



## DISCIPLINARY ORDERS AND REGULATORY DECISIONS

Date published: 2 November 2016

### Disciplinary orders

#### Disciplinary Committee tribunal orders

1	Mr Amer Usman ACA	2
2	MG Associates Ltd (In Liquidation)	9
3	Mr Kevin David Allen BSc [FCA]	17

#### Appeal Committee panel orders

4	Mr John Paul Bell FCA	21
---	-----------------------	----

#### Investigation Committee consent orders

5	No publicity of name	25
6	FKCA Ltd	25
7	Chantrey Vellacott DFK Ltd	25
8	Mr Anthony John Pearson FCA	26
9	Mr Alan Valembois ACA	26
10	Mr Greg Stewart	27
11	Mr Paul Durrant ACA	27
12	Mrs Lesley White FCCA	28
13	Gibson Booth	28
14	Graeme Charles Reid FCA	29
15	Stopfords (Chesterfield) LLP	29

## **Regulatory orders**

### Audit Registration Committee

16	Zaidi & Co	30
17	David Lindon & Co	30
18	KPMG LLP	30

# DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

**1 Mr Amer Usman ACA of**  
61 Cleveland Street, London, W1T 4JR

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 6 September 2016**

**Type of Member** Member

## Terms of complaint

Mr A Usman ACA failed to provide by 5 February 2016 all of the information, explanations and documents requested in a letter dated 20 January 2016 issued under Disciplinary Bye-law 13.

Mr Usman is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.c. Disciplinary Bye-Law 4.1. states the following:

4.1. A member or provisional member shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member or provisional member at the time of the occurrence giving rise to that liability:

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

06 September 2016

## Previous hearing date(s)

None

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

## Sentencing order

- a) Severe reprimand;
- b) Fine of £3000
- c) Order to supply any remaining information required in order to comply with the DBL13 letter by 1 November 2016.
- d) Costs of £3362.

## Procedural matters and findings

**Parties present** The Investigation Committee (IC)

**Represented** Mr Cope, solicitor, represented Mr Usman  
Theresa Thorpe, solicitor of ICAEW, represented the IC

**Hearing in public or private** The hearing was in public

<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the IC's bundle together with documents from Mr Usman
<b>Findings on preliminary matters</b>	An application was made by the IC, for the tribunal to proceed in Mr Usman's absence. Mr Cope read out a letter from Mr Usman, stating that he was to be abroad to recuperate from ill health. He wished the proceedings to go ahead on the date of the hearing and apologised for his absence. The tribunal had regard to the factors set out in the case of R v Jones to be considered in deciding whether to proceed in the defendant's absence. In light of the letter from Mr Usman and that he was represented at the hearing, the tribunal decided that it was appropriate to proceed in his absence.

#### **Issues of fact and law**

1. In 2012, Mr Usman prepared a tax return for the year ended 5 April 2012 for Mr 'B'. Mr 'B' alleges that he paid Mr Usman £700 in advance in respect of Mr Usman's fees. Mr 'B' then went travelling and on his return to the UK there was a letter from HM Revenue & Customs informing him that a tax refund totalling £1,409 had been paid to Usman Accountancy on 17 January 2013.
1. Mr 'B' contacted Mr Usman to obtain the tax refund but Mr Usman refused to pay it to him. Mr 'B' alleges that Mr Usman told him that the tax refund had been used to settle his firm's fee. Mr 'B' states that he gave no authorisation to Mr Usman to retain the money.
2. Subsequently, Mr 'B' commenced litigation to recover the tax refund from Mr Usman. Mr 'B' submitted a complaint to ICAEW in respect of Mr Usman on 26 May 2015.
3. The complaint against Mr Usman is that he failed to substantively respond to a letter issued to him on 17 July 2015 requesting information from him following a complaint made by Mr 'B' that on or around 17 January 2013, Mr Usman retained without authority and/or otherwise account for, a tax refund of £1,409, which Mr Usman obtained on Mr 'B's behalf.

#### **Complaint**

4. Having received the complaint from Mr 'B', ICAEW's Professional Conduct Department (PCD) commenced an investigation into whether Mr Usman had complied with the Clients' Money Regulations and other relevant ICAEW regulations in his dealings with Mr 'B'.
5. PCD notified Mr Usman of the complaint on 17 July 2015 and requested information concerning his instructions, work undertaken and recording of the transaction. Mr Usman replied that day and informed PCD that he was on vacation and that they should not contact him. When PCD reminded Mr Usman that he previously agreed that they could contact him by email during his absence, Mr Usman responded that that arrangement would no longer apply.
6. Mr Usman was on vacation for July and August 2015. In September 2015 PCD contacted Mr Usman again for the information. On 17 September 2015 Mr Usman apologised and

said that he was sick but he was working on the response. However, on 24 September 2015, Mr Usman emailed and claimed the matter was sub judice because of the legal proceedings and he would let PCD know when the legal proceedings were concluded. PCD asked Mr Usman on 24 September 2015 for a copy of the claim so that it could consider the matter further. Nothing was received and a reminder was sent. Mr Usman responded on 9 October 2015 that he was on vacation until 3 November 2015 and that he would respond on his return.

