Disciplinary Orders and Regulatory Decisions

DATE PUBLISHED: 6 MARCH 2019

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. Miss Stephanie Pereira of
Oxford, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 12 December 2018

Type of Member Provisional Member

Terms of complaint

Complaint 1A

On 22 December 2014, Miss Stephanie Pereira submitted a Credit for Prior Learning (CPL) Application for the Certificate Level Accounting Exam contrary to Student Regulation 30.

The above action was dishonest in that she knew she had failed this exam on 10 October 2014 and therefore was ineligible to apply for CPL in respect of this exam.

And/or

Complaint 1B

On 22 December 2014, Miss Stephanie Pereira submitted a Credit for Prior Learning (CPL) Application for the Certificate Level Accounting Exam contrary to Student Regulation 30.

Complaint 2

On or around 16 December 2015, Miss Stephanie Pereira falsified or caused to be falsified, a letter dated 8 December 2015 purporting to be from Dr 'A' and submitted this letter to ICAEW.

If proven, the provisional member may be liable to disciplinary action under Disciplinary Bye-law 4.1a in respect of complaint 1A and 2 and 4.1c in respect of complaint 1B.

Disciplinary Bye-law 4.1 states:

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

a. if in the course of carrying 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.

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

Hearing date

12 December 2018

Previous hearing date(s)

None

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes: 1A and 2
All heads of complaint proven	Yes: 1A and 2
Sentencing order	Declaration: Miss Stephanie Pereira is unfit to become a member of the ICAEW.
Procedural matters and findings	Miss Stephanie Pereira was a provisional member of ICAEW at all material times. Tribunal has jurisdiction and power to hear this complaint and pass sentence.
Parties present	Miss Stephanie Pereira was not present.
Represented	Miss Pereira was not represented. The Investigation Committee (IC) was represented by Mrs Silpa Tozar.
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. See below.
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle (together with some emails and an attachment between the Defendant and the ICAEW dated December 2018 which were added to the bundle as pages "IC 124 – 129". The attachment is a document which purports to be a letter from the Defendant to the ICAEW dated 15 January 2016. These documents are relevant to the question of jurisdiction, service and proceeding in the absence of the Defendant. They are in the possession of the Defendant. The tribunal also had witness statements about service from Diane Waller dated 17 October 2018, and 'Mr 'B' (process server) dated 4 July 2018 and 'Mr 'C' (process server) dated 18 October 2018.

Preliminary Matters

Jurisdiction, Service and Proceeding in Absence of the Defendant

Jurisdiction

1. By an email dated 11 December 2018 timed at 07.45 from the Defendant to Mrs Tozar (after a long period of silence), the Defendant stated that (i) she had seen on ICAEW's website that there is "*an open case*" against her (that is, this complaint); (ii) she had received no notices or letters about it; and (iii) she had resigned her membership on 15 January 2016 and moved overseas. Moreover, she stated that ICAEW had "confirmed my resignation". The Defendant argued that *"under ICAEW disciplinary bye-laws a non-member cannot be liable to disciplinary action".* She requested that the complaint be dismissed for this reason.

2. The Defendant asserted that she has sent a letter to the ICAEW dated 15 January 2016 in which she said: *"Please accept this letter as notice, confirming the resignation of my membership from the Institute of Chartered Accountants in England and Wales (ICAEW). I do not wish to pursue this qualification any further."*

3. ICAEW denies receiving that letter.

4. By an email to the Defendant dated 10 December 2018 timed at 08.08, a representative of the Membership Team of ICAEW stated *"I can confirm that your training contract has been ceased [sic] since 2016, and no further payments have been taken."*

5. Principal Bye-law (PBL) 6 provides that a member may tender their resignation by notice to ICAEW and on its acceptance by the Council (of ICAEW), "*but not until then*", they shall cease to be a member.

6. The Defendant's position is misconceived. Even if the Defendant's letter dated 15 January 2016, was (i) genuine, not a concoction and (ii) received by ICAEW, her resignation had, as a matter of fact, not been accepted by Council pursuant to PBL 6 and therefore her membership has not ceased. The tribunal does not have to find whether the letter was received by ICAEW or not. This is because the event which determines cessation of membership is not the receipt of letter, but the acceptance of the tender of resignation by Council. Whether the letter was received or not, the tribunal found that the acceptance by Council had not occurred.

7. The Defendant was incorrect to interpret the email from the membership team of ICAEW dated 10 December 2018 to be an acceptance of her resignation. This is because: (i) the email does not say that it was an acceptance and (ii) it is not evidence of any acceptance by Council of the tender of resignation. The email simply informs the Defendant of the two facts that her *"training contract has been ceased [sic] since 2016, and no further payments have been taken."*

8. As a matter of fact, the tribunal found that the Defendant was a provisional member of ICAEW when disciplinary proceedings were commenced and at the time of the hearing of this complaint. Therefore, the tribunal held that it possessed the jurisdiction to hear the complaint and the power to make decisions in respect of it.

Service of Notice of these Proceedings

9. The Defendant's registered address is in Oxford, United Kingdom. That address is cited at the beginning of this decision because it is the official address of the Defendant currently in the possession of ICAEW. The process server instructed by ICAEW was, however, unable to serve at that address because, when he arrived there, he found that it comprised "many flats" and it was unclear which one was occupied by the Defendant. As an alternative, the ICAEW tried an address in Hayes, United Kingdom, which was the Defendant's address set out by her in the letter dated 15 January 2016 referred to above. It was also the address to which the Defendant's former employer believed she could be reached and to which it had written to her in the past. It was also the address used, purportedly, by Dr 'A' in a letter dated 8 December 2015 which is the subject matter of this complaint.

10. According to the process server's witness statement dated 18 October 2018, when the process server first visited the Hayes address on 22 September 2018, the Defendant's father was present and he spoke to the process server. It appeared that the address was the Defendant's parent's home address and that the Defendant did not live there permanently. Contact details were left with the father but the process server was not contacted by the Defendant. When the process server returned a second time on 15 October 2018, the father indicated that he would receive process for, and would pass it to, the Defendant (although

not in so many words). The process server purported to effect service on the Defendant (as opposed to postal) service in that way. However, later the documents were returned to the ICAEW in the dead letter service which meant that the documents passed by hand to the father were posted back to ICAEW either by him or by a third party.

11. Regulation 20 of the Disciplinary Committee Regulations provides that service of any notice *"may (emphasis added) be served personally or by first class post to the defendant at his last known place of business appearing in the register or his last known home address."*

12. Notice of these proceedings was not served by post and was not served personally on the Defendant herself. So much is clear from the process servers' evidence. However, it was left with a man who was located in the Defendant's last known home address (Hayes) who identified himself as the Defendant's father and who said he would ensure that it would reach the Defendant. The notice, however, found its way back to the ICAEW by post.

13. The permissive language of regulation 20 does not preclude service by other means than post and direct personal service, including deemed or substituted service. The tribunal is satisfied that the ICAEW has taken all reasonable steps to serve the Defendant and that the leaving of notice of these proceedings at her last known home address in the custody of her father was good service. It also posted notice of these proceedings on its website. The Defendant was deemed served by the process server's actions and/or service was substituted by leaving the documents with the Defendant's father on her behalf. This occurred on 15 October 2018, and well within the 42 day notice period required under regulation 3 of the Regulations.

