



DISCIPLINARY ORDERS AND REGULATORY DECISIONS

Date published: 4 May 2016

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mr John Errol Thomas Martin ACA of
2nd Floor, 272 London Road, WALLINGTON, SURREY, SM6 7DJ.

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

Type of Member Member

Terms of complaint

1. Mr J E T Martin ACA having confirmed by an email sent on 6 March 2012 that he would submit the results of an external practice assurance review ‘...within one month of its completion...’ failed to comply with that assurance by 1 May 2013 demonstrating a failure to ‘...cooperate with ICAEW, its staff and any committee carrying out functions under the PA scheme’ contrary to regulation 4 of the Practice Assurance Regulations.
2. Between 6 December 2011 and 16 January 2014 Mr J E T Martin ACA failed to comply with written assurances he had given at or shortly after a QAD visit in September 2011, that he would by 31 March 2012:
 - a. ‘...instigate a risk assessment on all clients with a considered conclusion on each to be held in a separate file for [that] purpose’;
 - b. ‘...[prepare] a letter to all clients indicating [his] standard terms of business’;
 - c. ‘...ensure that a suitably worded disclosure in relation to PII [was] included ... [on his firm’s] finished website’,demonstrating in each case a failure to ‘...cooperate with ICAEW, its staff and any committee carrying out functions under the PA scheme.’ contrary to regulation 4 of the Practice Assurance Regulations.
3. Between 6 December 2011 and 16 January 2014 Mr J E T Martin ACA failed to establish and maintain appropriate risk sensitive policies and procedures as required by paragraph 20 of the Money Laundering Regulations 2007, and in so doing failed to comply with Practice Assurance Regulation 1 and the Practice Assurance Standards which require a firm to comply with laws, regulations and standards that are relevant to the services it provides.
4. Between 6 December 2011 and 16 January 2014 Mr J E T Martin ACA failed to comply with Disciplinary Bye-law 11.1 as he failed to inform clients in writing of the name of the principal to be contacted in the event of their wishing to complain about the firm’s services, and their right to complain to the Institute.
5. Between 6 December 2011 and 16 January 2014 Mr J E T Martin ACA failed to provide fee information in accordance with paragraph 240.2b of The Code of Ethics.
6. On 22 May 2012 Mr J E T Martin ACA submitted his 2012 annual return which was due on 29 February 2012 and accordingly failed to comply with a written assurance he had given at or shortly after a QAD visit in September 2011 that he would in respect of his firm’s future annual returns, ensure that ‘...[they were] submitted... in a more timely manner’ demonstrating a failure to ‘...cooperate with ICAEW, its staff and any committee carrying out functions under the PA scheme contrary to regulation 4 of the Practice Assurance regulations.

7. On 10 May 2013 Mr J E T Martin ACA submitted his 2013 annual return which was due on 28 February 2013 and accordingly failed to comply with a written assurance he had given at or shortly after a QAD visit in September 2011 that he would in respect of his firm's future annual returns, ensure that '...[they were] submitted... in a more timely manner' demonstrating a failure to '...cooperate with ICAEW, its staff and any committee carrying out functions under the PA scheme

Mr Martin is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(b) in respect of complaint 5 and under Disciplinary By-law 4.1(c) in respect of complaints 1, 2, 3, 4, 6 and 7.

Hearing date

16 February 2016

Previous hearing date(s)

None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order

- a) Severe reprimand; and
- b) Fine of £1,800.

Procedural matters and findings

Parties present Mr Martin
The Investigation Committee (IC)

Represented The IC was represented by Ms Joester of 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 as to service

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

Issues of fact and law

1. Mr Martin is a sole trader, trading as 'Errol Martin', with an estimated gross practice income for the year ended 5 April 2014 of c£45,000.00. Following a QAD practice assurance review on 22 September 2011 Mr Martin gave several assurances to ICAEW regarding the future conduct of his practice.