7. On 7 November 2015, Mr Usman sent PCD a copy email which he had sent to the court in which he requested copies of the case bundles and court documents. PCD requested a copy of the court claim and defence and Mr Usman responded on 9 November 2015 that 'my laptop has been stolen so you will have to wait'. Mr Usman emailed the court again on 11 November 2015 again requesting documents as his laptop had been stolen.
8. PCD did not receive any substantive information from Mr Usman in response to its letter of 17 July 2015 and PCD therefore informed Mr Usman on 1 December 2015 that it would issue a notice under Disciplinary Bye-law 13 requiring the information. Mr Usman responded that day stating that he was awaiting the court outcome and that 'I will not be responding to your letter until the court matter is resolved. Moreover, I do not appreciate your attempts to again pressurise me into a response so kindly desist.'
9. On 17 December 2015, Mr Usman forwarded 'the only document that I currently possess' in respect of Mr 'B's claim. This was a Directions Questionnaire and not the claim or defence.
10. PCD wrote to Mr Usman on 22 December 2015 pointing out that the information it requested should be contained within his practice records. Therefore regardless of whether his laptop had been stolen, the information would be available from other sources including his computer backup. PCD also requested the crime reference number for the laptop theft. It was explained to Mr Usman that he should respond to all questions and if the information was not available he should explain why. Mr Usman responded that day and advised that he was too busy to respond until 11 February 2016. He added that we were aware he was awaiting documents from the court and that he could not respond until these had been received. He also said, 'It is very rude to chase me in this manner when you know that I've recently been the victim of a crime, you have no right to pressurise me in this manner.'
11. No substantive response was received from Mr Usman. On 20 January 2016 PCD issued a notice in accordance with Disciplinary Bye-law 13 that Mr Usman provide the information originally requested on 17 July 2015, by 5 February 2016. Mr Usman's response that day was to repeat that the matter was sub judice, that he was awaiting the court documents, and that he would not comply with the deadline.
12. On 25 January 2016, Mr Chris Cope, representing Mr Usman at the hearing, of Accountants National Complaint Services Ltd (who had been copied in on much of the correspondence) emailed the Head of Investigation explaining that Mr Usman had referred him to the PCD letter of 20 January 2016. Mr Cope had explained to Mr Usman the implications of the notice and had urged him to give the matter priority but, as Mr Usman was busy with client affairs, Mr Cope asked for an extension of time to 15 February 2016. Mr Cope was informed that the date for a response would not be extended but that PCD would consider whether it was necessary to report the matter if a full response was received.
13. Mr Cope emailed PCD on 17 February 2016 that Mr Usman's father was seriously ill and that 'there will be a slight delay in Mr Usman responding with his representations'. Mr Usman emailed us on 18 February 2016 advising that his practice records were 'backed up using iCloud and Time Capsule'.

14. Mr Usman submitted a partial response by email on 15 March 2016. The letter issued on 20 January 2016 required the following information be provided:
  - (a) Details of when Mr Usman was appointed and, if relevant, when he ceased to act, with copies of the letter of engagement and any disengagement letter.
  - (b) If the amount has been paid to Mr 'B', details of when and how paid and any deductions made from it.
  - (c) If the amount has not been paid to Mr 'B' an explanation of why he had not paid the amount over.
  - (d) Copies of all communications with Mr 'B' in this matter, including all letters, file notes of meetings and telephone calls, and fee notes. If Mr Usman has maintained a hard copy file then a copy of the complete file will suffice.
  - (e) A copy of Mr 'B's 2011/12 tax return as filed by Mr Usman.
  - (f) A copy of relevant bank statements to show all transactions relating to this sum i.e. receipt of the tax refund and any payments therefrom, and a copy of any relevant client ledger.
  - (g) If there have been any legal proceedings in this matter, an explanation of those proceedings and outcome or, if ongoing, how the matter currently stands.
15. Mr Usman has provided a partial response to the above outstanding requests.
16. Mr Usman provided an account of his dealings with Mr 'B', but did not provide any of the documentation requested. PCD accepted that Mr Usman's response provides an answer to points (b) and (c). Mr Usman has partly responded to point (a) by confirming he was engaged from May 2012 but has not provided the requested engagement letter or confirmation of when he ceased to act.
17. PCD informed Mr Usman that it considered he had provided a partial response on 17 March 2016. Mr Usman said that he would provide a further response by 23 March 2016. No further response was received.
18. PCD sent Mr Usman a copy of the report on 11 April 2016. Mr Usman subsequently provided further information. Within the documentation and explanation provided, Mr Usman confirmed that there was no signed engagement letter. Mr Usman provided a copy of the judgement following the court proceedings which confirming that Mr 'B's claim was dismissed. Mr Usman also provided a copy of a medical note confirming that he was not fit to work for the period 21 April 2016 to 21 May 2016.
19. Mr Usman provided a further medical note for the period 23 June 2016 to 4 August 2016 on 23 June 2016. Whilst PCD accept that Mr Usman has provided sick notes for two periods of time, neither note operated at the time that Mr Usman was required to provide a response to the request for information pursuant to Disciplinary Bye-Law 13 (by 5 February 2016).

### **Conclusions and reasons for decision**

20. Mr Cope indicated on behalf of his client, Mr Usman, that the complaint was admitted. The Tribunal found the complaint proven on Mr Usman's own admission.
21. PCD originally requested the information contained in the DBL 13 notice on 17 July 2015; more than 12 months ago. Mr Usman initially made no attempt to provide the information and stated many times that he would not provide it. Although after the deadline set in the

letter of 5 February 2016 Mr Usman has provided a commentary on his dealing with Mr 'B', he has not provided the documentation requested.

22. Whilst the legal proceedings have concluded, PCD's investigation has not. The focus of PCD's investigation at this stage is whether Mr Usman has complied with the Client's Money Regulations.
23. The tribunal did not accept that Mr Usman was unable to respond to PCD's request for information because his laptop was stolen. The majority of the information that PCD requested should be available from Mr Usman's practice records, which he claims are backed up. Further, the bank statement information would be available from his bank and would not require access to records held solely by him. In any event Mr Usman had had ample time to provide the requested information and has failed to provide it.
24. The tribunal was satisfied that in all the circumstances, Mr Usman had breached Disciplinary Bye-law 4(1)(c).

