Disciplinary Orders and Regulatory Decisions

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mr Andrew Clive Hind [ACA] of
14 Princes Avenue, LONDON, N10 3LR

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 6 December 2017

Type of Member Member

Terms of complaint

Between 1 November 2006 and 23 March 2010 Mr Andrew Hind ACA conspired by insider dealing to acquire price affected securities on the regulated market.

Mr Andrew Clive Hind is therefore liable to disciplinary action under Disciplinary Bye-law 4.1 (a)

Hearing date

06 December 2017

Previous hearing date(s)

N/A

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes
All heads of complaint proven	Yes
Sentencing order	a) exclusion; and b) costs of £4724.50.
Procedural matters and findings	
Parties present	Andrew Clive Hind
Represented	Investigation Committee (IC) was represented by Ms Jennings
Hearing in public or private	The hearing was in private
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service

Documents considered by the tribunal	The tribunal considered the documents contained in the IC's bundle together with documents submitted by the defendant.
Findings on preliminary matters	The tribunal was asked by the defendant whether the recording of the hearing could be ordered to be made available to the Financial Conduct Authority for the purposes of the forthcoming confiscation hearing. The IC submitted that it could not be guaranteed that this would not happen, as the ICAEW would be subject to the jurisdiction of the Crown Court in this regard. Whilst in the normal course of events a transcript of a recording of a private hearing would not be given to any person outside of the Institute, it could not be ruled out that a court would not order disclosure. The legal assessor informed the tribunal that this issue would warrant further legal research and that Mr Hind may wish to seek an adjournment for this matter to be considered further. She also mentioned that Mr Hind should seek such an adjournment if this was in any way to cut across any matter he felt appropriate to raise with the tribunal in order to bring his defence. Mr Hind decided not to seek an adjournment and accepted the position that no guarantee could be given.

Issues of fact and law

1. On 25 May 2012, the Financial Conduct Authority ('FCA'), (formerly the Financial Services Authority ('FSA')), contacted ICAEW to explain that they were conducting an investigation called 'A,' into whether insider dealing, contrary to the Criminal Justice Act 1993 and/or market abuse, as defined in section 118 of the Financial Services and Markets Act 2000 (FSMA), had occurred. They believed that one of the individuals involved, Mr Hind, was a member of ICAEW.

2. ICAEW confirmed to the FCA that Mr Hind was a member of ICAEW.

3. By way of background, it appears that Mr Hind had previously worked for the predecessor of 'B'. He was later a Financial Director at 'C' and then set up his own business providing consultancy services to 'C', 'D', 'E' and others. He also set up a company in property and in wholesale/retail of high value watches. He was also the director of 'F' Ltd. He was not a 'high street accountant,' but did charge fees for his services.

4. Mr Hind, along with others, was later charged with the offence of insider dealing between 1 November 2006 and 23 March 2010, following their arrests on 23 March 2010.

5. On 9 May 2016, Mr Hind and one other were convicted of one count of conspiracy to insider deal to acquire price affected securities on the regulated market. Three other defendants were acquitted.

6. Mr Hind was sentenced on 12 May 2016 by His Honour Judge Pegden, to an immediate custodial sentence of three and a half years. A confiscation hearing is listed for a contested hearing in April 2018.

Complaint

7. The offence of insider dealing is set out in section 52 of the Criminal Justice Act 1993. Mr Hind's role in the insider dealing is as explained below and in the Prosecution's Case Summary and Prosecution's Note for Sentence.

8. As can be seen from the Prosecution's Note For Sentence, which was largely adopted by His Honour Judge Pegden at the sentencing hearing, the 'insider' involved in this case was Mr 'G', who was a Senior Investment Banker, employed in the Corporate Broking departments of 'H', 'I' and 'J', at the relevant time. He had access to inside information on the deals in which he was involved and on transactions worked on by his colleagues.

9. Mr Hind was friends with Mr 'G', who passed the inside information to him, and Mr Hind acted as an intermediary and arranged for private traders, Mr 'K' and Mr 'L' (who were acquitted of the offence) to essentially place a bet on whether the price of a stock would rise or fall. Mr Hind kept a spreadsheet that recorded the balance of the trading and Mr Hind used that spreadsheet to record the allocation of that balance amongst the conspirators.

10. While Mr Hind was prosecuted for one count of conspiracy to insider deal, this arose from five separate incidents that occurred over a period of more than three years. The total value of the stocks that form the five incidents was £6,691,608**.** The profit allocated from these incidents to Mr Hind was £238,460**.** The prosecution's case focused on the profits allocated, as opposed to received, by the defendants.

