was issued in February 1992 and ran until 31 December 2007 and states:

“Paragraph 1

A member engages in public practice when personally and directly he or she provides or holds himself out to provide accountancy services to the public as an individual principle or as a partner in a firm or director of a company providing such services to the public.”

6. The second relevant Council statement is the current statement applicable from 01 January 2008. It states:

“Paragraph 5

A member is engaged in public practice if he is a principle in:

- *A public practitioner, or*
- *The parent company of a public practitioner*

An entity which is a principle of a public practitioner.”

7. A public practitioner is defined by para 4 as, an entity which provides accountancy services to clients in anticipation of reward.

8. Regulation 3.1 Professional Indemnity Insurance Regulations has been in effect since 1991. It states:

“A firm must:

- a. take reasonable steps to meet claims arising from being in public practice; and*
- b. arrange qualifying insurance which meets the limits in regulations 3.2 to 3.5.”*

9. Accordingly, any person engaged in public practice in anticipation of reward requires both a practicing certificate and sufficient PI insurance.

10. In a letter dated the 04 December 2015 the defendant accepts he engaged in public practice from 1995 as a sole practitioner. He accepts receiving remuneration during this period. It is apparent that on acquisition of SMB (Leeds) Limited in 2003 the defendant commenced trading through the company providing general accountancy and taxation services. SMB (Leeds) Limited accounts declare an average yearly turnover from 2004 to 2013 of £16,000.

11. The defendant accepts that he did not have a practicing certificate or any PII for the period as alleged within the complaints.

Complaint three – signing a false declaration of independence

12. At pages 29 to 33 of the bundle is a document headed 'statement of independence and confidentiality and confirmation of fit and proper status'. This document was supplied on or around November 2010 to the defendant in his capacity as an employee of S S Limited. It is a document utilised by the firm to ensure that its staff declare (and therefore guard against) conflicts of interest of interest / audit breaches.
13. At page 33 it is signed by the defendant and dated 08 November 2010. It was signed by the Audit compliance principle on the 11 November 2010. Section E of the form is headed 'Outside business interests' and states:

"E: Outside business interests

The firm must be independent in its dealings with business clients. Please list below any business interests, directorships, etc...that you have. If you have none, please state 'none'

*Business interests: **NONE***

*Directorships: **NONE***

*Appointed representative for Investment Business authorised firms: Other: **NONE**"*

14. Here, plainly, the defendant failed to disclose existence of SMB (Leeds) Limited, his connection to it or its clients. The defendant had been a director of the company for seven years by the time he made the declaration. The company turnover in 2010 was approx. £15,000. The defendant accepts that he 'did not want to disclose that he had clients of his own'. He states that he did not believe he was obliged to disclose this information as he did not consider there was a conflict. The Investigation Committee contend that In having both the directorship of SMB (Leeds) Limited and the business interest in that firm the defendant knowingly and falsely declared that he had no directorship or business interest. That declaration was false regardless of the existence of any conflict. It is perhaps important to mention that the defendant has accepted providing services to at least one former client of S S Limited which undermines his contention that his failure to disclose was on the basis of an absence of conflict, actual or potential.
15. The defendant was dishonest in his declaration by the ordinary standards of reasonable and honest people and it is submitted that he knew or realised that what he declared was, by those standards, dishonest.

Complaint four – Lending money to a client

16. Between 01 September 2006 and 31 December 2010 Paragraph 280.3b ICAEW Code of Ethics applied. It stated:

"Loans

Objectivity may be subject to a self-interest threat if a firm, or any principal of the firm should directly or indirectly make a loan to, or receive a loan from the client, or give or accept any guarantee in relation to a debt of the client, firm or principal.

A firm or principal in the firm should not receive from or make a loan to a client unless the client is a bank or similar institution and the transaction is under normal commercial conditions. This is because the perceived self-interest threat arising in such circumstances is generally seen as being too great to be reduced to an acceptable level by the application of any safeguards.”

17. Accordingly, between the above dates ICAEW considered the provision of a loan to a client a clear ethical breach.
18. Between January 2008 and November 2010 the defendant provided accountancy services to a client by the name of Mr N. A schedule of loans confirmed by the defendant to be loans to Mr N demonstrate that between 08 December 2008 and 12 November 2010 (a period within the ethical standard above) the defendant loaned Mr N a total of £2,093,519.45.
19. In correspondence dated 13 August 2015 the defendant confirmed that he realised the loans made to Mr N were not appropriate and as such terminated the client relationship in 2010. The defendant confirms he received interest on the loans between 2008 and 2015 as set out in his letter.