### **Matters relevant to sentencing**

25. The tribunal took into account its *Guidance on Sanctions*.
26. Mr Usman did not have a prior disciplinary record. Mr Cope attributed Mr Usman's inability to respond to the Institute to the stress he had been suffering since July 2014. In this regard, the tribunal noted that all the medical evidence post-dated the Investigation Committee's consideration of this matter. In any event, the medical evidence did not indicate that Mr Usman was not able to respond to the letter, even if stressed. The tribunal therefore only gave limited weight to this mitigation.
27. Failure to respond to a Disciplinary Bye-law 13 letter was a matter of considerable concern. The Institute can only carry out its critical role of the maintenance of the standards of the profession and thereby the public's confidence in the profession, if regulatory requests are dealt with fully and in a timely fashion. This matter was aggravated by the fact that Mr Usman had only sought to comply with the request at the last possible moment (ie: on the day of the hearing), although the tribunal were not in a position to assess whether the DBL 13 letter was now fully complied with. Mr Usman's approach to the Institute was cavalier and his response's to the PCD indicated a disregard for the Institute's regulatory role.

### **Sentencing Order**

28. The tribunal decided to impose the following sentence:
  - a) Severe reprimand;
  - b) Fine of £3000
  - c) An order to supply any remaining information required in order to comply with the DBL13 letter by 1 November 2016.
  - d) Costs of £3362.

The defendant was given 12 months to pay the fine and costs. He was ordered to make a first payment by 1 November 2016 of £532 and then for there to be 11 equal monthly instalments of £530.

**Decision on publicity**

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

**Non Accountant Chairman**  
**Accountant Member**  
**Non Accountant Member**  
**Legal Assessor**

Mr Ron Whitfield  
Mr Martin Ward FCA  
Mr Nigel Dodds  
Ms Melanie Carter

**032315**

2 **MG Associates Ltd (In Liquidation)**  
36 Victoria Road, Dartmouth, Devon, TQ6 9SB

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 6 July 2016 and on 19 September 2016**

**Type of Member** Firm

### **Terms of complaint**

On 4 August 2015, ICAEW's Investigation Committee referred a formal complaint to the Disciplinary Committee against MG Associates Limited (in liquidation). MG Associates Limited (in liquidation) is an ICAEW member firm.

### **Complaint**

That MG Associates (in liquidation) failed to comply with:

1. Audit Regulation 2.03a in that the firm failed to ensure that Mrs 'A' held audit affiliate status following her appointment as a director on 19 November 2010 and
2. Audit Regulations 6.06 in respect of failure to include Mrs 'A' as a director on the firm's 2011, 2012 and 2013 annual returns.

MG Associates Limited (in liquidation) is therefore liable to disciplinary action under Disciplinary Bye-law 6.2a.

Disciplinary Bye Law 6.2a states the following:

6.2 A registered auditor shall be liable to disciplinary action under these bye-laws in any of the following cases

a. if it has committed a breach of any regulations issued by the Institute in its capacity as a recognised supervisory body under the Companies Act 2006 or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations.

### **Hearing dates**

6 July 2016 and 19 September 2016

Directions given on 20 June 2016 and 8 July 2016.

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** (i) Severe reprimand; (ii) fine of £6,350

## **Procedural matters and findings**

<b>Parties present</b>	Mr Michael Ghersie FCA was present at the hearing on 6 July 2016 but not at the hearing on 19 September 2016.
<b>Represented</b>	Mr Ghersie represented MG Associates Ltd (in liquidation). The Investigation Committee (IC) was represented by Ms Theresa Thorp.
<b>Hearing in public or private</b>	The hearing was in public.
<b>Decision on service</b>	See paragraphs 1 – 5 below.
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with (i) Regulation 13 answers with attachments (ii) a witness statement of Ben Jowett dated 17 March 2016 (iii) a witness statement of Mr Ghersie dated 27 February 2016; (iv) a bundle of documents relating to the "abuse of process" defence referred to below and (v) a letter from 'B' to ICAEW dated 24 August 2016. The tribunal also heard oral evidence from Mr Jowett, who was cross-examined by Mr Ghersie.

### **The Representation of MG Associates Limited ("the Defendant") and the adjournment of the hearing of 6 July 2016 as part heard**

1. The defendant was represented at the hearing on 6 July 2016 by Mr Michael Ghersie FCA, a director of the defendant. Throughout that hearing, and up to and after it found the complaint proved, the tribunal had been made aware that the defendant was in administration and it was satisfied, amongst other things, that all necessary documents had been properly served on the defendant in accordance with regulations 3-5 of the disciplinary regulations.
2. Shortly before the tribunal was about to announce and impose its sanction on the defendant (which was the final stage of the process of the hearing, and which may have included a financial penalty), Mr Ghersie informed the tribunal that the defendant "might be" in liquidation. The tribunal sought advice from the legal assessor who advised that if the defendant were in liquidation, the liquidator ought to have been made aware of the hearing before it had begun and have been given notice of his or her right to attend it, but that had not been done. If the defendant was in liquidation, the position would need to be rectified, but first it was necessary to know conclusively whether the defendant was in liquidation or not.
3. As a result, the tribunal, having found the complaint proved but before it had imposed any sanction, immediately adjourned the hearing (part-heard) to obtain clarification as to whether the defendant was in liquidation and, if so, for the liquidator to be served with all necessary documents, informed of the hearing and given the opportunity to make whatever representations he or she saw fit.
4. Directions were also made by the tribunal to this effect on 8 July 2016. It transpired that the defendant was in liquidation at the time of the hearing and the liquidator was Mr 'B', an licenced insolvency practitioner and an insolvency partner of a firm. In a signed letter to ICAEW dated 24 August 2016, Mr 'B' wrote:

*“...As discussed in our telephone conversation, given the circumstances, and the fact that the company is now in liquidation, I do not propose to make any representations to, or participate in, the disciplinary proceedings on behalf of the company.*

*I shall be grateful if you will advise me in due course of any fine or costs order imposed upon the company so that I may provide you with documentation to submit a claim in the liquidation as appropriate.”*

5. In the light of this communication from Mr 'B', the tribunal was satisfied that it could properly and fairly continue with the hearing. The hearing which was adjourned on 6 July 2016 was re-fixed on 19 September 2016, to enable it to be concluded. The legal assessor who attended the hearing on 6 July 2016 was unable to attend the 19 September 2016 hearing, and was replaced by Mr John Trotter.