14. The tribunal's view is fortified by the fact that the Defendant has made contact with the ICAEW shortly before the hearing of this matter and she was aware of the hearing. In fact, she wrote to Mrs Tozar, who is the IC's legal representative, and clearly knew her email address. She stated in the email dated 11 December 2018 timed at 07.45 which is referred to above:

    "I have seen on the ICAEW website that there is an open case to my name. I have received no notices or letters about this. I resigned my ICAEW membership on 15 January 2016 and moved overseas…"

15. For the reasons specified above, the tribunal is satisfied that the Defendant has received due notice of the hearing of this complaint. The tribunal does not accept the assertion that the Defendant has not received any notices or letters. It is also very sceptical that the Defendant learned of this hearing for the first time by chance (which is what the Defendant implies in her email) when she was viewing the ICAEW's website. The seemingly accidental perusal of that small part of the ICAEW's website which happened to be about her seems highly improbable for a person who purportedly resigned from the ICAEW in January 2016 because she did not wish to pursue a career as a chartered accountant. A more probable explanation is that the Defendant knew of this hearing from the documents passed to her father at her last known home address. If the Defendant did peruse the ICAEW's website at all, it was because she had notice of the hearing as a result of what was handed to her father at her address; it is plausible that she wanted to see if the hearing was going ahead.

16. The tribunal also notes that the Defendant has, she says, moved overseas. Since she had not properly resigned from ICAEW, and if she has truly moved overseas (although the father suggested to the process server she lived in Hayes non-permanently, that is, temporarily or intermittently) she ought to have notified the ICAEW of this development but failed to do so. It is not a bar to proper service of these proceedings.

17. The tribunal was satisfied that it should proceed in the Defendant's absence. It took into account the seriousness of these proceedings, the allegation of dishonesty, and their possible consequences for the Defendant. It applied Tate v The Royal College of Veterinary Surgeons [2003] UKPC 34, applied in General Medical Council v Adeogba [2016] EWCA Civ 162; it noted Sanusi v General Medical Council [2018] EWHC 1388 (Admin). These are the factors the tribunal took into account.

18. First, it was satisfied that the Defendant had been served with notice for the reasons given above, and that she knew of the hearing date.

19. Secondly, the Defendant could have asked for an adjournment but did not. Instead, she sought to raise a legal defence of jurisdiction referred to above.

20. Thirdly, there is no evidence to support the view that were this matter to be adjourned, the Defendant would attend any adjourned hearing.

21. Fourthly, the tribunal considers that there is plausible evidence to prove that the Defendant has tried to evade service of these proceedings. Details have already been set out above, but in summary: (i) the registered address is misleadingly incomplete; (ii) there was an unsuccessful attempt to argue that the Defendant fell outside the jurisdiction of these proceedings based on an incorrect interpretation of the bye-laws; (iii) it is implausible that the Defendant's father would have posted the documents to the ICAEW he received on his daughter's behalf having said to the process server that he would give them to her; (iv) the assertion made in December 2018 that no notice or letters had been received by the Defendant is implausible and wrong.

22. Fifthly, it is in the public interest to proceed. There is a real risk of this matter falling outside the ICAEW's jurisdiction if there is a delay of this matter beyond 12 April 2019. The reason is that the Defendant's membership will lapse on that date in any event because it will be the third anniversary of the cessation of her training contract. Under the appropriate regulations, a provisional member's membership can lapse in that way. It is not in the public interest for the subject matter of this case to be unresolved, and potentially unresolvable in this way.

The IC's case

23. Student Regulation 30 provides that all applications for Credit for Prior Learning (CPL) shall *"not be allowed if the applicant has previously failed the module where Credit for Prior Learning is sought unless the applicant is eligible for credit for that module from an additional qualification they have gained since failing the module in question."*

24. At all material times, the Defendant was a provisional member of ICAEW. Initially, on 12 August 2014, she registered as a student for the ACA qualification and was allocated a student number which was 3900113. On the same day, she also commenced a training contract with a firm in public practice called 'D' LLP. She provided her office address when she applied for student membership.

25. On 10 October 2014, the Defendant failed an examination called Certificate Level Accounting. This examination was part of a suite of examinations leading to the ACA qualification. It was necessary for her to pass it before she could progress with her qualification.

26. However, on 1 December 2014, the Defendant re-registered as a new student. She used her home address rather than her office address and the ICAEW did not spot this. She was given a new student number because ICAEW thought she was a new student and not an existing student.

Complaint 1A

27. On 22 December 2014, using her new student number, the Defendant applied for Credit for Prior Learning (CPL) which meant she could be exempted from sitting certain examinations including the Certificate Level Accounting examination. She knew, however, that she was not entitled to this exemption because she had failed the same examination in October and Regulation 30 (extract cited above) makes it clear that CPL is not permitted for a failed examination unless (which is obviously not the case here) an additional qualification had been obtained since the examination was failed.

28. When making her application, the Defendant attached her degree certificate.

29. On 18 February 2014, ICAEW granted her CPL for the Certificate Level Accounting examination, the same examination she had failed in October 2014.

Complaint 2

30. On 7 December 2015, the Defendant sat two further examinations: (i) Professional Level Audit and Assurance and (ii) Professional Level Financial Accounting and Reporting. The first one did not go well and on the following day the Defendant told her employer that. She explained that she was sick part way through.

31. On 16 December 2015, the Defendant notified the ICAEW's special consideration team of the problem with the first exam and explained that she had been unwell. However, the medical evidence she supplied (such as it was) did not meet the ICAEW's Special Considerations Guidelines. In particular, it was not dated within two days of the examination and did not contain requisite specific explanations from the medical practitioner. The Defendant was told of these shortcomings on the same day.

32. On 18 December 2015, the Defendant submitted to the special consideration team by email a copy of a letter which purported to have been written by a "Dr 'A'" of 'E' and was dated 8 December 2015. It purported to comply with the Special Considerations Guidelines. It appeared to have been written on 'E's letterhead.

33. In fact, the purported letter was not written by "Dr 'A'" of 'E'. This was confirmed by 'E'.

34. The circumstances surrounding the discovery of this forgery by the Defendant's employer are relevant because they provide further circumstantial evidence of its commissioning.

35. [Paragraph private]

36. The employer then checked the authenticity of the Dr 'A' letter with 'E' who informed the employer on 3 February 2016, that "Dr 'A'" had written no such letter.

37. The employer called the Defendant in for a second meeting on 3 February 2016 when it was put to her that 'E' denied writing the Dr 'A' letter. The Defendant replied that she had indeed visited 'E', she saw a doctor and that "he" had written the letter.

38. The problem was that "Dr 'A'", who is indeed a doctor practising at 'E', is female. The Defendant replied that she had seen lots of doctors at 'E'.

39. The employer immediately began a disciplinary investigation and the Defendant was suspended pending that investigation. During that investigation, the Defendant refused her employer permission to contact Dr 'A' with her details. At a disciplinary hearing on 2 March 2016, the Defendant failed to attend; it was adjourned to 8 March 2016. On 8 March 2016, the Defendant stated that she was still unwell and would not attend. She requested that the hearing proceed in her absence. This occurred; the Defendant's employment was terminated without notice and the matter reported to the ICAEW. In the opinion of the employer, the Defendant was not a fit and proper person to be a member of ICAEW.

Defence

40. The Defendant has not offered any defence to the substantive allegations of the complaint. As described above, she asserts she has not been given notice of them although she admits seeing details of the forthcoming hearing on the ICAEW's website.

41. However, the Defendant has recently sought to argue that she is not liable to disciplinary action because she is not a member of ICAEW. This is described and discussed in detail above.

Issues of fact and law

42. Because the Defendant has not admitted the complaint and was not present at the hearing, the IC was put to proof of its complaint. The standard of proof was the balance of probabilities.