11. The five acts of insider dealing that formed the charge (as opposed to the finding of the jury, which only had to identify one act of insider dealing) related to the following companies, with the following allocation of profits to Mr Hind:

'M' in October 2007	£140,500
'N' in July 2008	£25,800
'O' in October 2008	Nil
'P' in February 2009	£52,560
'Q' in March 2010	£19,600
Total:	£238,460

12. Defence counsel made representations that as the jury had to find that only one of the five deals reached the criminal burden of proof and three other defendants alleged to have been involved in the deals were acquitted, the allocation of profits and involvement in the deals should be reduced or disregarded accordingly. However, HHJ Pegden sentenced the defendants on the basis of the allocation and involvement alleged by the prosecution.

13. HHJ Pegden acknowledged that encryption was used in an attempt to conceal the records from authorities, including the use of code names and 'R'. Financial transactions were usually effected via foreign company bank accounts, cash payments, false invoices and payments in kind.

14. HHJ Pegden stated that Mr Hind's trading used sophisticated methods of secrecy and included insider dealing that was affected through him. In his view, Mr Hind played an important role in the conspiracy and was a 'middle man.' He stated that Mr Hind was, importantly, responsible for record keeping and allocation of profit or loss and that those profits were considerable. He stated that Mr Hind's behaviour was 'persistent, prolonged and deliberate'. With respect to the harm caused by his offending, HHJ Pegden stated that the information used to trade was to the disadvantage of others in the market who did not have it.

15. HHJ Pegden made reference to the case of *R v McQuoid* [2009] EWCA Crim 1301, in which the Judge stated that 'insider dealing is not a victimless crime and those who involve themselves in it are criminals; no more and no less'. HHJ Pegden also considered the need for deterrence in sentencing Mr Hind, as he considered that this type of crime is extremely time consuming to detect and the investigation into such matters is lengthy and painstaking. He had some regard to the theft, breach of trust, guidelines when sentencing Mr Hind, but was particularly mindful of the guidance given to sentences in cases of this type in the case of *McQuoid*, where the relevant factors to be considered were set out. He placed Mr Hind in the highest category, having the highest culpability, with a starting point of three and a half years custody and a range of two and a half to six years custody. The maximum sentence for insider dealing, as per ss61(b) of the Criminal Justice Act 1993, is seven years.

16. HHJ Pegden concluded that Mr Hind had played an important and leading role**.** In consideration of mitigation, he gave particular attention to the impact a custodial sentence would have on Mr Hind's children, his reputation, his previous good character and the time that had elapsed between his arrest and trial, namely six years. HHJ Pegden stated that these matters of mitigation had 'weighed significantly' with him, but considered the matter to be so serious that only an immediate custodial sentence was appropriate**.** Mr Hind was sentenced to three and a half years, of which he would serve half in custody and the remainder on licence. Mr Hind has now served his sentence and has been released from custody.

17. Mr Hind confirmed that he did not appeal the conviction. He explained that while he disagreed with the decision the jury had reached (noting that it was not unanimous) he considered it was a fair and balanced trial in the way it was conducted. He considered that the wrong verdict had been reached on the basis that first, Mr 'G' had lied at the police station and that this had coloured the jury's response and secondly, that for personal reasons he had chosen not to give evidence at the trial.

Conclusions and reasons for decision

18. The tribunal found the case proven. The Defendant was convicted of a serious and complex offence resulting in a not insignificant immediate custodial sentence. Thus, further to Disciplinary Bye-law 7.1, the conviction was conclusive evidence of an act or omission likely to give rise to discredit and the tribunal found the Defendant to have breached Disciplinary Bye-law 4.1(a).

Matters relevant to sentencing

19. The defendant had no prior disciplinary record. The tribunal took into account that the offence had not been committed whilst acting as a chartered accountant. The tribunal did not consider that any of the other matters raised by the defendant amounted to mitigation.

20. The aggravating features were that the offence was carried out over a long period of time and was based on dishonesty. In the words of the presiding judge, HH Judge Pegden QC, the offence had amounted to "persistent, prolonged and deliberate dishonest behaviour". The tribunal was satisfied that the offence committed was of such seriousness that no lesser sanction than exclusion was warranted. The defendant's conduct had fallen far below the standards expected by the public of chartered accountants.

Sentencing Order

21. The tribunal took into account its *Guidance on Sanctions* and imposed the following sanction:

    (a) Exclusion from membership;

    (b) Costs of £4724.50
    payable within 12 months of the date of this Order (mindful that the confiscation proceedings were starting in April 2018).

Decision on publicity

22. Publicity with names.

Non Accountant Chairman	Mr Richard Farrant	
Accountant Member	Mr Jon Newell FCA	
Non Accountant Member	Mr Graham Humby	
Legal Assessor	Ms Melanie Carter	**008217**

2 Mr Anthony Charles David Wiggin FCA of
Soane Point, 6-8 Market Place, READING, RG1 2EG.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 6 December 2017.

Type of Member Member

Terms of complaint

1. Mr A C D Wiggin FCA, 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 in the form of an undertaking given by Mr Wiggin under the Company Directors Disqualification Act (CDDA) 1986 signed by Mr Wiggin on 8 December 1999.