### **The Investigation Committee's (IC's) case**

6. Audit Regulation 2.3a provides (in summary) that each principal of a firm which is not a sole practice must be either a member of an Institute, a member of the Association of Chartered Certified Accountants, an audit affiliate of the registering Institute, a Registered Auditor, an EEA auditor who is also an audit affiliate of the registering Institute or an EEA audit firm which is also an audit affiliate of the registering Institute.
7. This means that if a firm wants to hold audit registration, each principal must possess one of the qualifying criteria set out above. Unless that occurs, audit registration is not granted.
8. Audit Regulation 6.06 provides (in summary) that a Registered Auditor or an applicant for registration should provide the Audit Registration Committee (“ARC”) with any information about the firm or its clients and allow access to the firm's systems and personnel in order for a firm's audit work, or how it is either complying with or intending to comply with the audit regulations, to be reviewed.
9. The defendant (which was incorporated on 15 November 2005) was registered to carry out audit work with ICAEW with effect from 11 November 2010. A few days later, on 19 November 2010, Mrs 'A' (who is not a qualified accountant) was appointed a director of the Defendant. This made her a “principal” of the defendant which meant that she had to satisfy one of the qualifying criteria of Audit Regulation 2.3a; she had no accountancy qualifications and this meant, in short, that she needed to become an “audit affiliate”. Only then would the defendant be eligible for audit registration. The defendant did nothing to rectify the position at any time.
10. On 6 July 2012, ICAEW Practice Support Services conducted an external whole firm audit compliance review and also a cold file review.
11. On 3 December 2013, a second review was completed; this time, it was a cold file review of the Defendant's only audit client as well as a review of the defendant's most recent annual return, which covered the period up to July 2013.
12. On 24/25 April 2014, the defendant was visited by ICAEW's Quality Assurance Department; the reviewer found that the defendant had not notified ICAEW of Mrs 'A's appointment in November 2010 and it was noted that the defendant had not disclosed that Mrs 'A' was a director in any of its previous annual returns for the last three years although, as Mr Ghersie pointed out, Mrs 'A' was shown on the defendant's notepaper as a director.
13. The failure to obtain Mrs 'A's affiliate status was not resolved and on 10 September 2014, the Audit Registration Committee withdrew the defendant's audit registration. The

Defendant applied for a review of that decision. The decision was upheld by the Review Committee on 3 December 2014.

14. Because the defendant failed (i) to ensure that Mrs 'A' had audit affiliate status from 19 November 2010 and (ii) to include Mrs 'A' as a director on its annual returns for the years 2011, 2012 and 2013, it has breached Disciplinary Bye-law 6.2(a).
15. The defendant denied the complaint and raised two matters in its defence. The first defence ("the omission defence") was that ICAEW's failings to notice the problem of Mrs 'A's affiliate status in July 2012 and December 2013 was negligent and had it done so and brought the issue to the attention of Mr Ghersie, the problem could have been resolved at that time.
16. The second defence ("the abuse of process defence") was that the defendant had been given a legitimate expectation on 3 December 2014 (the day of the Review Committee hearing referred to above) that this complaint would not be proceeded with. The basis for that was a representation made by Ben Jowett of ICAEW who, it was alleged, told Mr Ghersie on 3 December 2014 that if the application for a review was withdrawn and the defendant paid the costs of the application for a review then no further sanctions would follow. Mr Ghersie says he relied on this representation, withdrew the application for a review, agreed to pay the costs of the application and expected nothing further to occur. In fact, it did occur – this complaint was prosecuted and, Mr Ghersie submits, it should not have been. The defendant alleged that the prosecution of the current complaint is an abuse of process and it should be struck out.
17. The IC denies each defence.

### **Issues of fact and law**

1. Did the omission by the reviewers in July 2012 and December 2013 to draw the issue of Mrs 'A's affiliate status to Mr Ghersie's attention amount to a good defence in law that DBL 6.2(a) has not been breached?
2. Did the Defendant on 3 December 2014, obtain a legitimate expectation from the representations of Mr Jowett that the current complaint would not be proceeded with?
3. Do the matters complained of constitute a breach of DBL 6.2a?
4. The relevant standard of proof is the balance of probabilities.
5. The tribunal found the complaint proved.

### **Conclusions and reasons for decision**

#### **The omission defence**

18. The defendant ought to have ensured that Mrs 'A' had affiliate status by the day on which she became one of its directors, that is, by 19 November 2010. It did not, and so was in breach of Audit Regulation 2.3a from that date. It is not part of the defendant's defence that ICAEW ought to have warned the defendant about the matter before the first review in July 2012. The defence is that when the reviewers attended in July 2012 and December 2013, they ought to have spotted that Mrs 'A' needed to have affiliate status and should have told the defendant. The scope of this defence cannot extend as far back as 19 November 2010, and the defendant was in breach from that date. If the reviewers had noticed the problem, and advised the defendant about it, that would not have retrospectively cured the defendant's breach which had been continuing up to the date of

first review. At best, to have informed the defendant of the issue would have enabled it to have taken remedial steps so that the breach, which was a continuing one, would not continue.