43. The issues of fact to be proved are whether:

    43.1 The Defendant submitted a CPL Application for the Certificate Level Accounting Examination contrary to Student regulation 30 on 22 December 2014;

    43.2 That action was dishonest because the Defendant knew she had failed this examination on 10 October 2014 and was therefore ineligible to apply for CPL about it;

    43.3 On or around 16 December 2015, the Defendant falsified or caused to be falsified a letter dated 8 December 2015 purportedly from Dr 'A';

    43.4 On or around 16 December 2015, the Defendant submitted the said letter to ICAEW.

44. The test to be applied to an allegation for dishonesty is set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378 and Lord Hoffman in Barlow Clowes International Ltd v Eurotrust International Ltd [2005] UKPC 37. This was recently re-affirmed in Ivey v Genting Casinos [2017] UKSC 67. In short, the actual state of the Defendant's knowledge and belief as to the facts should be ascertained, and then the question of whether her conduct was dishonest must be determined by applying the objective standards of ordinary, decent people.

45. The tribunal found Complaint 1A and 2 proved. There was no need to find Complaint 1B proved or not proved as a discrete head of complaint. If the facts of 1A were proved, it must follow that the facts of 1B would be proved as well. Complaint 1B is a modification of Complaint 1A, is less serious but which arises from the same nexus of fact.

Conclusions and reasons for decision

Complaint 1A

46. The tribunal was satisfied as a matter of fact the Defendant submitted an application for CPL which was contrary to Student Regulation 30. She had failed an examination. She was not allowed to obtain CPL in respect of it and she had not obtained the relevant "*additional qualification*" which would have fallen within the exception to Regulation 30.

47. The more complex issue to determine was whether or not this action by the Defendant was dishonest. The nature of the dishonesty described in the complaint is that the Defendant made the CPL application knowing that she had no right to do so because she knew (i) she had failed the examination and (ii) was ineligible to apply.

48. It is possible to conceive of a situation that a person might make an application for CPL when he or she is ineligible to do so without being dishonest. For example, they might honestly believe that they have an additional qualification when they do not or thought they understood or knew what Regulation 30 said or meant when they did not. These may not be likely scenarios, and it would be for the applicant to prove their case on the facts of each case, but they are possible. In short, making an application for CPL when a person is not eligible to do so is not in and of itself always going to be an act of dishonesty.

49. The reason why the tribunal discounts the Defendant's application as an innocent mistake of the kind suggested above, but an act of dishonesty, is that (a) she knew she had failed the examination; (b) knew what Regulation 30 said because she made an application under it but (c) tried to do so by re-registering as a new student using her parent's home address. This third action is suspicious. This is because it was not required under Regulation 30 and was completely unnecessary. It was misleading because it gave the impression to ICAEW that the Defendant who failed the examination in October 2014 was not the Defendant making the application in December 2014, but a different person. It appears to have been a deliberate attempt by her to mislead the ICAEW.

50. The tribunal found that the Defendant knew and believed that this was an entirely unnecessary registration of herself as a new student. It is reasonable to conclude that this was an attempt to circumvent the problem which Regulation 30 presented, which was that a person who had failed an examination (and thus who was a student member already, with an existing student number) could not obtain CPL.

51. It is true that the Defendant submitted her proper degree certificate when making the application. However, this would not be enough to un-mislead the ICAEW because they could not reasonably be expected to work out that the two student numbers – for them, two different people – are one and the same.

52. There is no doubt that attempting to mislead a regulator in this way would be considered dishonest by the objective standard of ordinary and decent people.

53. For these reasons, the tribunal found that the Defendant's actions as alleged in the complaint were dishonest.

54. There is no doubt this Complaint breaches DBL 4.1(a).

55. For all these reasons the tribunal found Complaint 1A proved.

Complaint 1B

56. There is no need to make a finding on Complaint 1B.

Complaint 2

57. The facts of this complaint suggest to the tribunal that, on the balance of probabilities, the letter dated 8 December 2015 was not written by Dr 'A'; moreover, there is sufficient circumstantial evidence to prove on the balance of probabilities that the Defendant either wrote the letter dated 8 December 2015 or caused it to be written at her direction. There is no-one else who is likely to have done those things.

58. There is no doubt that the Defendant submitted the letter to the ICAEW. She did so in an email dated 18 December 2015 and implicitly or explicitly admitted she did to her employer's representatives when she met them.

59. The tribunal draws an adverse inference from the Defendant's conduct towards her employer's attempts to find out what had happened. The tribunal finds it implausible, in the extreme, the Defendant's explanation that she asked 'E' to backdate a letter written by one of its doctors and that 'E' or, more to the point, Dr 'A', then agreed to do that. The Defendant had the motive to have the letter backdated – it would put it within the critical 48 hour period after the examination required under the Guidelines. However, there is no evidence whatsoever that Dr 'A' ever agreed to do this.

60. The tribunal also draws an adverse inference from the Defendant's mistake as to Dr 'A's gender. She sought to explain to her employer that she knew Dr 'A' had written the letter. She could not have known that because she described Dr 'A' as male.

61. Thirdly, an adverse inference should properly be drawn from the Defendant's refusal to disclose her details to the very doctor she said had diagnosed her condition. This was a reasonable and proportionate request by the Defendant's employer in the circumstances; it could have sorted the matter out once and for all and, if the Defendant had been telling the truth, it would have supported her position. By the same reasoning, however, if the Defendant was lying to her employer, it would have exposed the lie. The Defendant's refusal to allow her employer to engage with the actual doctor at the heart of this case was suspicious.

62. There is no doubt that Complaint 2 breaches DBL 4.1(a)

63. For all these reasons, the tribunal found Complaint 2 proved.

64. These complaints are very serious because they concern dishonest behaviour by a member of the ICAEW. That dishonesty involved misleading the ICAEW and the falsification of a doctor's opinion to the Defendant's unfair advantage. This is professional misconduct of a very high order and must be reflected in the penalty which must flow from it.

Matters relevant to sentencing

65. The tribunal considered the *Guidance on Sanctions* and saw no reason to depart from that. It was satisfied that no lesser sentence than the one imposed was appropriate.

66. There were no mitigating factors; the fact that the Defendant had no disciplinary record (normally a mitigating factor) has to be set against the fact that she had only been a member of ICAEW for four months before the conduct complained of occurred.

67. An aggravating factor is that this matter comprises two, not one, allegations involving dishonest conduct. Part of the misconduct involved the falsification of a professional person's purported opinion, namely Dr 'A', who was innocent of any involvement in this matter. The tribunal also noted the Defendant's refusal to engage with her regulator about this matter and the trouble and inconvenience as well as cost to which her refusal to accept service as well as to engage responsibly has caused the ICAEW.

Sentencing Order

1. Declaration that the Defendant is unfit to become a member of the ICAEW.
2. Costs in the sum of £8,000.

Decision on publicity

Publication with name.

Non Accountant Chair	Mrs Mary Kelly	
Accountant Member	Mr Jon Newell FCA	
Non Accountant Member	Mr Graham Humby	
Legal Assessor	Mr Dominic Spenser Underhill	**033445**

2. Mr Thomas Binns ACA of
Cheshire, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 8 January 2019

Type of Member Member

Terms of complaint

1a. In or around September 2016, Mr Thomas Binns ACA was dishonest in that while engaged in the audit of the financial statements of client A for the year ended 30 April 2016 he knowingly altered an email from his firm's Valuation team intended for the audit of client B and presented this as audit evidence for the audit of client A.