2. Mr A C D Wiggin FCA, between 8 December 1999 and 6 May 2015 failed to report to ICAEW Head of Staff that he had been disqualified as a director pursuant to Section 6 Company Directors Disqualification Act and / or failed to disclose the undisputed facts supporting that disqualification.

Mr Anthony Charles David Wiggin is therefore liable to disciplinary action under Disciplinary Bye-law (DBL) 4.1a in respect of head one and 4.1.c in respect of head two.

Hearing date

06 December 2017

Previous hearing date(s)

N/A

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes
All heads of complaint proven	Yes
Sentencing order	a) reprimand b) fine of £2,500 c) costs of £5,000

Procedural matters and findings

Parties present	Mr A C D Wiggin and the Investigation Committee (IC)
Represented	The IC was represented by solicitor Ian Graham of the ICAEW
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 documents provided by the defendant.

Issues of fact and law

Material facts leading to disqualification

1. The defendant was a director of 'A' Ltd which was wound up by order of the High Court on 22 July 1998. 'A' Ltd was incorporated on 13 November 1995 and commenced trading on 1 December 1995. It ran a Park Farm and Visitors Centre. Its estimated deficiency in the liquidation was £480,264. The defendant and Mr 'B' were its directors.

2. 'A' Ltd was the trading subsidiary of 'C' which was set up by Mr 'D' to provide for disadvantaged children. It provided "camps" for those children at 'E' where they could experience rural life.

3. Due to laws restricting charitable trusts, trade had to take place via a separate entity and 'A' Ltd was that entity. The defendant and Mr 'B' became trustees of 'C' in 1995 before becoming directors of 'A' Ltd on 13 November 1995.

4. Mr 'D' was Chief Executive of 'C', allowing him to take a salary. He never became a director of 'A' Ltd but was considered a de facto director.

5. Over its trading life, 'A' Ltd incurred losses and no additional support or sponsorship could be obtained. Toward the end of 1997, 'F' (Insolvency Practitioners) were approached and it recommended the company cease to trade owing to its insolvent status. 'A' Ltd ceased trading on 7 May 1998 and a new company took over management of 'E' on 8 May 1998.

6. CDDA proceedings were taken against Mr 'D' by the Official Receiver regarding his conduct in 'A' Ltd. He was disqualified as a director under Section 6 for 5 years on 15 October 1999.

7. On 8 December 1999 the defendant was disqualified as a director under Section 6 following his acceptance of undisputed facts pursuant to Re Carecraft Construction Co Limited [1994] 1 WLR 172.

8. DBL 7.2 (effective until 28 September 2011) stated:

   "The fact that a member, member firm or provisional member:

   a. [omitted]

   b. has had a disqualification order made against him or has given a disqualification undertaking which has been accepted by the Secretary of State under the Company Directors Disqualification Act 1986,

   shall, for the purposes of these bye-laws, be conclusive evidence of the commission by him of such an act or default as is mentioned in bye-law 4.1(a) or 5.1(a), as the case may be."

9. In accordance with DBL7.2 the defendant's disqualification as a director is conclusive evidence of discredit under DBL4.1.a.

Second head of complaint

10. DBL 9.1 and 9.2 (effective until 28 September 2011) stated:

"(9.1) Any person may bring to the attention of the head of staff any facts or matters indicating that a member, a firm or a provisional member may have become liable to disciplinary action under these bye-laws or the AADB Scheme (http://www.frc.org.uk/aadb) or the JDS; and it is the duty of every member, where it is in the public interest for him to do so, to report to the head of staff any such facts or matters of which he is aware.

(9.2) In determining whether it is in the public interest for a member to report any such facts or matters under paragraph 1 regard shall be had to such guidance as may from time to time be issued by the Council."

11. The duty to report misconduct (guidance effective 4 August 1993) at paragraph 6 states:

"It is …in the public interest that a member's or provisional member's conduct should be considered by the Institute in the circumstances listed below. The circumstances are where the member or provisional member has or may have:

[i to v. omitted]

vi. performed their professional work or the duties of their employment in a grossly incompetent manner;

[vii and viii omitted]

12. The defendant did not tell ICAEW he had been disqualified as a director under the CDDA. This was discovered as part of routine checks undertaken when the defendant's firm changed its name.

13. The defendant told the Tribunal that he believed there were systems monitoring members to identify these disqualifications.

Conclusions and reasons for decision

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

15. In respect of head one the defendant's disqualification as a director renders him in breach of DBL4.1.a via operation of DBL7.2.b. The statement of facts was not in dispute for the purposes of a 'Carecraft' settlement and was therefore probative evidence underlying his acceptance of both the behaviour and his disqualification.

16. The defendant had a corresponding duty, with which he failed to comply, to report the directors' disqualification order in accordance with DBL9.1. As such he was in breach of DBL 4.1.c.