19. However, the tribunal is not persuaded that the reviewer, in July 2012, had failed in any obligation to spot the problem of Mrs 'A's audit status. The July 2012 review was a "whole firm review" and included a review of whether or not the defendant was in compliance with the Audit Regulations. The reasons are that the defendant's annual returns filed with ICAEW from 2011 to 2014 failed to disclose that Mrs 'A' was a director of the defendant. It is reasonable to expect the reviewer to have relied upon the annual return when conducting the review, and there is no evidence that the reviewer was put on notice during the review that the annual return was incorrect. Moreover, a question asked by the reviewer: "*Are all principals who are not qualified individuals audit affiliates?*" was met with the defendant's response was "*Not applicable.*" This was the wrong answer (whatever the reason given why it was wrong), as the question was obviously applicable and the correct response should have been "*No*". Had the reviewer seen that response it is reasonable to assume that the issue would have been drawn to the defendant's attention, because ascertaining regulatory compliance was the purpose of asking the question. As it was, the reviewer was misled both by the inaccurate annual returns and also by the response to this question. It is not reasonable for the defendant to assert that the reviewer was negligent in not spotting the issue of Mrs 'A's audit affiliate status when the data the reviewer could reasonably rely upon was incorrect, because of the fault of the defendant.
20. As to the review in December 2013, this was a cold file review (not a whole firm review, as the 2012 one was), and there is no reason to expect the reviewer to have considered Mrs 'A's status. Even if there had been, the defendant's representations had not changed since 2010, and there is no reason to believe that the reviewer would have come to a different conclusion to that of 2012.
21. The tribunal is not persuaded that had the defendant been told in either 2012 or 2013, the extent of the breach could have been mitigated. The defendant was told about the breach in April 2014 but no steps were taken to remedy the breach then; it is not reasonable to infer that they would have been taken earlier, and the defendant has not adduced any evidence that they would, or could, have been.
22. For these reasons, the omission defence fails.

### **The legitimate expectation defence**

23. To establish a legitimate expectation, the person who wishes to rely on it must prove, on the balance of probabilities, that a representation was made to him which was clear, unambiguous and devoid of relevant qualification.
24. In this section of this record, the "Review Committee matter" describes the decision of the ARC to withdraw the defendant's audit registration and the defendant's application for a review of that decision by the Review Committee. Reference to the "investigation matter" is to the investigation of the matters which are now the subject of this complaint. The Review Committee matter and the investigation matter are different to each other and engage different regulatory and legal principles.
25. In support of his defence, Mr Ghersie relies on a representation he says was made to him by Mr Ben Jowett of the ICAEW shortly before the hearing of the defendant's application for a review of the Audit Registration Committee's decision in the Review Committee matter, on 3 December 2014. The gist of the alleged representation was that if the defendant agreed to abandon its application for a review and pay an agreed sum in respect of wasted costs of £2,000, all regulatory matters, including both the Review Committee matter and investigation matter would be compromised. There is no

contemporaneous evidence, documentary or otherwise, of what was actually said in this meeting before the hearing. There is only an official transcript of the Review Committee hearing which took place very shortly afterwards (incorrectly referring to a “Disciplinary Committee”, when it should have referred to a “Review Committee”). The evidence about what was said is contained in the witness statements of Mr Ghersie and Mr Jowett, and each one was written long after the event (27 February 2016 and 17 March 2016 respectively).

26. It was part of the defence that Mr Ghersie did not appreciate the distinction between the two matters. The tribunal does not accept this. In the period leading up to the hearing on 3 December 2014, ICAEW was corresponding with Mr Ghersie in respect of two separate matters (one with reference 022273 and the other 024934). Significantly, on 11 November 2014, Mr Ghersie requested an adjournment of the Review Committee hearing until the conclusion of aspects of the investigation matter. Just over a week later, Mr Ghersie received a letter from ICAEW dated 20 November 2014, clearly distinguishing the two matters. This evidence persuades the tribunal that Mr Ghersie was made aware and was aware of the distinction of the two matters and that they were being treated as two separate processes by ICAEW.
27. In his witness statement dated 17 March 2016 (which was adopted as evidence in chief at the hearing of the complaint), Mr Jowett explains that on 3 December 2014 he was only dealing with Review Committee matter and Mr Ghersie’s status as the Responsible Individual of the Defendant. Mr Jowett recalls a general discussion with Mr Ghersie shortly before the hearing was due to begin, but cannot recall “*word for word*” what was said. He recalls that Mr Ghersie said that the Defendant did not, in reality, want to retain its audit registration but he disputed some underlying facts which were relied upon by the ARC to withdraw audit registration. Mr Jowett suggested that Mr Ghersie and he should explain this to the Review Committee; as far as the costs of the hearing were concerned, Mr Jowett suggested agreeing an amount as a contribution to costs. In the event, Mr Ghersie agreed to this approach, and to a costs contribution of £2,000 (the total costs sought were £2,300).
28. Mr Jowett also recalls a discussion about the investigation of the matters which comprise this complaint. Mr Jowett says he mentioned to Mr Ghersie the possibility that the defendant may be able to accept the penalty which had previously been offered as a compromise, but this was out of his hands and Mr Ghersie would have to speak to Ms ‘C’ who was in charge of that. Mr Jowett recalls calling Ms ‘C’ in Mr Ghersie’s presence but does not recall with any precision what was said; he “*believes*” that she may have said that if Mr Ghersie contacted her, it may be possible to accept this amicable arrangement out of time.
29. Mr Jowett accepts that he may have told Mr Ghersie that it would be “*an end to the matter*” if he withdrew his application for review and paid agreed costs. Mr Jowett explains, however, that he would only be referring to the Review Committee matter, and not Ms ‘C’’s investigation matter, because he had no authority to compromise the latter.
30. Mr Ghersie does not actually state in his witness statement the words he says were used by Mr Jowett at the meeting. He maintains that he would not have accepted a compromise of the Review Committee matter without compromising the investigation matter as well, as there would have been no purpose in doing one and not both. Furthermore, he states that Mr Jowett led him to believe that Mr Jowett had the capacity to compromise the investigatory matter. Mr Ghersie said in oral evidence that he was led to believe by Mr Jowett that he was compromising all regulatory matters against the defendant.