First head of complaint

2. During a Practice Assurance visit on 28 February 2012 the reviewer noted that there was 'no regular annual compliance review' and that 'You would benefit from carrying out a Practice Assurance compliance review from time to time...'
3. Mr Martin responded by saying 'I will carry out a compliance review at the same time as preparing my Institute annual return. 28 February 2012.' Mr Martin followed this up by emailing the QAD reviewer on 6 December 2011, stating that 'In order to reassure the QAD for the future and for the purpose of the elimination of any doubt I shall instigate an external review process of my practice...I will follow up on this in the New Year post January filing deadline. In due course, later in 2012 I will make the findings of the review available to QAD.'
4. Mr Martin failed to provide the external review by the end of September, and after several letters had been sent to him asking him for the review, he responded in November 2012, stating that the review had not been completed, but that '...I would hope to have this underway within a short while.'
5. The case manager emailed Mr Martin again on 20 February 2012 asking for a copy of the review, and wrote again on 20 March. As no reply was received the Secretary to the Practice Assurance Committee wrote to him on 1 May 2013, informing him that his failure to provide the review would be reported to the Practice Assurance Committee.
6. Mr Martin responded on 6 June 2012, apologising for the delay and stating that he had arranged for an external review to take place in July. However, the Practice Assurance Committee considered the matter on 19 June 2012 and decided that the firm should have a paid for follow-up review from QAD. They also referred the question of Mr Martin's failure to obtain a review for investigation.
7. A case manager wrote to Mr Martin, who responded on 24 September, admitting that he had failed to obtain the review and apologising for his tardiness in that respect.
8. Practice Assurance Regulation 4 provides:-

'Members and member firms shall cooperate with ICAEW, its staff and any committee carrying out functions under the PA scheme.'

Second head of complaint

9. Following a 2011 QAD visit Mr Martin made several assurances in the closing meeting notes and a subsequent email. These included:-
 - (a) 'I will instigate a risk assessment review on all clients with a considered conclusion on each to be held in a separate file for that purpose. 31 March 2012.' (This in relation to a criticism that he had no procedures in place to document client due diligence).
 - (b) 'I am now preparing a letter to all clients indicating my standard terms of business. 31st March 2012.' (This in relation to a criticism that clients were not notified in writing of the basis of fees.')
 - (c) 'I will ensure that a suitably worded disclosure in relation to PII is included in the finished website. 31st March 2012.'

10. Mr Martin's practice received a further follow-up visit on 16 September 2013. The review completed after that visit stated:-
 - (a) 'No procedure in place to carry out client due diligence on all clients.'
 - (b) 'Clients not notified in writing of basis of fees.'
 - (c) 'PII insurer details not disclosed to all new clients.'
11. Mr Martin seemed to accept the reviewer's criticisms. In his letter to the Secretary to the Practice Assurance Committee dated 16 January 2014 he stated that 'The client due diligence review has commenced and is ongoing. The tribunal was of the view that this indicates that there had been no previous review.'
12. In the closing meeting notes Mr Martin seemed to accept that further work needed to be done in relation to the criticism that clients were not notified in writing of the basis of fees, saying 'A letter setting out both the fee basis and the complaints procedure and intended to be sent out to all clients had been drafted some time ago but not followed up. In relation to the criticism regarding the failure to disclose PII details he said 'A suitably worded notice is being prepared for display in my office and this will also be included when updating my website.'

Third head of complaint

13. The third head of complaint alleges that Mr Martin had failed to 'establish and maintain appropriate risk-sensitive policies and procedures as required by paragraph 20 of the Money Laundering Regulations 2007'.
14. Following the QAD visit in 2011 the reviewer noted that there were 'no procedures in place to document evidence of the identity of clients'. Mr Martin accepted that criticism, and stated in the closing meeting notes that 'with immediate effect any new clients will be subject to identity checks such as copy of passport and/or household utility bills.' Against a criticism that there were 'no procedures in place to document client due diligence on all clients' he committed to 'instigate a risk assessment review on all clients with a considered conclusion on each to be held in a separate file for this purpose.'
15. However, when the QAD undertook the next review in September 2013 the reviewer made a similar finding, stating that there were 'no procedures in place to carry out client due diligence on all clients'
16. In his letter to the Secretary to the Practice Assurance Committee Mr Martin seemed to accept that work needed to be done in relation to due diligence/money laundering, saying 'The client due diligence review has commenced and is ongoing. I anticipate completion by 7th March 2014'.
17. The tribunal's attention was drawn to The Money Laundering Regulations 2007 paragraph 20. In addition, attention was drawn to Practice Assurance Standard 1 states 'A firm should comply with laws, regulations and standards that are relevant to the services it provides, including ICAEW's regulations, standards and guidance.' ICAEW members are obliged to act in accordance with the Standards because of Practice Assurance Regulation 1, which states 'PC holders and member firms shall act in accordance with the PA standards'.

Fourth head of complaint

18. At the QAD review in September 2011 the reviewer identified deficiencies in the terms of engagement between clients and Mr Martin. These included:-

'b) clients not notified in writing of complaints procedure.'

'Suggested wording for the complaints procedure can be found in disciplinary bye-laws and in the helpsheet...'