Matters relevant to sentencing

17. The Tribunal took into account its *Guidance on Sanctions.*

18. It noted that the defendant did not have a prior disciplinary record. The Tribunal considered that there were significant mitigating features in this matter :

(a) The shortfalls in his conduct were at the lower end of seriousness, reflected in the fact that the period of disqualification was relatively short. Thus, the failings were in essence: first, that he had relied on a loan to the company from Mr 'D' which Mr 'D'

had stated publicly was subordinated to all other claims on the company and would not be withdrawn if the company could not afford to repay it. The subordination of the loan had subsequently been found to be ineffective; secondly, he had relied on the fact that the property assets of the parent trust had a market value considerably in excess of its liabilities, and that they would be available to the company which was its trading subsidiary. He had thereby wrongly regarded the two entities as a single concern. He noted that the auditors of the company had also relied on this. In the event the litigation costs in relation to the status of the loan had more than eaten up the surplus.

(b) He had not just sat back however once the company had got into difficulties, and could be seen to have taken corrective action. He had appointed 'F' (Insolvency practitioners) to advise on the situation and personally become very involved in trying to turn matters around, and had organised a charity event to raise funds to input to the failing company.

(c) Although there were many years in between the underlying events and when this came to light (when the company applied for audit registration), during this period, the defendant had not been aware that there had been anything amiss in not reporting the disqualification. He had moreover discussed whether he needed to report this matter with his insolvency practitioner advisers, 'F'.

(d) The failure to report had been inadvertent.

(e) It did not appear that there had been any other criticisms or regulatory difficulties arising from his practice over the intervening years.

19. In these circumstances, the Tribunal were of the view that whilst the disqualification order was a serious matter, the failure to report having been inadvertent and given the mitigation, a reprimand and a fine were the appropriate sanctions. The Tribunal took into account the defendant's means.

Sentencing Order

20. The Tribunal order that the defendant:

(a) Be reprimanded;

(b) Pay a fine of £2,500;

(c) Pay costs of £5,000.

The Tribunal further ordered that the defendant pay the fine and costs over 12 months, in monthly instalments of £625, the first instalment to be made by 31 January 2018.

Decision on publicity

21. Publicity with names.

Non Accountant Chairman	Mr Richard Farrant
Accountant Member	Mr Jon Newell FCA
Non Accountant Member	Mr Graham Humby
Legal Assessor	Ms Melanie Carter

027944

3 **Mr David Richard Meacher-Jones FCA**
6 St. Johns Court, Vicars Lane, CHESTER, CH1 1QE

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 9 January 2018.

Type of Member Member

Terms of complaint

1. On 26 February 2014, Mr D Meacher-Jones FCA issued an audit report in the trading name of his firm, Meacher-Jones, in respect of the financial statements of 'A' Limited for the year ended 30 September 2013 when the firm was not a registered auditor, contrary to section 1213 of the Companies Act 2006.

2. On 4 July 2014, Mr D Meacher-Jones FCA issued an audit report in the trading name of his firm, Meacher-Jones, in respect of the financial statements of 'B' Limited for the year ended 30 April 2014 when the firm was not a registered auditor, contrary to section 1213 of the Companies Act 2006.

3. On 12 May 2014, Mr Meacher-Jones FCA issued an accountants report in the trading name of his firm, Meacher-Jones, in respect of the unaudited financial statements of 'C' Ltd for the year ended 30 September 2013 when the company was not entitled to audit exemption under section 477 of the Companies Act 2006.

Mr David Richard Meacher-Jones is therefore liable, in respect of all heads, to disciplinary action under Disciplinary Bye-law (DBL) 4.1.a

Hearing date

9 January 2018

Previous hearing dates

None

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes
All heads of complaint proven	Yes
Sentencing order	(i) Severe reprimand; (ii) fine of £5,000

Procedural matters and findings

Parties present	Mr David Meacher-Jones was present.
Represented	Mr Meacher-Jones was represented by Mr Jonathan Goodwin, solicitor advocate. The Investigation Committee was represented by Mr Ian Graham.
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 report and bundles supplied by Mr Meacher-Jones in advance of the hearing together with a single document submitted by the IC during the hearing, and a bundle of character references submitted by Mr Meacher-Jones. There was evidence of Mr Meacher-Jones' means.

The Investigation Committee's (IC's) case

1. Section 1213 of the Companies Act 2006 provides (in part) as follows:

   "(1) No person may act as a statutory auditor of an audited person if he is ineligible for appointment as a statutory auditor.

   …

   (8) In proceedings against a person for an offence under this section it is a defence for him to show that he did not know and had no reason to believe that he was, or had become, ineligible for appointment as a statutory auditor."

2. The Defendant is the sole director of Meacher-Jones and Company Limited, which is a regulated accountancy practice based in Chester ("the firm"). That firm had been registered to conduct audit work, pursuant to the ICAEW's Audit Regulations, until early in 2014.

3. On 4 May 2012, the Defendant was notified by ICAEW that the firm's audit registration would continue subject to certain conditions and restrictions.