And/or

1b. In or around September 2016, Mr Thomas Binns ACA breached the fundamental principle of Integrity, in particular section 110 of ICAEW Code of Ethics, in that while engaged in the audit of the financial statements of client A for the year ended 30 April 2016 he altered an email from his firm's Valuation team intended for the audit of client B and presented this as audit evidence for the audit of client A.

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

Hearing date	08 January 2019
Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Complaint 1a found not proved Complaint 1b found proved by admission
Sentencing order	**Severe reprimand and order to pay ICAEW's costs of £6,916.17**
Parties present	Mr Thomas Binns (the Respondent) Ms Victoria Morgan, Legal Adviser, on behalf of the Investigation Committee Mrs Sarah George, Committee Administrator
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.

The Complaints were read into the record.

The Respondent not being represented and having taken no legal advice prior to the hearing, the Chairman explained briefly what "dishonesty" and "breach of the Fundamental Principle of Integrity" meant and what the difference between them was. She invited comments from Ms Morgan who did not demur.

The Respondent then indicated that he did not admit Complaint 1a but did admit Complaint 1b. The hearing proceeded on that basis.

The Investigation Committee's (IC's) case

1. The Respondent was employed by 'C' LLP between 29th August 2007 and 2nd August 2017. From 1st July 2016 he was promoted to the position of Assurance Director. However, he continued to exercise the role of senior manager with regard to Client A's audit for the year ended 30 April 2016.

2. During the course of this audit, the Respondent deliberately altered an email from his firm's Valuation team regarding the WACC for Client B to create what looked like an email from the Valuation team in relation to Client A, and attached it to Client A's file as audit evidence. Specifically, the Respondent altered the header, footer and changed the client name and relevant number of the email relating to Client B for use on the Client A audit file.

3. The Respondent has admitted that he changed the original email sent by 'D' in the Valuation team in relation to Client B, in order to use the same information for the Client B file without going back to the Valuation team. It was the IC's case that he intended that the altered email look like and be taken as originating from the Valuation team.

4. 'C' LLP instigated an investigation and produced a report which led to an internal disciplinary meeting. The matter was reported to ICAEW in a letter dated 20 September 2017 by 'C' LLP, in accordance with its duty to report misconduct.

5. The two client companies, A and B, are similar to each other in that they provide telecommunications services to SMEs in the UK. The companies are not connected to each other.

6. Both Client A and Client B hold intangible assets on their balance sheets. The companies amortise the intangible assets over their useful economic life, and also review the assets annually for impairment, as required by section 27 of FRS 102. This is to ensure that the value of the intangible assets at each balance sheet date is not materially misstated.

7. In respect of the annual impairment review, it is the client's responsibility to prepare the review. In certain circumstances, such as for Client A and Client B, the client management may undertake this review by using a valuation model and it is the auditor's responsibility to audit that process.

8. ISA 540 sets out the requirements of the auditor in reviewing the valuation model used by the client, including auditing the assumptions and inputs used in the model. In significant cases, the expectation would be for an auditor to use an internal valuation expert to audit this information, who would then be responsible for providing a report to the audit team. A valuation expert would normally be expected to be used where the client's valuation includes matters of significant judgement, for example, where a discount rate has been applied to the valuation by management. The audit team would then use the valuation expert's report to conclude whether the valuation of the intangible asset is appropriate.

9. For the audit of Client B, the audit team did involve the 'C' LLP Valuation team. The team was contacted to request their expertise in the audit of the client's impairment review. This was to support the audit team's conclusions on intangibles. The Respondent received an email from 'D' in 'C' LLP's Valuation team, with their analysis of the information provided by management for the audit of the valuation of the intangible assets. This included the Valuation team's conclusion on Client B's WACC and market comparables.

10. This email was placed on the Client B audit file. It included a substantial amount of other information as well as a paragraph, which stated:

> 'Based on the client's cash flows, we have derived an IRR [Internal Rate of Return] of 7.8%. This appears reasonable based on the client's WACC [Weighted Average Cost of Capital]. Our analysis of a market based WACC for Client B suggests a WACC in the range of 7.8% - 10.8%, which is reasonable but at the low end of our range. We can include this analysis in our memo to provide you with support for the client's calculation.'

11. The Client A audit file also contained a copy of an email purportedly from 'D' sent to The Respondent, which stated:

> 'Based on the client's cash flows, we have derived an IRR of 7.28%. This appears reasonable based on the client's WACC. Our analysis of a market based WACC for U suggests a WACC in the range of 7.8% - 10.8% on a pre-tax basis.'

12. This email above refers to 'U' which is one of Client A's brands. This 'email' contained only the paragraph referred to at paragraph 11 above and was not the full original email set out at paragraph 10 above.

13. Both emails are dated 18 February 2016 at 17:19. The Respondent forwarded the shorter email to himself and it was the forwarded and altered email that was placed on the audit file of Client A. The forwarded email was dated 25 September 2016 and timed at 13:06.

14. Each email had been placed on the relevant company's audit file as evidence of the involvement of the 'C' LLP's Valuation team in assessing the appropriateness of the client's valuation model.

15. During the audit of Client A for the year ended 30 April 2017, the engagement team contacted the 'C' LLP Valuation team to request an updated email to that provided in the previous year (i.e. the email referred to in paragraph 11 above). At this point, it became apparent that the Valuation team had not provided the original email dated 18 February 2016 for the Client A audit for the year ended 30 April 2016.

16. As part of the 'C' LLP investigation, the current Responsible Individual on the Client A audit, 'E', stated:

> 'I haven't repeated the calculation, but using a multiple of 8 to 10 which would seem about right in this industry, that would mean (based on a 'simple' calc) a headroom of around £80m to £130m. The Client B and Client A businesses are not identical, but they are in the same sector. Based on what I know, I would say that the statement that 'there was a lot of headroom' was not unreasonable. To put it another way, in discussions I have had on this with the engagement leader, the saddest thing to come out of this is that the EL [engagement leader] (who signed the 2016 accounts) went as far as to say that he would have been happy to sign the accounts without the involvement of Valuations, given what they already knew about the WACC and the headroom.'

17. The Respondent has stated that the impairment model prepared by the management of Client A was provided in late September 2016. Client A was going through a large acquisition, and was late in sending through its valuation model to support the intangible value. This information was needed to enable the Respondent to complete the necessary work for the audit and signed off to meet the client's banking covenant deadline on the 28 September 2016.

18. One of the assumptions in the valuation model prepared by management was the discount rate. Given the headroom on the impairment model, the Respondent concluded that the discount rate was not that sensitive to change. He took the decision that audit evidence to support the appropriateness of the discount rate would enhance the quality of the audit work performed.

19. The Respondent did not believe there was time to ask the 'C' LLP Valuation team to perform an assessment for the Client A audit. He therefore took the decision that, given the comparable nature of the businesses and the external benchmarking performed, he would use the work done for Client B to support the Client A audit.

20. The Respondent was asked about the changes that were made to the email, referring to wording that had been altered and the figure of 7.8% being changed to 7.28%. He stated that "the figure of 7.28% was to support the figure in the Client A model". He took the view that there was significant headroom on the Client A model (intangible value of £120m supported by annual EBITDA of £25m) and that as the Valuation team's conclusion on the Client B WACC was applicable and comparable to Client A (as they operated in similar industries), it could be used to support the Client A conclusion. He felt time pressured in order to meet the client's deadline.