19. Mr Martin seems to have accepted the criticism as he responded in the closing meeting notes, saying:-

'1 paragraph in respect of the complaints procedure will be included alone with the standard terms of business.'

20. When the next QAD review took place, on 16 September 2013, the same issue was noted. The reviewer stated:-

'Clients not notified in writing of complaints procedure.'

21. Again, Mr Martin seems to accept the finding, as he says in the closing meeting notes that a letter addressing the issue had been previously drafted, but not sent out, and that:-

'An updated version of this letter has now been prepared and will be sent to all clients as work commences on their affairs over the next year...'

22. In his letter of 16 January 2014 Mr Martin further confirms that:-

'6 Letters of standard terms and conditions to all clients are being incorporated along with the CDD and these will also be done by 7th March.'

23. Disciplinary Bye-law 11.1 states:-

'Every firm shall ensure that all new clients are informed in writing of the name of the principal to be contacted in the event of their wishing to complaint about the firm's services, and of their right to complain to the Institute.'

Fifth Head of Complaint

24. At the first QAD review in September 2011 the reviewer found:-

'Clients not notified in writing of basis of fees'

25. Mr Martin accepted that criticism, writing in the closing meeting note that:-

'I am now preparing a letter to all clients indicating my standard terms of business.'

26. At the next QAD visit, however, there was a similar criticism of Mr Martin:-

'Clients not informed in writing of basis of fees.'

27. Again, Mr Martin responded positively, and indicated that he would be taking action to remedy the situation.

28. Paragraph 240.2b of the Code of Ethics states:-

'The arrangements agreed shall be confirmed in writing prior to the commencement of any engagement, normally in an engagement letter, including a confirmation of any estimate, quotation or other indication, and where the basis of future fees will differ from that of initial fees, the basis on which such fees will be rendered. Where there is no engagement letter the professional accountant in public practice shall confirm the initial discussion in writing to the client as soon as practicable.'

Sixth Head of Complaint

29. In the 2011 QAD review the reviewer noted that the previous year's annual return had been submitted 'more than 45 days late'. Mr Martin accepted this criticism and gave an assurance in the closing meeting notes that:-

'I will ensure that this is done in a more timely manner in the future. 28th February 2012.'

30. Mr Martin was issued with an annual return 'as at January 2012'. The return was due to be returned by 29 February 2012. However, Mr Martin failed to return it until on time, only signing it on 18 May 2012, and sending it so that it was received on 22 May 2012, 83 days late.'

Seventh Head of Complaint

31. The final head of complaint relates to the 2013 annual return for Errol Martin. As has been outlined in relation to head six, Mr Martin had given an assurance in the closing notes of the QAD review in 2011 that he would ensure that his annual returns were submitted 'in a more timely manner'. In 2013 his annual return was due to be submitted by 28 February, however Mr Martin again failed to respond in time, signing the return on 25 March, but submitting it late, so that it only reached ICAEW on 10 May 2013.

32. In the event the 2013 annual return was some 72 days late.

Conclusions and reasons for decision

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

34. In relation to the first head of complaint, his failure to make any effort to arrange for an external review to take place and in his dilatory communications with members of ICAEW staff dealing with the matter Mr Martin has breached Practice Assurance Regulation 4.

35. In relation to the second head of complaint, in failing to comply with the written assurances that he gave ICAEW in the closing notes of the QAD review in 2011 Mr Martin has breached Practice Assurance Regulation 4.

36. In relation to the third head of complaint, in failing to establish and maintain a due diligence procedure in relation to his clients Mr Martin has breached the Money Laundering Regulations, and has therefore also breached Practice Assurance Standard 1 and Practice Assurance Regulation 1.

37. In relation to the fourth head of complaint, in the above circumstances Mr Martin has failed to comply with Disciplinary Bye-law 11.1.

38. In relation to the fifth head of complaint, in failing to confirm the basis upon which future fees will be charged Mr Martin has breached Paragraph 240.2b.

39. In relation to the sixth head of complaint, in failing to comply with the assurance that he gave to the Quality Assurance Department Mr Martin has failed to co-operate with ICAEW and/or its staff when they were carrying out functions under the Practice Assurance scheme, and he has therefore breached Practice Assurance Regulation 4.
40. In relation to the seventh head of complaint, in failing to comply with the assurance that he gave to the Quality Assurance Department Mr Martin has failed to co-operate with ICAEW and/or its staff when they were carrying out functions under the Practice Assurance scheme, and he has therefore breached Practice Assurance Regulation 4.
41. The tribunal found that the matter at head 5 was a breach of Disciplinary Bye-law 4(1)(b) and the remaining matters were breaches of Disciplinary Bye-law 4(1)(c).