31. What was actually said before the hearing of 3 December 2014 has not been proved, on the balance of probabilities, either by Mr Ghersie or Mr Jowett. Both men gave evidence about what they meant and what they understood by these lost words. As far as Mr Jowett is concerned, he candidly admits he cannot recall word for word what was said, but does give an account of what happened and refers to a conversation with Ms 'C'. He also refers to an email he sent on 4 December to Mr Ghersie confirming that he has no role in the investigation matter and that Mr Ghersie must write to the case manager about that which Mr Ghersie does not deny took place, although he does not refer to that in his witness statement.
32. Mr Ghersie does not state what was actually said, but what he believed was meant by what he says was said, which is not the same thing. The tribunal finds no evidence upon which it can rely that, on 3 December 2014, Mr Ghersie received from Mr Jowett (or anyone else) a representation which was clear, unambiguous and devoid of relevant qualification made for the purpose of compromising both the Review Committee matter and the investigation matter. Furthermore, it appears to the tribunal unlikely that such a representation was made given (as the tribunal accepts) Mr Jowett did not have the authority to compromise the investigation matter with which he was not involved. This finding is supported (or at least not rebutted) by the absence of any written or oral confirmation after 3 December 2014, either from Mr Ghersie or anyone at ICAEW, that the investigation matter had been compromised whereas it seems there was written evidence in the form of an order that the Review Committee matter had been compromised (as referred to in the transcript of the review hearing).
33. Furthermore, an email from Mr Jowett to Mr Ghersie on 4 December 2014 confirming the position as Mr Jowett understood it to be (in summary, that Mr Ghersie should write to the case manager about the possibility of compromising the investigation matter out of time as Mr Jowett had no role in that matter) clearly suggests that the investigation matter was not compromised, Mr Jowett did not think it was and that Mr Ghersie had no reason to believe it had been. Mr Ghersie's reply to that email is relevant, where he states: *"Thank you for your email and clarifying the position, When it has been finalised, could I have a copy of yesterday's hearing."* The tribunal accepts the IC's submission that had Mr Ghersie been labouring under the impression that both matters had been compromised on 3 December 2014, his response to Mr Jowett would have been markedly different to this one.
34. The tribunal considers the transcript of the Review Committee hearing to be of no assistance in determining this precise issue, not least as it transcribes events after the representation was allegedly made by Mr Jowett. The tribunal draws no adverse inference on Mr Jowett's refusal to give a copy of the transcript of the Review Committee hearing to Mr Ghersie when one was sought (as Mr Ghersie asks it to do) because the tribunal accepts that, as a matter of course, transcripts are not provided by the ICAEW to applicants and it was understandable of Mr Jowett to decline Mr Ghersie's request. For the avoidance of doubt, since it forms part of Mr Ghersie's submissions, the tribunal finds no evidence whatsoever that Mr Jowett lied either to Mr Ghersie or in his evidence or has otherwise tried to mislead him.
35. In his submissions, Mr Ghersie asserted that he would never have agreed to compromise the Review Committee matter only as he did not get anything back in return. This is not accepted. In his compromise, Mr Ghersie obtained the conclusion of the Review Committee proceedings which his company no longer wanted anyway, and also a reduction in the amount of costs sought of £300.
36. Because there is no evidence of a clear, unambiguous representation which is devoid of relevant qualification that the Defendant can rely upon to base a defence in legitimate expectation, that defence fails.

### **Do the matters complained of constitute a breach of DBL 6.2a?**

37. The failure by the defendant to ensure that Mrs 'A' had audit affiliate status on 19 November 2010 and its failure to include Mrs 'A' as a director in its annual returns for 2011, 2012 and 2013 means that it has, self-evidently, breached Audit Regulations 2.03a and 6.06. Thus, it has breached DBL 6.2a because it has breached two "*regulations of the Institute in its capacity as a recognised supervisory body*" as defined thereunder.

### **Matters relevant to sentencing**

38. The tribunal considered the *Guidance on Sanctions* and saw no reason to depart from that. The tribunal was satisfied that no lesser penalty than the one imposed was appropriate. Mitigating factors are the defendant's clean disciplinary record and the appearance of Mrs 'A's name on the defendant's notepaper. Aggravating factors are repeated errors on the Annual Return which need not have occurred and the Defendant's failure to rectify Mrs 'A's standing despite the assurance that had been given.

### **Sentencing Order**

1. Severe reprimand;
2. Fine of £6,350;
3. Costs of £8,000

### **Decision on publicity**

Publication with name.

The tribunal **directs** that any publication of this decision must describe the defendant as follows: either "the defendant" or "MG Associates Ltd (In liquidation)" as the context permits.

**Non Accountant Chairman**  
**Accountant Member**  
**Non Accountant Member**

Mr Peter Williamson  
Mr Michael Barton FCA  
Miss Jane Rees

**Legal Assessors**

Mr Dominic Spenser Underhill (6 July 2016)  
Mr John Trotter (19 September 2016) **024934**

**3 Mr Kevin David Allen BSc [FCA]**  
86 Cornyx Lane, Solihull, West Midlands, B91 2SE

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 20 September 2016**

**Type of Member** Member

**Terms of complaint**

3. As the director of 'A' Limited Mr Allen failed to deliver to the Registrar of Companies a copy of that company's accounts in respect of the financial year ending 28 February 2011 by the required date of the 06 October 2012.
4. Between 26 March 2009 and 17 July 2012 Mr Kevin Allen dishonestly made transfers totalling £1m from 'B', (where he was a finance director) to 'C' Limited where he was the sole director

Kevin David Allen is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(a)

because

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

**Hearing date**

20 September 2016

**Previous hearing date(s)**

None

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** Exclusion

**Procedural matters and findings**

**Parties present** Kevin Allen was not present.

**Represented** Mr Allen was not represented. The Investigation Committee (IC) was represented by Mr James Francis.

**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.

## **The Investigation Committee's (IC's) case**

1. Until 27 September 2012, the defendant was the finance director of a business called 'B', which was regulated by the Financial Conduct Authority (FCA). 'B' offered equity release mortgage products and loaned money to customers through regulated mortgage contracts.
2. The defendant was also a director and minority shareholder of the 'C' Limited. The majority shareholder of 'C' Limited was 'D' Limited. 'D's shares were owned by the 'A' Limited. 'A' Limited's shares were all owned by the defendant, who was also its sole director. This meant that the defendant was, to all intents and purposes, the sole director and entire shareholder of 'C' Limited in spite of 'C' Limited's majority shares being, ostensibly, owned by Swan.