21. The Respondent accepted that his actions were wrong, although he felt comfortable that the underlying information used did support what he wanted to achieve. The Respondent remained of the view that the conclusions drawn by the 'C' LLP Valuation team for Client B were appropriate to support the work being performed on the Client A audit.

22. He accepted that with hindsight he should have asked for support, contacted the Valuation team, or, at the least, recorded on the file the process he had gone through to use the assumptions provided by the Valuation team for the Client B client.

23. No one else was aware of what he had done and he did not disclose his actions to the engagement leader, or the audit associate he was working with.

24. The Respondent explained the pressure and consequences had he not met the deadline for filing the Client A accounts. He explained that one possible outcome could have been that the banks would seek to recover the debt from the company, which was at roughly £200million, or they may have incurred a penalty fee (which would have been more likely).

25. The Respondent fully admitted his actions and expressed remorse.

26. He put forward that, at the time, he was under significant pressure. He was still acting in a senior manager capacity on a number of engagements, as well as trying to deliver his role as an Assurance Director. In September 2016 he was under increased pressure due to the approaching September deadline for the filing of 31 December 2015 year-end financial statements, and this was the first year of companies filing under the new accounting standard, FRS 102.

27. Further, the Respondent contends that there were significant restrictions on staff availability, given the same filing pressures being in place across multiple clients. There was limited support.

28. The Respondent pointed to the significant pressure and expectations upon him at work as contributing to the error of judgment made. He highlighted a lack of work life balance with most working days being in excess of 11 hours and including weekends. A summary of the Respondent's timesheets for the six months from 1st July 2016 to 31st December 2016 was provided by 'C' LLP which shows that in that period the Respondent recorded 208 hours overtime, averaging over 2 hours overtime per working day.

29. In summary, the IC contended that the Respondent held a significant position of trust which he breached. Audit firms rely on their members of staff to ensure that audit work is conducted and documented correctly, reflecting the work that has actually been carried out. There would not have been any reason for the RI to have called into question the validity of an email received by The Respondent from the Valuation team confirming the reasonableness of the intangible assets valuation.

30. The Respondent did not attempt to contact the Valuations team to enquire as to whether they could provide a response within the required timeframe, but instead chose to create and use the changed email as audit evidence.

31. Paragraph 27.7 of FRS 102 does not require consideration of the recoverable amount of an asset if there is no indicator of impairment. The Respondent and Mr 'E' say that there was no indicator of impairment and so there was no requirement for the Respondent to obtain audit evidence from the 'C' LLP Valuations team in respect of the Client A audit.

32. The actions of the Respondent were only discovered when the 2017 engagement team requested a similar email be provided.

33. There is no suggestion that the use of the amended email on the Client A audit led to the incorrect audit opinion being issued for the 2016 Client A audit. Based on the email from the current engagement leader as set out above, the conclusion on the audit work appears reasonable.

34. The Respondent made no personal gain from submitting the altered email other than to ensure that he complied with the audit deadline and enhanced the quality of the audit.

35. In deliberately altering the email and putting it on the Client A audit file to evidence audit of the client's valuation, and thereby to support the Client A 2016 financial statements, the IC contended that the Respondent was dishonest and/or breached the fundamental principle of integrity.

Issues of fact and law

36. The IC relied on the Supreme Court decision in Ivey v. Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. The IC submitted that the Respondent knew or believed that he had altered the email from 'D', dated 18 February 2016 in relation to Client B to make it appear to relate to Client A by changing the IRR from 7.8% to 7.28% and including reference to "U", one of Client A's brands and that he knew that he was wrong to do this. The IC further submitted that he did this for the purpose of enhancing the quality of Client A's audit. He had then placed the altered email on Client A's audit file, where it was not discovered for a year. The IC contended that his actions in producing a false document and making a false representation in the form of the altered email would be regarded as dishonest by the objective standards of ordinary decent people. The facts therefore met the test of dishonesty set out in Ivey and also in the two cases there cited, Royal Brunei Airlines Sdn Bhd v. Tan and Barlow Clowes.

The Respondent's Case

37. The Respondent gave evidence and did not dispute that he had altered the email from 'D' dated 18 February 2016 and used it to "enhance the quality" of the audit of Client A. He contended that he had not acted for the purpose of gain for himself and indeed derived no benefit for himself by his actions. He honestly believed that the factual content of the email dated 18 February 2016, prepared for the Client B audit was an accurate account of the position for Client A and that by placing the shortened version of the email on Client A's file he was doing no more than setting out an accurate valuation of "U", in accordance with what he knew and the information he had been given by Client A. He had had no intention to mislead, manipulate or falsify the audit. He was working to a tight deadline and Client A had been late in submitting all the relevant documentation to him to enable him to complete the work on the audit. He was working simultaneously on several other audit files with a similar deadline. He had been under very great pressure and stress and made an error of judgment – the first and only one he made during his career at 'C' LLP. He denied he had been dishonest.

Conclusions and reasons for decision

38. The tribunal found that the Respondent had altered the email of 18 February 2016 in the knowledge and belief that the contents of that email, relating as it did to Client B, were consistent, with a minor amendment of 7.8% to 7.28%, with Client A's position. He had "short-circuited" the normal channel of asking for another valuation for Client A from the Valuations team because he was under very great pressure of time and considered that there was no actual harm done in using the valuation for Client B, a client in the same sector as Client A, both providing telecommunications services to the SME market in the UK and whose businesses were comparable.

39. The tribunal found that the Respondent, by taking a short-cut in the way that he admitted in this case, behaved irresponsibly and, as the Respondent admitted, in breach of the Principle of Integrity that is fundamental to the practice of a Chartered Accountant. The tribunal accepted that the Respondent had a choice of actions available to him: that, without any untoward consequences, he could have omitted any reference to the valuation in auditing Client A: he could have referred the matter to a superior at 'C' LLP and asked for advice; and/or that he could have spoken to the Valuation team and asked them to agree that their valuation for Client B could be adapted *mutatis mutandis* for Client A. The tribunal further found that he had made a grave error of judgment that risked alienating a client and blackening the reputation of the firm and of the profession; but to designate his actions as "dishonest" would require a higher degree of culpability and a deliberate intention to mislead, which was not present in the evidence before us. The tribunal therefore found that the IC had not proved dishonesty on a balance of probabilities and we therefore dismissed Complaint 1a.

Matters relevant to sanction

40. The tribunal found the following mitigating factors:
    (i) The Respondent had no previous disciplinary findings against him;
    (ii) The Respondent was genuinely remorseful; he had learned his lesson and it was unlikely that he would repeat the conduct complained of;
    (iii) The conduct complained of was an isolated failure;
    (iv) There were no adverse financial or other consequences on any client or the Respondent's employers;
    (v) The Respondent made no personal gain from his actions;
    (vi) The Respondent had admitted the facts and accepted blame at the earliest opportunity after his actions had been discovered and never sought to hide or blame others for his actions;

(vii) The Respondent was under a high degree of stress and pressure at work at the time of his actions.

Sanction and Costs Order

41. The tribunal considered the *Guidance on Sanctions* (effective from 1 July 2018) and decided that the Respondent's actions fell into the "less serious" category under breach of the Principle of Integrity. The tribunal had regard to the paramount importance of protecting the public but in this case considered that the public interest would be served by a severe reprimand.

42. The IC applied for costs in the sum of £6,916.17. The tribunal considered these costs were reasonably incurred and having regard to the schedule of the Respondent's means, it was appropriate to award costs against the Respondent in the full amount claimed.