Matters relevant to sentencing

42. Mr Martin had a prior disciplinary record. On 3 March 2011, the Appeal Committee found there to have been a breach of Disciplinary Bye-law 4(1)(a) relating to misleading accounts and his having improperly signed in a director's name in approving the accounts. The Appeal Committee decided he should receive a severe reprimand and a fine of £1,000.
43. Mr Martin made the following points of mitigation to the tribunal. All the matters related to previous business arrangements which had been very stressful and had now come to an end. This had been a period of financial difficulty resulting in his losing his previous home. He set out his current financial circumstances.
44. The tribunal took into account the above mitigation. It was of the view however that there were aggravating features in this complaint, namely the range of deficiencies and the previous disciplinary matter.
45. Mr Martin appeared to be struggling to maintain the necessary minimum standards expected of a chartered accountant. These however were not optional standards and to practice as a chartered accountant he had to both meet the requirements and comply with the ICAEW monitoring of that compliance. The regime he had fallen foul of was, as a result of the previous disciplinary matter, such that he would have been well aware of the monitoring to which he would be subject. In these circumstances it was particularly surprising and disappointing that he had failed to ensure standards were met. The tribunal noted that the fine would have been considerably higher and he would have had an order for costs, were it not for his financial circumstances.

Sentencing Order

46. The tribunal took into account its *Guidance on Sentencing* and imposed the following sanctions:
 - a) Severe reprimand; and
 - b) Fine of £1,800.

The tribunal ordered that Mr Martin pay the fine in 12 equal monthly instalments of £150 per month, the first payment to be made by 1 April 2016.

Decision on publicity

47. Publicity with names.

Non Accountant Chairman

Mr Peter Williamson

Non Accountant Member

Mr Nigel Dodds

Accountant Member

Mr Ian Walker FCA

Legal Assessor

Ms Melanie Carter

019915

INVESTIGATION COMMITTEE CONSENT ORDERS

2 Mr Marios Cosma FCA

Consent order made on 30 March 2016

With the agreement of Mr Marios Cosma of Treppides Tower, 2nd Floor, 9 Kafkasou Street Aglantzia, Nicosia, CY – 2112, Cyprus, the Investigation Committee made an order that he be severely reprimanded, fined £5,000 and pay costs of £1,125 with respect to a complaint that:

That on 27 September 2013 Mr M Cosma FCA issued signed audit reports in respect of the following companies when, contrary to section 1212 of the Companies Act 2006, he was not eligible for appointment as auditor under the Audit Regulations and Guidance 2008:

- a. X Limited, year-ended 28 February 2013; and
- b. Y Limited, year-ended 28 February 2013.

029965

3 Mr Sunil Bhandari ACA

Consent order made on 30 March 2016

With the agreement of Mr Sunil Datt Bhandari of 1182, Sector 21B, Chandigarh, UT, 160022 INDIA, the Investigation Committee made an order that he be severely reprimanded, fined £3,000 and pay costs of £2,580 with respect to a complaint that:

Mr S Bhandari ACA failed to comply with the requirements of section 150 of the Code of Ethics as a result of the content of the following comments made on Twitter by him:

- Tweet dated 17 October 2014 which said:
A, B & his sidekick C - blacklisted freelancers, so I believe, by X & Y, I hope other colleges follow suit
- Tweet dated 17 October 2014 which said:
Surprised @Z employing a tutor like C given that she is banned by the private sector. Looks bad on them
- Tweet dated 18 October 2014 which said:
She and her partner B – poor tutors. That’s why they are banned by Y and X. However, @D accept substandard?
- Tweet dated 19 October 2014 which said:
I ascertained today that C & B are a little upset with my tweets. If you feel I have said something wrong – contact me. Happy to chat
- Tweet dated 19 October 2014 which said:
Those who are reporting back to C and B – please report back my last tweet
- Tweet dated 20 October 2014 which said:
Amazed that @Z think they can be a credible provider of ACCA/CIMA courses while employing a tutor (C) – banned by the pvte sector
- Tweet dated 22 October 2014 which said:
Still waiting to hear from B and C - ??? I wonder why? As I said earlier, I only tweet the facts and truth.
- Tweet dated 22 October 2014 which said:
Had text from E of D told me that they will not be using A, B and C in the future the re bam – good decision
- Tweet dated 22 October 2014 which said:
Being spied upon by @D tutors - @F and G. Interesting they try to teach Tax and FA and I am the FM & AFM man – idiots
- Tweet dated 27 October 2014 which said:
I was Rip Off Britain last week on BBC. I immediately thought of college based in B’ham run by 3 partners charging extortionate prices.
- Tweet dated 28 October 2014 which said:
Calling all H P4 and F9 students. I hear you are getting short changed. You all know me and my vast experience. Here to help you.