Complaint 5 – using software belonging to his employer without permission

20. In a letter dated 08 July 2014 the defendant admitted using software belonging to S S Limited to prepare accounts for his own clients (not clients of S S Limited) and submit and file their tax returns. S S Limited have confirmed that the defendant was not given permission to use the software and that they did not know he was using it.
21. In reply to a letter dated 23 July 2014 the defendant supplied documents under cover letter dated the 08 August 2014 which were documents he had prepared for his own clients on S S Limited software. The earliest document supplied by the defendant is annotated as filed 31.01.2011 and the latest document supplied by the defendant was dated 10.12.2013.

Complaint six – misleading his employer

22. S S Limited provided documentation showing that the defendant had indicated on four separate occasions that he was visiting the doctors on the office plan when he was, in fact, visiting his own practice clients. Those four occasions are set out as follows:
 - (a) 23 February 2012 – visiting B P
 - (b) 17 October 2012 – visiting B P
 - (c) 5 June 2013 – visiting C I
 - (d) 1 October 2013 – visiting Z
23. In declaring to his employer that he was visiting the doctors when he was visiting his own clients, the defendant was being dishonest. Again, the Investigation Committee contends that he was being dishonest by the ordinary standards of reasonable and honest people and that he knew or realised that what he declared was, by those standards, dishonest.
24. Mr Boden did not dispute any of the facts laid out by the IC and he accepted the complaints as lodged against him.

Conclusions and reasons for decision

The tribunal considered the various heads of complaint in turn:-

Heads 1 and 2

25. Mr Boden accepted in his correspondence that he had been engaged in private practice since 1995. He says that he realises he should have obtained a practising certificate and PII, and that he has no defence for that.
26. By having engaged in public practice without a practising certificate or PII, Mr Boden has failed to comply with Principal Bye-law 51a and Regulation 3.1 of the Professional Indemnity Regulations respectively.
27. The tribunal therefore finds Mr Boden has committed breaches of the bye-laws and regulations and that Heads 1 and 2 of the complaint are proven.

Head 3

28. The tribunal has seen the document dated 8 November 2010 signed by Mr Boden in which he states "none" in answer to a request to list his business interests and directorships. Mr Boden accepts and there is written evidence to show that he was at that time and had for the previous seven years been a director of SMB (Leeds) Limited. The Tribunal finds this to be dishonest behaviour.

Head 4

29. The tribunal noted that Mr N (the person to whom Mr Boden lent money) never paid fees to Mr Boden or his company even though Mr Boden prepared his company accounts. The tribunal is nevertheless satisfied that Mr N was a client of Mr Boden's. Mr Boden provided full details of all the loans which he had provided to Mr N between January 2008 and 12 November 2010 and details of interest received up to 2015.
30. The loans made by Mr Boden to Mr N within the period of January 2008 to 12 November 2010 were fluctuating in that loans were made, repayments were made and further loans were made. The maximum outstanding at any time was £336,672.08.
31. The tribunal has considered paragraph 280.3b of the ICAEW Code of Ethics which applied between 1 September 2006 and 31 December 2010 and loans to clients are stated within that code to amount to a clear breach of ethics.
32. The tribunal finds this behaviour to have amounted to a breach of the relevant Code of Ethics.

Head 5

33. Mr Boden accepts that he used his employer's software to prepare accounts for his own clients. Mr Boden supplied copies of accounts so prepared and the tribunal has seen them.
34. The tribunal finds this behaviour to have been dishonest.

Head 6

35. Mr Boden accepts that he indicated to his employers on four separate occasions that he was visiting doctors when in fact he was visiting clients. Mr Boden provided confirmation of dates, times and the names of the clients he was visiting. The tribunal finds this behaviour to have been dishonest.
36. In respect of heads 1 and 2, the tribunal finds the complaint proven.
37. In respect of heads 3, 4, 5 and 6, the tribunal finds, taking the various heads together, that Mr Boden has in the course of carrying out his professional work, committed acts likely to bring discredit on himself, the Institute or the profession of accountancy. Accordingly, in respect of heads 3, 4, 5 and 6, the complaint is proven.

Matters relevant to sentencing

38. The tribunal took into account the *Guidance on Sanctions*.
39. In respect of heads 1 and 2, the Tribunal noted that Mr Boden had been in public practice for nineteen years without a practising certificate or insurance.
40. Unsurprisingly, Mr Boden has nowhere suggested that he was unaware of his responsibilities with regard to the requirement for a practising certificate or insurance.
41. In respect of heads 3, 4, 5 and 6, Mr Boden's behaviour has been shown to have been both unethical and in various ways, dishonest.
42. Mr Boden offers no defence whatever for his behaviour and he also says that he has no mitigation to put forward.
43. In considering mitigating factors, and despite Mr Boden's own view that he has none to offer, the tribunal notes that Mr Boden, having been found out by his employers, did provide full co-operation. Mr Boden has chosen to provide no information about his financial circumstances.
44. This is a serious case. Having taken all matters into account, the tribunal considers that exclusion and a significant fine should be ordered.