Decision on publicity

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

Non Accountant Chair	Mrs Rosalind Wright QC	
Accountant Member	Mr Martin Ward FCA	
Non Accountant Member	Mr Nigel Dodds	**040971**

3. Mr Costas Michael Takkas [ACA] of
London, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 15 January 2019

Type of Member	Member

Terms of Complaint

1. On 24 May 2017, at the US District Court, Eastern District of New York (Brooklyn), Mr Costas Takkas was convicted of money laundering conspiracy.

   Mr Costas Michael Takkas is therefore liable to disciplinary action under Disciplinary Bye-law 4.2.g

Hearing dates	15 January 2019
Previous hearing dates	N/A
Pre-hearing review or final hearing	Final hearing
Complaint found proved	Yes
Sentencing order	Exclusion Costs of £6,049

Procedural matters and findings

Parties and representation	The Investigation Committee was represented by Mrs Silpa Tozar. The defendant was present and was not represented.
Hearing in public or private	The hearing was in public
Decision on service	The tribunal was satisfied that service was in accordance with regulations 3 and 5 of the Disciplinary Committee Regulations.
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's bundle and the defendant's Regulation 13 Answers.

The Investigation Committee's case

1. The defendant has been a member of the ICAEW since 1982.

2. On 24 May 2017 he was convicted in the US District Court of an offence of money laundering conspiracy. The conviction related to a conspiracy to launder $3m in bribes paid to Mr 'A' by sports marketing companies. The background is as follows.

3. The defendant is a UK national and has previously been based in the Cayman Islands. He was general secretary of the 'B'. One of his associates was Mr 'A', a former president of 'C' covering North America, Central America and the Caribbean.

4. Mr ‘A’ took bribes from two companies, ‘D’ and ‘E’. The companies paid the money in order to benefit from Mr ‘A’s influence in relation to contracts for media and marketing rights relating to the ‘F’ World Cup qualifying matches in 2018 and 2022. ‘D’ entered into a contract for those rights with ‘F’ in August 2012. The contract was signed on ‘D’s behalf by Mr ‘G’, who was charged with conspiracy to launder money along with the defendant. The money for the bribes was funded jointly by ‘D’ and ‘E’.

5. The case against the defendant in the US District Court was that he assisted Mr ‘A’ by acting as an intermediary. He assisted in making wire transfer payments in order to conceal the true origin of payments to Mr ‘A’ and thereby hide his illegal activity.

- On 13 November 2012 $1.2m was transferred from ‘D’s account to a front company. $1m of that was then transferred on 21 November 2012 to the account of ‘H’ Ltd in the Cayman Islands. ‘H’ Ltd was a BVI registered company of which the defendant was the principal.

- On or about 14 December 2012 a further $500,000 was transferred by ‘D’ to another individual and then in to an account controlled by the defendant in the Cayman Islands.

- Transfers were then made by the defendant from these funds in the Cayman Islands to or for the benefit of Mr ‘A’. $80,000 was paid to a company who built a swimming pool at ‘A’s residence in Georgia, USA. A further sum was used to purchase real estate for Mr ‘A’ in Stone Mountain, Georgia.

- On or about 28 October 2014, $170,000 was wired from an account in Panama to an account in St Vincent held in the name of ‘H’ Ltd and controlled by the defendant.

6. The defendant was arrested in Switzerland on 27 May 2015 and held in custody for ten months before being extradited to the USA. The defendant appeared in the US District Court, Eastern District of New York, on 24 May 2017. He pleaded guilty to the following count:

> ‘In or about and between January 2012 and the present . . . the defendants Costas Takkas and Mr ‘G’, together with others, did knowingly and intentionally conspire to transport, transmit, and transfer monetary instruments and funds, to wit: wire transfers, from places in the United States to and through places outside the United States and to places in the United States from and through places outside the United States, (a) with the intent to promote the carrying on of specified unlawful activity, to wit: wire fraud, contrary to Title 18, United States Code, section 1956 (a) (2) (A), and (b) knowing that the monetary instruments and funds involved in the transportation, transmission, and transfer represented the proceeds of some form of unlawful activity and knowing that such transportation, transmission, and transfer was designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of the said specified unlawful activity, all contrary to Title 18, United States Code, section 1956 (a) (2) (B) (i).’

7. In his Allocution and at the hearing on 24 May 2017 the defendant stated that he accepted that he entered in to an agreement with Mr ‘A’ to receive money from him, knowing that Mr ‘A’ wanted to keep the receipt of the money secret from, amongst others, ‘I’. He knew that the money coming from Mr ‘A’ was from ‘D’ and ‘E’, both sports marketing companies involved in the ‘F’ World Cup Qualifier contracting process. Both companies were in a position to possibly benefit from future decisions made by Mr ‘A’ as a Football Official. The Respondent admitted that he consciously avoided knowing that the companies were giving money to Mr ‘A’ to influence his decision as a Football Official. The Respondent sent and received the money he received from Mr ‘A’ via wire transfers, including wire transfers between bank accounts in the United States and bank accounts outside the United States.

8. The defendant was sentenced on 31 October 2017 to 15 months' imprisonment. He was given credit for the ten months served in custody pending extradition. He was also sentenced to one year supervised release. The defendant was ordered to pay $3m restitution, which was joint and several his co-defendants, and a special assessment fee of $100.

9. In passing sentence the judge, the Honorable Pamela K Chen, said the defendant had assisted in laundering $3 million in bribes taken by Mr 'A'. Judge Chen described this as a 'breath-taking amount of fraud that Mr Takkas was involved in concealing and transmitting'. She described the fraud as 'very elaborate'. She said that the defendant engaged in the fraud for a period of time, six months or more, because the transmissions were broken up into instalments. He had to make conscious decisions each time to commit fraud, concealing where the money was from and how it was being used and even creating false contracts to cover up the conduct.

10. Turning to mitigation, Judge Chen regarded the ten months the defendant had spent in custody prior to deportation as the biggest consideration. In addition he had spent 29 months separated from his family and friends. She noted that he is 'very good to his family' and that there are many people who care about him and who say he is perhaps naive as opposed to cunning or calculated.

11. Judge Chen stated that the fact that the Respondent did not receive any money from his involvement in the fraud made his crime 'even less understandable and perhaps more serious.' Judge Chen described the Respondent as having a serious failure to appreciate the gravity of what he was involved in. The defendant's representations that he did not understand the seriousness of the crime he was involved in was, in the Judge's view, 'distressing in terms of the potential for recidivism and the need for deterrence'.

12. The defendant was released from prison on 2 February 2018 and subsequently deported to the UK.

13. Under DBL 4.2.g a member is liable to disciplinary action if they have been convicted in a court of competent jurisdiction outside England and Wales of an offence corresponding to an indictable offence in this jurisdiction.

14. The Respondent was convicted of money laundering conspiracy, contrary to Title 18, United States Code, section 1956 (a) (2) (A) and (B). The equivalent money laundering offence in the UK is section 327 (concealing criminal property) and/or section 328 (being concerned in a money laundering arrangement) of the Proceeds of Crime Act 2002. Section 1(1) of the Criminal Law Act 1977 creates and defines the offence of conspiracy in the UK, which is indictable only. The maximum sentence for money laundering in the United States is a fine, twenty years' imprisonment or both. The maximum sentence in the UK is a fine, fourteen years' imprisonment or both.

15. The IC submitted that the US District Court is a court of competent jurisdiction and the offence to which the defendant pleaded guilty corresponds to an indictable offence in England and Wales.