- Tweet dated 29 October 2014 which said:
To improve quality & ethics in the accountancy training market it was important to remove A, B and C. The sensible colleges agreed
- Tweet dated 1 November 2014 which said:
Let me close the chapter on C and B. I gave them chance to get in touch – neither did.
As they say on “Watchdog” – they join the..
“Rogues Gallery those who are talentless and not trustworthy like A and I
- Tweet dated 5 November 2014 which said:
Still awaiting to hear from @Z re C being employed by them. They lose credibility by their action
- Tweet dated 5 November 2014 which said:
28 years that’s greater than the experience of the 3 lady partners of one local competitor added together! That says it all!

024651

4 Mr Richard Savage

Consent order made on 13 April 2016

With the agreement of Mr Richard Hilton Savage of Fairclough House, Church Street, Adlington Chorley, Lancashire, PR7 4EX, the Investigation Committee made an order that he be reprimanded, fined £2,500 and pay costs of £2,480 with respect to a complaint that:

Richard Savage as supervisor of the IVA of Ms X did not issue a notice of breach until 12 months after being made aware that a significant creditor had not been disclosed by Ms X in her IVA proposal and whose vote at a subsequent meeting of creditors resulted in the failure of the IVA.

025360

5 BDO LLP

Consent order made on 30 March 2016

With the agreement of BDO LLP of 55 Baker Street, London, W1U 7EU, the Investigation Committee made an order that the firm be reprimanded, fined £5,000 and pay costs of £3,500 with respect to a complaint that:

1. On 3 July 2014, BDO LLP issued an unqualified audit report, on the financial statements of X Ltd for the year ended 31 October 2013 when the audit was not conducted in accordance with International Standards on Auditing (UK & Ireland) 560 'Subsequent Events' in that the firm failed to obtain, and document, sufficient appropriate audit evidence regarding the progress of the sale of Y Ltd (a subsidiary company) between the date of the financial statements and the date of the auditor's report to determine if an adjustment, or disclosure in, the financial statements was required.

025196

6 Moore Stephens (North West) LLP

Consent order made on 13 April 2016

With the agreement of Moore Stephens (North West) LLP of 110-114 Duke Street, Liverpool, L1 5AG, the Investigation Committee made an order that the firm be reprimanded, fined £5,000 and pay costs of £5,142 with respect to a complaint that:

1. Moore Stephens (North West) LLP accepted appointment and issued audit reports for X Ltd for the year ended 30 June 2008, in breach of Audit Regulation 3.02, in that the firm failed to have adequate procedures in place to ensure that the audit firm's consideration of circumstances that might reasonably be considered threats to their objectivity or the perceived loss of independence were appropriately documented on a timely basis as required by paragraphs 54-56 of APB Ethical Standard 1.
2. Moore Stephens (North West) LLP accepted appointment and issued audit reports for X Ltd for the following year ends, in breach of Audit Regulation 3.02, in that the firm failed to have adequate procedures in place to ensure that the audit firm's consideration of circumstances that might reasonably be considered threats to their objectivity or the perceived loss of independence were appropriately documented on a timely basis as required by paragraphs 64-66 of APB Ethical Standard 1 (revised April 2008):
 - i. Year end 30 June 2009
 - ii. Year end 30 June 2010

024537

7 Inspire Compliance Limited

Consent order made on 13 April 2016

With the agreement of Inspire Compliance Limited of 20 Kingsway House, Team Valley, Gateshead, Tyne and Wear, NE11 0HW, the Investigation Committee made an order that the firm be reprimanded, fined £1,300 and pay costs of £2,755 with respect to a complaint that:

On 31 March 2014, Inspire Compliance Limited signed an unqualified audit report on the group financial statements of X Limited for the year ended 30 September 2013 which stated that the accounts had been prepared in accordance with the special provisions of Part 15 of the Companies Act 2006 relating to small companies and with the Financial Reporting Standard for Smaller Entities (effective April 2008) when under section 383 of the Companies Act 2006 the parent company and group did not qualify as small and therefore the parent company and group were ineligible to prepare accounts in accordance with the special provisions of Part 15 and the Financial Reporting Standard for Smaller Entities (effective April 2008).

024303

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