4. By a letter dated 6 December 2013, the ICAEW notified the Defendant of various failings by him which breached those conditions and restrictions. It warned him that the Audit Registration Committee would, on 15 January 2014, consider those breaches and also *"whether to withdraw your firm's audit registration as a result of these breaches.".*

5. On 15 January 2014, the Audit Registration Committee decided to withdraw the firm's audit registration with effect from 3 February 2014. ICAEW notified the Defendant of this decision by a letter dated 16 January 2014. The Defendant's right to a review of this decision was not exercised. The firm was, accordingly, not a registered auditor with effect from 3 February 2014.

6. On 26 February 2014, the Defendant signed an audit report in the name of his firm in respect of the financial statements of a company called 'A' Limited for the year ended 30 September 2013. He was not entitled to do this because his firm no longer held audit registration with ICAEW and neither it nor he was a registered auditor. Moreover, and as a result, the signing of the audit report contravened Section 1213 of the Companies Act 2006.

7. On 4 July 2014, the Defendant signed an audit report in the name of his firm in respect of the unaudited financial statements of a company called 'B' Limited for the year ended 30 April 2014. The Defendant was not entitled to purport to sign an audit report because his firm no longer held audit registration with ICAEW and neither it nor he was not a registered auditor. Moreover, and as a result, the signing of the audit report contravened Section 1213 of the Companies Act 2006.

8. On 12 May 2014, the Defendant issued an accountants report in the name of his firm in respect of the unaudited financial statements of 'C' Limited for the year ended 30 September 2013 in which the directors claimed exemption from audit when that company was not entitled to audit exemption under section 477 of the Companies Act 2006.

9. Each of these acts constitute a breach of DBL 4.1(a).

The Defence

10. The Defendant admitted heads of complaint (2) and (3).

11. The Defendant denied head of complaint (1). His defence was that as a matter of fact he did not receive ICAEW's letter dated 16 January 2014, notifying him that his firm's audit registration had been removed. He was therefore entitled to proceed as if that registration were in place. As soon as the position became known, he ceased.

12. Although no proceedings have been brought against him for any offence under section 1213 of the Companies Act 2006, the wording of the statutory defence of sub-section 8 of that section is of assistance. It is submitted that by the non-receipt of the letter of 16 January 2014, the Defendant therefore did not know and had no reason to believe that he was or had become ineligible for appointment as a statutory auditor when he signed the audit report for 'A' Limited on 26 February 2014. As a professional person, the Defendant was entitled to receive notice that his firm's audit registration had been withdrawn, but he did not receive such notice. Therefore, he did not breach DBL 4.1(a) in so doing.

13. [Private]

14. The IC did not accept this defence. In its submission, and in reliance on Audit Regulation 1.08, the letter of 16 January 2014 (which was sent by post) was deemed to have taken effect two business days after it was posted, namely on 18 January 2014, which was long before 26 February 2014.

Issues of fact and law

15. No issues of fact or law arose in respect of heads of complaint (2) and (3) because they were admitted.

16. As far as head of complaint 1 was concerned, these are the following issues of fact and law.

17. Did the Defendant receive the ICAEW's letter dated 16 January 2014?

18. If not, can it be said that he did not know and had no reason to believe that he was or had become ineligible for appointment as a statutory auditor when he signed the audit report for 'A' Limited on 26 February 2014?

19. If it can be said, does that amount to a defence to the allegation that DBL 4.1(a) has been breached?

20. To what extent, if any, does the Defendant's mental health bear on these matters as a matter of fact?

21. The tribunal found all heads of complaint proved (heads (2) and (3) proved on admission), and it found the entire complaint proved.

Conclusions and reasons for decision

Did the Defendant receive the ICAEW's letter dated 16 January 2014?

22. As a preliminary point, it is not in issue that the Defendant signed the audit report on 26 February 2014. He did so after the ARC withdrew his firm's audit registration.

23. The Defendant stated in writing that he did not receive the letter dated 16 January 2014, and so he did not know that his firm's audit registration had been withdrawn. That written evidence was adopted in submissions. The IC, in response to this evidence, relied on the deeming provision of Audit Regulation 1.08 to show that the Defendant had deemed knowledge of the letter's contents two business days after it was sent. It was submitted by Mr Goodwin for the Defendant that this argument must fail because such a deeming provision can be, and is, successfully rebutted by a matter of fact.

24. During the hearing, and in response to a question from the chair of the tribunal, the IC sought to prove that ICAEW's letter had been posted by producing a photocopy of what, in its submission, was the actual envelope in which the letter had been sent. Mr Goodwin, on his client's behalf, objected to the admissibility of this evidence because it was unfairly late, and also submitted that it should be given no weight because (i) it did not in and of itself disprove that the letter was not received by his client; (ii) the letter was not marked as a registered letter, whereas the envelope ambiguously was marked first class and had a "signed for" sticker on it and (iii) there was no evidence adduced by the IC from the actual sender of the letter that the letter had actually been sent.