### ***The first head of complaint***

3. As the sole director of 'A' Limited, the defendant was obliged to file accounts at Companies House. The last filed accounts of 'A' Limited were for the year ended 29 February 2008, and thereafter no accounts were filed, including for the year ended 28 February 2011.
4. Because of this, the Department of Trade laid a charge against the defendant that, contrary to Sections 441 and 451 of the Companies Act 2006, he had failed to file accounts of the 'A' Limited for the financial year ended 28 February 2011 by the due date of 6 October 2012. The matter was heard in the defendant's absence at the Vale of Glamorgan Magistrates' Court when he was found guilty; the defendant was disqualified from being a director under Section 5 of the Company Disqualification Act 1986 for three years, expiring on 5 February 2016.

### ***The second head of complaint***

5. Between 26 March 2009 and 17 July 2012, the defendant made dishonest transfers of money totalling £1,000,000 from 'B' to 'C' Limited. He did this without the knowledge or approval of the other directors of 'B'.
6. The defendant did this by, amongst other things, falsifying an email exchange to an employee of 'B' so as to make it appear that a transfer of funds to 'C' Limited (which he had instigated) had been authorised by another director of 'B', when it had not been. Furthermore, the defendant falsified a bank statement of 'B' which recorded an illicit transfer of funds of £100,000 to 'C' Limited on 2 September 2010; he falsified it by making it look as though the payment was not to 'C' Limited, but to HMRC.
7. The defendant admitted these two acts of falsification when he was interviewed by the FCA on 24 October 2014.
8. On 9 June 2015, having investigated the defendant's conduct, the FCA issued a final notice to the defendant. The FCA had found that
  - (a) The defendant had admitted to making transfers of £1,000,000 from 'B' to 'C' Limited without the knowledge of 'B's other directors.
  - (b) The defendant had breached 'B's prohibition on loans and advances made to companies in excess of £50,000, without the approval of the other directors.
  - (c) The defendant had falsified a bank statement and an email exchange.

9. The FCA found that the defendant had failed to act with integrity in carrying out controlled functions and was not a fit and proper person. The defendant was fined, censured publically and prohibited from carrying out regulated activity.

***The “conclusive evidence” of the matters complained of***

10. Disciplinary Bye-Laws are referred to as “DBL”. DBL 7.2(a) provides that the fact that a member has been the subject of an adverse finding in respect of his conduct, shall, for the purpose of the Disciplinary Bye-Laws, be conclusive evidence of the commission by him of the act or default mentioned in DBL 4.1(a). That “finding” is a finding in proceedings before a body which is for the time being a regulatory body performing its functions under the Financial Services and Markets Act 2000. The FCA is such a body.
11. DBL 7.2(b) provides that the fact that a member has had a disqualification order made against him under the Company Directors Disqualification Act 1986 shall, for the purposes of the Disciplinary Bye-Laws, be conclusive evidence of the commission by him of the act or default mentioned in DBL 4.1(a).
12. Therefore, the defendant is liable to disciplinary action under DBL 4.1(a) and the matters complained of are so proved.

**Issues of fact and law**

13. The issues of fact to be determined are:
  - (i) did the defendant fail to deliver to the Registrar of Companies a copy of ‘A’ Limited’s accounts in respect of the financial year ending 28 February 2011 by 6 October 2012 and;
  - (ii) did the defendant dishonestly make transfers totalling £1,000,000 from ‘B’ to ‘C’ Limited between 26 March 2009 and 17 July 2012?
14. If so, is the defendant liable to disciplinary action under DBL 4.1(a)?
15. The tribunal found the complaint proved.

**Conclusions and reasons for decision**

16. There is conclusive evidence that the defendant has discredited himself, ICAEW and the profession of accountancy, by (i) being disqualified as a director and (ii) acting dishonestly in the conduct of his business. This is, self-evidently, not acceptable conduct for any member of ICAEW and the appropriate sanction needs to be applied.

## **Matters relevant to sentencing**

17. The tribunal considered the *Guidance on Sanctions* and saw no reason to depart from that. It was also satisfied that no lesser penalty should be imposed.
18. A mitigating factor was the defendant's previously clean disciplinary record. Aggravating factors are (i) the dishonest conduct of the defendant; (ii) the fact that he was in a (fiduciary) position of trust when a director of 'B'; (iii) the motivation of self-interest when transferring the money from 'B' to a business he owned and controlled; (iv) the absence of any remorse or any insight into the defendant's wrongdoing.
19. The tribunal decided to exclude the defendant. His means and current situation persuaded the tribunal that neither a financial penalty nor an order for costs would be appropriate.

## **Sentencing Order**

Exclusion

### **Decision on publicity**

Publication with name.

**Non Accountant Chairman**

Mr Peter Williamson

**Accountant Member**

Mr Ian Walker FCA

**Non Accountant Member**

Miss Jane Rees

**Legal Assessor**

Mr Dominic Spenser Underhill

**013641**

## APPEAL COMMITTEE PANEL ORDERS

**4 Mr John Paul Bell FCA** of  
3rd Floor, The Pinnacle, 73 King Street, MANCHESTER, M2 4NG.

**A panel of the Appeal Committee made the decision recorded below having heard an appeal on 21 September 2016**

**Type of Member** Member

**Date of Disciplinary Tribunal Hearing** 28, 29 January and 10 March 2016

**Date of Appeal Hearing** 21 September 2016

### **Terms of complaint found proven before the Disciplinary Tribunal**

That Mr JP Bell FCA , in his capacity as Trustee in Bankruptcy of Mr 'A' wrongly authorised the exchange of contracts for the sale of a property when he should have known, that the shortfall in the Bankruptcy Estate might reduce significantly with the determination of the costs application the following day so that the shortfall could be funded without the sale of the property.