The defendant's case

16. The defendant admitted the complaint in his Regulation 13 Answers and when the complaint was put to him at the hearing. He further stated he agreed with the IC's summary contained in its report to the tribunal. In his Regulation 13 Answers he gave the following as mitigating circumstances:

'Further to my email correspondence I was only convicted in conspiracy to engage in money laundering. The US govt. adduced no evidence showing the money sent related to marketing rights or a bribe. I was not convicted of any fraud nor was there any victim from my actions. Restitution no longer applies.'

17. The defendant said in correspondence to ICAEW that he was convicted on the basis of 'conscious avoidance'. He had not benefitted financially from his actions and had effectively acted as honorary trustee for his friend. The prosecution had left him destitute as all his savings and assets had been used to pay for legal representation. He said he was appealing the restitution order made against him.

18. In his oral submissions to the tribunal the defendant repeated that he was not convicted of fraud and that he had not received any money as a result of his actions. He accepted in response to the tribunal's questions that the Allocution correctly reflected the basis on which he pleaded guilty to the offence. He told the tribunal that the restitution had now been withdrawn, as it was a joint and several order and has been paid by others.

Conclusions and reasons for decision

Matters proved by admission

19. The tribunal found the complaint proved by admission.

Matters relevant to sentencing

20. The tribunal took into account the fact that the defendant had admitted the complaint and there were no previous disciplinary matters recorded against him. That apart, there was little that could be advanced by way of mitigation.

21. The aggravating features of the case were the amount of money involved and the length of time over which the money laundering transactions took place.

22. The tribunal had regard to ICAEW's *Guidance on Sanctions*. The starting point for sanction where a member has been convicted of an offence involving dishonesty or money laundering or where a member receives a custodial sentence is exclusion.

23. The tribunal was satisfied there was no reason to depart from this starting point. Any order less than exclusion would be insufficient to protect the public or act as a deterrent to others.

24. The IC applied for costs in the sum of £6,049. The tribunal took into account the information supplied by the defendant as to his financial circumstances. It was satisfied that the defendant should pay the full sum sought by the IC for costs.

Sentencing order

25. Therefore in the tribunal's view the appropriate and proportionate sanction was to exclude the defendant from membership of the ICAEW.

26. The tribunal ordered the defendant to pay costs of £6,049.

Decision on publicity

27. The tribunal directed that a record of this decision shall be published and the defendant shall be named in that record.

Chairman	Mrs Mary Kelly	
Accountant Member	Mr Ian Walker FCA	
Non Accountant Member	Ms Martha Maher	
Legal Assessor	Mr Andrew Granville Stafford	**028355**

4. Mrs Hilary Ann Steele ACA of
Peterborough, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 15 January 2019

Type of Member Member

Terms of complaint

1. Between 31 January 2016 and 14 February 2018 Mrs H A Steele ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2014 to 31 October 2015 in breach of Principal Bye-law 56c.

2. Between 31 January 2017 and 14 February 2018 Mrs H A Steele ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2015 to 31 October 2016 in breach of Principal Bye-law 56c.

3. Between 31 January 2018 and 14 February 2018 Mrs H A Steele ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2016 to 31 October 2017 in breach of Principal Bye-law 56c.

Mrs Hilary Ann Steele is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.c

Hearing dates	15th January 2019
Previous hearing dates	N/A
Pre-hearing review or final hearing	Final hearing
Heads of complaint found proved	1, 2 and 3
Heads of complaint found not proved	None
Sentencing order	Reprimand; Fine of £1,500; Costs of £2,000

Procedural matters and findings

Parties and representation	The Investigation Committee was represented by Mrs Silpa Tozar. The defendant was not present and was not represented.
Hearing in public or private	The hearing was in public.
Decision on service	The tribunal was satisfied that service was in accordance with regulations 3 and 5 of the Disciplinary Committee Regulations and the defendant's Regulation 13 Answers.
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's bundle.

Preliminary matters

1. Notice of the hearing was sent by post to Mrs Steele ('the defendant') on 13 November 2018. The notice was sent to her registered address. The tribunal was satisfied that service had been effected in accordance with Regulations 3 and 5 of the Disciplinary Committee Regulations ('DCR').

2. The defendant completed and returned the Regulation 13 Answers the day before the hearing. In it she said she admitted the complaint and provided submissions in mitigation. She said she would not be attending the hearing. In her email accompanying the Regulation 13 Answers the defendant said she was unable to attend the hearing as she was unable to book holiday from her work.

3. The tribunal was satisfied that no useful purpose would be served in adjourning the hearing. The defendant had not requested an adjournment and had sent in written submissions. In the tribunal's view there was a clear public interest in proceeding in the defendant's absence.

The Investigation Committee's case

4. The defendant has been a member of the ICAEW since 1994. She does not hold a practising certificate.

5. As a member the defendant is required to submit a declaration annually to the Institute confirming that she has complied with the requirements of Principal Bye-Law 56 in relation to CPD (Continuing Professional Development). The IC's case was that the defendant has failed to comply with this requirement for the years 2015, 2016 and 2017.

6. The Professional Conduct Department ('PCD') of ICAEW wrote to the defendant on 16 October 2015 requesting her to complete her CPD declarations for 2012, 2013 and 2014. A chaser was sent on 22 December 2015 saying that the 2015 declaration was also now due.

7. The defendant returned her CPD declarations for the years 2012 and 2013 on 13 January 2016. On the form she confirmed her address and email.

8. Between January 2016 and January 2018, 11 emails and four letters have been sent to the defendant requesting her to complete her CPD declarations, including now those for the years 2016 and 2017. A telephone message was left for her on one occasion. She has been warned that her failure to co-operate could lead to disciplinary action.

9. There was no response from the defendant to these letters and email.

10. The IC's case is that the defendant has breached Principal Bye-law 56.c which requires members to certify compliance with the CPD requirements set out in that Bye-law. This therefore renders the defendant liable to disciplinary action under Disciplinary Bye-law ('DBL') 4.1.c (which imposes liability for disciplinary action where a member commits a breach of any of the ICAEW's bye-laws).

The defendant's case

11. The defendant admitted the complaints in her Regulation 13 Answers. She accepted the summary contained in the IC's report.

Conclusions and reasons for decision

<u>Matters proved by admission</u>

12. The tribunal found the complaints proved by admission.

Matters relevant to sentencing

13. There were no previous disciplinary matters recorded against the defendant. The tribunal took into account the fact that she admitted the complaints, albeit somewhat late in the day.

14. In her written mitigation, the defendant set out details of her health condition and personal problems she had been dealing with. This had resulted in her allowing post to pile up and emails go unnoticed. She said she was on a low salary with dependants and that her current job was 'school-based'. She gave details of her income in a statement of financial circumstances.

15. The tribunal had regard to ICAEW's Guidance on Sanctions. The starting point where a member fails to submit a CPD declaration is a reprimand and a category F financial penalty (£1,000) for each year up to a maximum of four.

16. In light of the defendant's financial circumstances the tribunal considered it appropriate to reduce the financial penalty to £500 per year (total £1,500). Otherwise it found no reason to depart from the starting point.

17. The IC applied for costs in the sum of £4,537. There was no reason in principal why the defendant should not pay costs to the ICAEW. Taking into account the defendant's limited means, however, the tribunal reduced the amount of costs to £2,000.

18. The tribunal considered it appropriate to allow time to pay and directed that the fine and costs, totalling £3,500, be paid in instalments over the period of 12 months.

19. The tribunal recommended that, should the defendant wish to continue to remain a member of the Institute, she should bring her annual CPD declarations up-to-date by 31 October 2019.