25. The tribunal accepted Mr Goodwin's submissions. It is clear that the receipt of the letter of 16 January 2014 has been a matter in issue in these proceedings for some time. Mr Goodwin was correct to argue that a deeming provision is rebuttable by evidence to the contrary, and in this case there was evidence to the contrary. The IC failed to prove that the letter of 16 January 2014 was received by the Defendant and it was not enough only to rely on a deeming provision.

26. The tribunal noted the photocopy of the envelope which the IC produced at the hearing, but did not admit it as evidence that the envelope contained the letter of 16 January 2014 because it was admitted too late. Even if it had been adduced on time, it was clearly insufficient to prove that the letter had been sent to the Defendant. First, there was no evidence from the person who actually posted the envelope with the letter in it. Secondly, the envelope is not dated; thirdly, it anomalously had a "signed for" sticker on it, whereas the letter was not described as a registered letter. Feasibly, the second and third points could have been fully addressed in evidence from the sender, but there was no such evidence.

27. The tribunal therefore finds as a matter of fact that the Defendant did not receive the letter dated 16 January 2014.

Can it be said that the Defendant did not know and had no reason to believe that he was or had become ineligible for appointment as a statutory auditor when he signed the audit report for 'A' Limited on 26 February 2014?

28. It can be plausibly said that the Defendant did not actually know that he had become ineligible for appointment, because he did not know what the letter of 16 January 2014 (telling him as much) said, as he did not receive it. The tribunal found accordingly.

29. However, the statutory defence (which if it is to be adopted in these proceedings needs to be considered in full) does not stop there. It provides that the person who is alleged to have breached the section must "*show*" that he "*did not know and had no reason to believe*.." (underlining added).

30. To avail himself of this defence, the Defendant must not only show that he did not know, but he must also show that he had no reason to believe that he had become ineligible for appointment as a statutory auditor. The tribunal finds that he has failed to do this for the following reasons.

31. The circumstances giving rise to the withdrawal of the firm's registration in January 2014 had their origins in May 2012, when the Audit Registration Committee imposed conditions and restrictions on it. From that time, the Defendant knew, as a matter of common sense and because he was expressly told by ICAEW in its letter to him dated 4 May 2012, that if those conditions and restrictions were breached, there was a risk that audit registration would be lost. He also knew that he was in breach of those conditions and restrictions because he caused them to happen. This state of affairs culminated in ICAEW's letter to him of 6 December 2013, in which complaint was made that the conditions and restrictions were not being complied with. In that letter, ICAEW spelled out that the withdrawal of audit registration would be considered on 15 January 2014. The letter concluded with the following:

"These matters will now be referred to the Audit Registration Committee (ARC) when it meets on 15 January 2014 for the committee to reconsider the breaches of the conditions and restrictions imposed on your firms [sic] audit registration by the ARC at its meeting in May 2012. The committee will also consider whether to withdraw your firm's audit registration as a result of these breaches."

32. The Defendant accepts that he received this letter. Furthermore, in his letter dated 3 October 2014, he tells ICAEW….. [Private]. The work issue was stated to be "*potential loss of audit registration*".

33. The tribunal finds that the Defendant knew in December 2013 and the beginning of January 2014 that he might very well lose his audit registration and that a decision about that would be made by ARC on 15 January 2014. He made no attempt to clarify the position with the ICAEW before 26 February 2014. His decision to sign the audit report on 26 February 2014 was therefore unreasonable.

34. The tribunal does not accept Mr Goodwin's submission that as a professional person, the Defendant was simply entitled to await formal notification of audit registration withdrawal before ceasing to act as an auditor and until then could carry on as before. As the language of sub-section 8 of section 1213 suggests, it is more complicated than that. What is relevant is not only that the person did not know that audit registration had been withdrawn, but also that he had no reason to believe that he was ineligible (underlining added). In this case, the tribunal has found that the Defendant did not actually know. However, it also finds that he *did* have reason to believe that he was ineligible. The Defendant has therefore failed to "show" both limbs of the sub-section 8 defence. It must follow that the Defendant has breached section 1213.

35. A breach of section 1213 is self-evidently conduct which brings discredit, and the tribunal finds that DBL 4.1(a) has been breached.

36. The tribunal notes, that in February 2014, the Defendant was attending to professional matters, including the conclusion of the audit process that is part of the subject matter of this complaint.

37. [Private].

Matters relevant to sentencing

38. The tribunal considered the *Guidance on Sanction*s and saw no reason to depart from that. It was satisfied that no lesser penalty than the one imposed was appropriate.

39. The tribunal considered that the matters complained of, and for which the Defendant has been found responsible, are very serious. It is not acceptable, in the absence of any defence or lawful justification, for members of ICAEW to sign audit reports when they should not have done. It is unlawful, and risks undermining the trust that the public and other institutions have in ICAEW. In the absence of mitigating factors, the Defendant should expect to receive a severe sanction.