Sentencing Order

45. (i) Exclusion
- (ii) Fine £18,000
- (iii) Costs of £7,065.67

Decision on publicity

46. The tribunal decided that there should be publicity of this decision.

Non Accountant Chairman

Mr Ron Whitfield

Accountant Member

Mr Nigel Meredith FCA

Non Accountant Member

Ms Martha Maher

Legal Assessor

Mr John Trotter

020530

INVESTIGATION COMMITTEE CONSENT ORDERS

2 Athena & Co (Scotland) Limited

Consent order made on 27 January 2017

With the agreement of Athena & Co (Scotland) Limited of 130/9 Leith Walk, Edinburgh, EH6 5DT, the Investigation Committee made an order that the firm be reprimanded, fined £2,000 and pay costs of £2,643 with respect to a complaint that:

1. Between 29 November 2014 and 6 January 2015, Athena & Co (Scotland) Limited filed the abbreviated accounts of X Ltd for the year ended 31 March 2014 with Companies House which had been deliberately signed by an employee of the firm in the name of the director of X Ltd, in breach of section 450 of the Companies Act 2006.
2. Between 6 January 2015 and 30 May 2015, Athena & Co (Scotland) Limited filed the amended abbreviated accounts of X Ltd for the year ended 31 March 2014 with Companies House which did not comply with the requirements of paragraph 4 of The Companies (Revision of Defective Accounts and Reports) Regulations 2008.

028258

3 Alliotts

Consent order made on 2 February 2017

With the agreement of Alliotts of Imperial House, 15-19 Kingsway, London, WC2B 6UN, the Investigation Committee made an order that the firm be severely reprimanded, fined £32,000 and pay costs of £7,280 with respect to a complaint that:

1. Alliotts issued audit reports on the financial statements of X Ltd for the following year ends, in breach of Audit Regulation 3.08, in that the audit was not conducted in accordance with International Standard on Auditing (UK & Ireland) 210 'Agreeing the terms of audit engagements' as the appointment as auditor should not have been accepted when the auditor was aware, before accepting the audit engagement, that those who appoint the auditor would impose a limitation on the scope of the audit work likely to result in the need to issue a disclaimer of opinion on the financial statements:

Year ended 31 December 2010 – audit report dated 30 March 2012
Year ended 31 December 2011 – audit report dated 10 April 2013
2. Alliotts issued audit reports on the financial statements of Y Ltd (formerly Z Ltd) for the following year ends, in breach of Audit Regulation 3.08, in that the audit was not conducted in accordance with International Standard on Auditing (UK & Ireland) 210 'Agreeing the terms of audit engagements' as the appointment as auditor should not have been accepted when the auditor was aware, before accepting the audit engagement, that those who appoint the auditor would

impose a limitation on the scope of the audit work likely to result in the need to issue a disclaimer of opinion on the financial statements:

Year ended 31 December 2010 – audit report dated 12 November 2012

Year ended 31 December 2011 – audit report dated 11 June 2013

Year ended 31 December 2012 – audit report dated 23 April 2014.

024375

4 Mr Peter James Farragher FCA

Consent order made on 6 February 2017

With the agreement of Mr Peter James Farragher of 130 Castleknock Park, Dublin, County Dublin 15, Ireland, the Investigation Committee made an order that he be severely reprimanded, fined £3,450 and pay costs of £1,467 with respect to a complaint that:

1. Between 4 March 2009 and 2 June 2013 Mr P J Farragher FCA, engaged in public practice without holding a practising certificate contrary to Principal Bye-Law 51a.
2. Between 4 March 2009 and 4 March 2013 Mr P J Farragher FCA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.

028619

5 Mr Aled Wyn Williams FCA

Consent order made on 8 February 2017

With the agreement of Mr Aled Wyn Williams of Parkdale, 8 Broadway, Rhos On Sea, Conwy, LL28 4AR, the Investigation Committee made an order that he be reprimanded, fined £2,250 and pay costs of £1,368 with respect to a complaint that:

1. Between 1 June 2011 and 7 June 2016 Mr Aled Williams FCA, engaged in public practice without holding a practising certificate contrary to Principal Bye-law 51a.
2. Between 1 June 2011 and 31 May 2016 Mr Aled Williams FCA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.

033151

AUDIT REGISTRATION COMMITTEE

ORDER – 14 DECEMBER 2016

6 Publicity Statement

Moore Stephens, 30 Gay Street, Bath, BA1 2PA, has agreed to pay a regulatory penalty of £5,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 6.06 for failing to comply with an undertaking previously given to arrange for a hot file review to be carried out by a reviewer from outside the firm's network.

023441

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