Sentencing order

20. The tribunal ordered that the defendant be reprimanded and fined £1,500.

21. The tribunal ordered the defendant to pay costs of £2,000.

22. The tribunal directed the fine and the costs be payable by instalments with the first instalment of £310 to be paid by 1 March 2019 and 11 further instalments of £290 per month to be paid by the first of each month thereafter.

Decision on publicity

23. The tribunal directed that a record of this decision shall be published and the defendant shall be named in that record.

Chairman	Mrs Mary Kelly	
Accountant Member	Mr Ian Walker FCA	
Non Accountant Member	Ms Martha Maher	
Legal Assessor	Mr Andrew Granville Stafford	**030322**

APPEAL COMMITTEE ORDERS

5. Mr Michael Jonathan Christopher Oldham of Rickmansworth, United Kingdom

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 26 November 2018

Type of Member	Member
Status of applicant	Insolvency practitioner
Date of decision of ILC	3 February 2017
Date of Review Panel Hearing	20 September 2017
Date of Appeal Panel Hearing	26 November 2018

Decision of the Review Committee held on 20 September 2017

The application for the review was struck out
The Appellant was ordered to pay costs in the sum £7,500
The decision was ordered to be publicised.

Decision of the Appeal Panel

1. Appeal dismissed.
2. Application for review dismissed.
3. Appellant to pay the Institute's costs assessed at £8,213.50
4. Publicity

Procedural matters and findings

1 Ms Sutherland-Mack appeared for the Institute. The Appellant was neither present nor represented, having informed the Panel that he would not be attending.

2 The hearing was in private

3 Directions were given by the panel on 25 April 2018 and by the Chairman on 10 May 2018 in which the Appellant's application for the hearing of a preliminary issue was rejected but the Appellant was given permission to adduce further documentary evidence

Grounds of appeal

4 The Institute was at fault in not ensuring that the Appellant did not have Professional Indemnity Insurance (PII) at the relevant time.

5 The Institute had engaged in an illegal arrangement to destroy the Appellant's business.

6 The Review Committee was wrong not to have treated the Appellant's letter of 19 July 2018 as withdrawal of his application for a review of the decision of the Insolvency Licensing Committee of 3 February 2017 and wrong not to permit him to make a further application for a review out of time.

7 The Review Committee was wrong not to adjourn the hearing of 20 September 2017 and wrong to consider his application on its merits in his absence and to strike it out.

8 The above is a summary of a 14 page document dated 26 October 2017.

Decision

9 The appeal from the Review Committee is dismissed.

10 The application for a review of the decision of 3 February 2017 is dismissed.

11 The Appellant is to pay the Institute's costs of the appeal assessed at £8,213.50. For the avoidance of doubt this is in addition to the order of the Review Committee that he pay the Institute's costs of £7,500 of the proceedings before that Committee.

12 This decision shall be published.

Reasons for decision

13 The Insolvency Licensing Regulations reg 5.24 lists the only five grounds on which an appeal lies from the Review Committee. The Appellant's grounds of appeal did not meet any of those criteria.

14 The Appellant's written contention that he had not been given adequate notice of the hearing of 26 November 2018 was rejected on the basis he had been given formal written notice of the date, time and place of the hearing dated 24 July 2018 and the directions of 10 May 2018 had made clear that no further adjournment would be allowed other than on certified medical grounds.

15 The Appellant's contention that he needed further time to prepare his case was rejected on the basis that he had prepared his case, all documents and both skeleton arguments had been in his possession since June 2018 and the original hearing had been fixed for July 2018.

16 Although the Appellant had flooded the Institute and the Panel with documentation, virtually none of the documentation was relevant to the issue in the appeal. Neither the Institute nor the Panel had any legitimate concerns with the Appellant's dispute with his former insurance brokers 'A' or with the Appellant's legal proceedings arising in the liquidation of 'B' Limited.

17 It was incontestable that, in breach of the Institute's rules, since at least June 2016 and probably May 2016, the Appellant had not been in possession of any PII. This was entirely the responsibility of the Appellant. The Institute was under no obligation to provide him (or any practitioner) with PII or to ensure that his brokers arrange PII on his behalf.

18 It was equally incontestable that, in breach of the Institute's rules, the Appellant had failed to notify the Institute that he was uninsured until (at the earliest) December 2016. Furthermore, which the Panel found a matter of serious concern, although the Appellant had continued to act in liquidations since May 2016, there was no evidence that he had possessed PII at any point in this period.

19 In essence the Appellant did not have and never had any defence whatsoever to the complaints that he was carrying on practice without PII and that he had failed to notify the Institute of that fact. The decision to remove his licence was inevitable and patently the only one which could have been made in the circumstances.

20 The Appellant had succeeded in delaying the consequences of the decision of 3 February 2018 by a combination of taking spurious procedural points, absenting himself from (or walking out of) hearings and by deluging the Institute with a mass of totally irrelevant documentation.

21 The Panel regarded the suggestions that the Institute had failed in its obligations to the Appellant and had engaged in a criminal conspiracy against him as not only wholly unfounded but grossly improper. The Appellant's conduct since May 2016 may merit further consideration by those concerned with enforcing the discipline of the profession.

Non Accountant Chairman	Mr Richard Mawrey QC	
Accountant Member	Mr David Kaye FCA	
Accountant Member	Mr Richard Lea FCA	
Non Accountant Member	Mrs Maureen Brennan	
Non Accountant Member	Mrs Mary Kelly	**037224**

INVESTIGATION COMMITTEE FIXED PENALTY ORDERS

6. Ms Anna Carin Fraser-Harris BSc ACA

Penalty order made on 24 January 2019

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

With the agreement of Ms Anna Carin Fraser-Harris BSc ACA, the Investigation Committee ordered that Ms Anna Carin Fraser-Harris BSc ACA, of Southsea, United Kingdom, be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

> Between 29 April 2016 and 3 January 2019, Ms Anna Carin Fraser-Harris BSc ACA engaged in public practice without holding a practising certificate contrary to Principle Bye-law 51a

046993

AUDIT REGISTRATION COMMITTEE

ORDER – 14 NOVEMBER 2018

7. Publicity statement

The registration as company auditor of AVN Arena Limited, 42 Chapel Street, King's Lynn, Norfolk PE30 1EF, was withdrawn on 14 December 2018 under audit regulation 7.03a of the Audit Regulations and Guidance 2008 for failure to comply with the requirements of the audit regulations.

046120

ORDER – 12 DECEMBER 2018

8. Publicity Statement

Aspire & Inspire UK Limited, Kingsland House, Abbey Foregate, Shrewsbury, Shropshire, SY2 6BL, has agreed to pay a regulatory penalty of £1,035, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 2.11d and regulation 2.07d of the DPB (Investment Business) Handbook in that the firm failed to notify ICAEW of changes to its offices between 2015 and 2018, within 10 working days.

045710

ORDER – 16 JANUARY 2019

9. Publicity statement

Brown McLeod Limited, 51 Clarkegrove Road, Sheffield, South Yorkshire, S10 2NH, has agreed to pay a regulatory penalty of £1,050, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.01, in that between 2013 and 2018, an individual in a position to influence the conduct and outcome of the audit held shares in an audit client.

043663

ORDER – 16 JANUARY 2019

10. Publicity statement

Brooks Carling Accountants Limited, Highview House, 1st Floor, Tattenham Crescent, Epsom, Surrey, KT18 5QJ, has agreed to pay a regulatory penalty of £3,320, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.03b and 2.07 for continuing to act as a registered auditor and for signing three audit reports when the firm did not meet the eligibility requirements.

044341