40. In this case, however, there are a number of powerful mitigating factors which were persuasively explained by Mr Goodwin, and these have had the effect of reducing the penalty (as well as the amount of costs awarded) that the Defendant was liable to receive. They are: (i) the Defendant's very difficult personal circumstances; (ii) his contrition, apology, and remorse; (iii) his means; (iv) clear evidence of insight into his actions; (iv) his determination and success, with supporting evidence, to turn his personal and professional life around, including seeking professional (including retaining Mercia to conduct a Practice Assurance Compliance review in March 2017 and to advise on heightened quality control and management of his practice); (v) the length of time that this complaint, which is stressful in itself, has been over him (about 3½ years). These factors have persuaded the tribunal that exclusion is not a proportionate or fair penalty.

41. There is a previous disciplinary record. On 22 October 2014, the Defendant agreed to a severe reprimand and to pay a fine of £6,350 as well as £3,340 costs. The reason was that he breached the conditions and restrictions with regard to a number of audit matters, which had been imposed by the ARC, and which are alluded to above. The tribunal does not consider this to be an aggravating factor, although it is serious. The subject matter of that disciplinary matter, while different and distinct from the current complaint, arose in precisely the same period and from the same background.

42. The tribunal has significantly reduced the amount of costs sought by ICAEW. This is less to do with concerns about the reasonableness of those costs but more to do with the Defendant's ability to pay them. The tribunal has taken into account the Defendant's means and applied the principle of proportionality to this issue, as well as the amount of the fine payable.

43. The tribunal is aware that in spite of its comments above, the Defendant now has two severe reprimands against his name. He must not allow matters in his professional life to deteriorate again.

44. The ICAEW may consider that a Practice Assurance visit on the Defendant's firm may be appropriate to ascertain, amongst other things, the progress the Defendant has made in improving the management of his practice.

Sentencing Order

(i) Severe reprimand
(ii) Fine of £5,000
(iii) Costs of £3,000

The sum of £8,000 shall be paid in 12 monthly instalments. The first instalment, due on 1 March 2018, is in the sum of £674. The remaining instalments due on the first of each subsequent month are in the sum of £666.

Decision on publicity

Publication with name.

Chairman	Mr Ron Whitfield	
Accountant Member	Mr Philip Coleman	
Non Accountant Member	Ms Martha Maher	
Legal Assessor	Mr Dominic Spenser Underhill	**022595**

APPEAL COMMITTEE PANEL ORDERS

4 Mr David Welsby ACA of
25 Victoria Road, DORCHESTER, DORSET, DT1 1SB

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 21 March 2017

Type of Member	Member
Date of Disciplinary Tribunal Hearing	23 November 2016
Date of Appeal Panel Hearing	21 March 2017

Terms of complaint found proven before the Disciplinary Tribunal (DCT)

1. Mr David Welsby ACA was reckless in that he failed to provide adequate protection for client money for which he had responsibility as Finance Director at 'A' Ltd, both in respect of accounting and internal reconciliation functions.

Mr David Alan Welsby is therefore liable to disciplinary action as follows:

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

Sentencing Order of DCT

The tribunal found the complaint proved. Severely reprimanded & pay costs of £6,600

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

Decision of Appeal Panel

(1) The appeal against the costs order was dismissed, although the requirement that costs should be paid in instalments was removed.

(2) Mr Welsby was ordered to pay the costs of the Appeal in the sum of £1,696.33 to be paid on or before 1 January 2019.

Reasons for decision

Procedural matters and findings

1. Mr Welsby was not present but provided written representations in support of his appeal. James Francis represented the Investigation Committee.

2. The hearing was in public.

3. No preliminary application was made.

Grounds of appeal

4. That the magnitude of the costs was disproportionate.

5. That the inclusion of costs for addressing the request for a private hearing was unfair.

Decision

6. The Appeal Committee dismissed the appeal. Mr Welsby was ordered to pay £1,696.33 in respect of the costs of the appeal, to be paid on or before 1 January 2019.

Reasons for decision

7. By the first ground of the appeal, Mr Welsby argued that the Committee and hearing costs should be reduced to £636 on the basis that setting aside a whole day for the original hearing was excessive. It was contended that the hearing itself lasted less than two hours and it would therefore be fair and proportionate to reduce these costs to a figure consistent with the amount which would have been sought had other hearings been listed on the same day.

8. The Appeal Committee rejected this ground of appeal. The Disciplinary Committee was entitled to require Mr Welsby to pay the costs of the proceedings against him, subject to ensuring that those costs had been reasonably incurred, were within his means to pay and did not amount to a disproportionate sanction. The Appeal Committee noted that no representations were made before the Disciplinary Committee as to the amount of costs sought or as to Mr Welsby's ability to pay a costs order. Equally, it was not asserted by Mr Welsby in his representations before the Appeal Committee that he was unable to pay the amount ordered, although it acknowledges that the amount was a significant sum for him.

9. The Appeal Committee was satisfied that the costs Mr Welsby had been ordered to pay by the Disciplinary Committee had been reasonably incurred and that Mr Welsby's means had been taken into account, notably in relation to the time which he had been given to pay and by the decision not to impose any separate fine. To suggest that there should be a reduction on the basis that other cases might have been able to be arranged on the same day was an artificial argument. The Appeal Committee determined that it was fair and proportionate that Mr Welsby be required to pay the actual costs incurred in the consideration of his case.

10. The second ground of appeal related to the costs which were incurred arising from Mr Welsby's request for a private hearing, which were said to amount to £312.50. Mr Welsby argued that his request arose out of concern for possible legal implications which may be caused to a criminal trial taking place in Scotland in which he is due to appear as a prosecution witness, rather than self-interest.

11. The Appeal Committee did not accept that Mr Welsby's motives were unmotivated by any degree of self-interest. That was plain from the terms of his original application and its determination by the Chairman, which was confirmed by letter dated 11 October 2016. However, regardless of the motive, the reality was that Mr Welsby had made an application which required determination in advance of the hearing. Costs were therefore incurred as a consequence. His application was refused. In all the circumstances, it was fair and reasonable for the costs associated with that application to be included as part of the overall costs which Mr Welsby was required to pay. The second ground of appeal was therefore also dismissed.

12. The Disciplinary Committee had ordered that the payment of costs should be discharged by way of 24 monthly instalments of £275, with a first payment on 1 January 2017. In fact, Mr Welsby paid £5,106.50 by way of costs on 17 January 2017, having borrowed that amount. In recognition of that payment and because the present regime of monthly instalments has been rendered inapplicable, the Appeal Committee varies the costs order so that Mr Welsby should pay the balance of the original costs order of £1,583.50 on or before 1 January 2019. This amounts to the same time period as set down by the Disciplinary Committee, but, given the present circumstances, the Appeal Committee considered that it was not necessary for the specific requirement of monthly instalments to continue, except if Mr Welsby chose to make payments in this manner.

13. As the appeal was dismissed, there was an application by Mr Francis for Mr Welsby to pay the costs of the appeal in the sum of £1,696.33. This was a reduction from the amount sought in a Schedule amounting to £1,771.33 which had been sent to Mr Welsby in advance of the hearing. This reduction reflected the actual time that Mr Francis had spent in attendance at the hearing. The Appeal Committee was satisfied that the amount sought had been incurred and was reasonable and that it was just and proportionate that Mr Welsby should pay those costs, taking into account his means. The Appeal Committee therefore ordered that Mr Welsby should pay the further sum of £1,696.33 by way of the costs of this appeal on or before 1 January 2019.

Non Accountant Chairman	Mr Angus Withington
Accountant Member	Mr Rob Tindle FCA
Accountant Member	Mr Andrew Strickland FCA
Non Accountant Member	Mrs Maureen Brennan
Non Accountant Member	Mr Geoff Baines

024569

INVESTIGATION COMMITTEE CONSENT ORDERS

5 Mr Jason Seagrave

Consent order made on 22 January 2018

With the agreement of Mr Jason Seagrave of 13-15 Regent Street, Nottingham, NG1 5BS, the Investigation Committee made an order that he be severely reprimanded, fined £3,450 and pay costs of £1,755 following a complaint that:

1. Mr Jason Seagrave was a director of 'X' Ltd, a firm in public practice which entered into administration on 24 July 2015.

2. On 22 October 2015, Mr Jason Seagrave signed an audit report on behalf of 'X' Ltd on the financial statements of 'Y' Limited for the year ended 31 March 2015 when he was not eligible to do so as 'X' Ltd ceased to be eligible to hold audit registration after the sale of its business and assets on 17 August 2015.

029603

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6 Kingston Smith LLP

Consent order made on 22 January 2018

With the agreement of Kingston Smith LLP of Devonshire House, 60 Goswell Road, London, EC1M 7AD, the Investigation Committee made an order that the firm be reprimanded, fined £2,650 and pay costs of £1,568 with respect to a complaint that:

Between 26 September 2013 and 7 August 2014, Kingston Smith LLP breached Section 102(d) of the Sarbanes-Oxley Act 2002 and Public Company Accounting Oversight Board Rule 2003, in that it failed to file a Special Report on a Form 3 with the Public Company Accounting Oversight Board disclosing that it had entered into a disciplinary consent order with ICAEW.

036660

AUDIT REGISTRATION COMMITTEE

ORDER – 17 JANUARY 2018

7 Publicity Statement

KPMG LLP, 15 Canada Square, London, E14 5GL, has agreed to pay a regulatory penalty of £2,350 which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 4.02b for allowing audit reports to be signed by an individual who did not, at the time, hold an appropriate practising certificate.

041817

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