Mr Bell is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b.

Disciplinary Bye Law 4.1b states the following:

- 4.1 A member or provisional member shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member or provisional member at the time of the occurrence giving rise to that liability
- b. if he has performed his professional work or the duties of his employment, or conducted his practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, the Institute or the profession of accountancy.

### **Sentencing Order of Disciplinary Tribunal**

Insolvency Licence be withdrawn for 24 months from 21 May 2016, fined £10,000 and pay costs of £40,000.

The fine and costs are to be paid by 12 monthly instalments. The first instalment of £4,350.00 is due on 1 May 2016 followed by 11 instalments of £4,150.00 due on the first of each consecutive month.

Appeal against finding? No

Appeal against Sentencing order? Yes to the extent of challenging the order for withdrawal

Appeal against Costs? No

Decision of Appeal Panel Appeal allowed in part. No order as to the costs of the appeal

If appeal allowed in part, set out brief details here

The order for withdrawal of the Insolvency Licence was quashed and an order for a severe reprimand substituted.

## **Reasons for decision**

### **Procedural matters and findings**

- 1 The Appellant attended and was represented by Ms Marcia Shekerdeman QC. Ms Theresa Thorp appeared for the Investigation Committee
- 2 The hearing was in public
- 3 The Appellant applied for the hearing to be in private on the ground that the material he wished to submit in mitigation was confidential to his practice.
- 4 On 21 September 2016 the Chairman rejected the application but ordered that the Appellant should be at liberty to serve the material in redacted form (for public consumption) and in full to the panel.

### **Grounds of appeal**

- 5 The Appellant claimed that the Disciplinary Committee had not treated him fairly in that it refused to provide him with its written reasons for finding the complaint proved in advance of the sentencing hearing and had failed to warn him or his counsel that he risked a suspension order.
- 6 The Appellant considered that the DC had in reality sentenced him for an offence under DBL 4.1a when the complaint was framed and had been conducted throughout on the lesser basis of DBL 4.1b.
- 7 The Appellant further claimed that a sentence of suspension was disproportionate to the complaint found proved.

### **Decision**

- 8 The Appeal was allowed in part. The order for withdrawal of the Insolvency Licence for 24 months was quashed and a severe reprimand substituted. The panel accepted an undertaking from the Appellant's solicitors to tender the sum of £72,000 to the complainant in reimbursement of the fees received by the Appellant in the complainant's bankruptcy.
- 9 There was no order as to the costs of the appeal.

## **Reasons for decision**

- 10 The only point at issue in the appeal was the order for suspension from practice: the Appellant did not contest either the fine or the order for costs made by the DC.

- 11 The panel considered that the DC hearing had not been handled appropriately. Given that sentence had been adjourned *sine die*, it was unfair to delay delivery of the written reasons for the decision until after the sentencing hearing. This meant that the Appellant's counsel had had to mitigate 'blind'. No satisfactory explanation had been forthcoming either for the extraordinary delay in producing written reasons (in the event ten weeks from the initial hearing) or for withholding the reasons at the sentencing hearing.
- 12 Suspension (*a fortiori* a lengthy, career-destroying, suspension) would be a very unusual penalty for any complaint under DBL 4.1b. The Committee considered that a fair way to proceed would have been for the DC to inform the parties at the hearing that it had such a penalty in mind and to invite counsel to address them on it. If, as was the case here, the possibility of suspension would have led the Appellant to conduct his mitigation on a much more detailed basis, the failure of the DC to draw the possibility of suspension to his attention is difficult to justify.
- 13 The reasoning of the DC was flawed. The case against the Appellant had been conducted throughout by the Investigation Committee (and the hearing opened by its advocate) on the correct basis of DBL 4.1b, namely that this was a bad case of incompetent or negligent behaviour unworthy of a member of the Institute but not one involving lack of integrity, dishonesty or deliberate wrongdoing. It appeared to the Committee that the DC had disregarded this and sentenced the Appellant as if he had been guilty of conduct covered by DBL 4.1a. Findings of lack of integrity and deliberate wrongdoing were not open to the DC on the way the case was framed or on the evidence adduced. It was thus wrong for the Appellant to be sentence on those bases.
- 14 The DC's reasoning was also open to question. Excessive weight was given to the wish of the complainant that the Cheltenham property should not be sold, given that he had not only expressed an earlier desire for it to be sold but had attempted to market it himself and given that there was no material before the DC to indicate that his wishes were rational or that he had any prospect of paying the mortgage if the property remained unsold. The Committee failed to understand the DC's view that the sale of the property had in some way occasioned the complainant loss (particularly in the light of the fact that complaints of sale at an undervalue had earlier been rejected as misconceived by the IC).
- 15 The DC failed to take into account two important factors. First, the proceedings against the Appellant were heard a very long time after the events giving rise to the complaint, the lion's share of the delay having been caused by the complainant refusing to accept that six of the seven complaints made by him were without foundation. This delay, no part of which can be attributed to the Appellant, should have been noted. Secondly when the one viable complaint had been identified, the IC itself had offered the Appellant the option of a severe reprimand and a fine. If the IC itself considered a severe reprimand sufficient penalty, the DC should have given reasons for departing from this stance.
- 16 The evidence placed before the panel in mitigation as to the disastrous effect of the suspension on the Appellant's career and his practice was highly persuasive. Had the DC not proceeded in the manner set out above, the Appellant would have adduced this evidence before the DC and the panel had no hesitation in accepting it.
- 17 Viewed objectively the sentence of suspension could not be justified on the ground of proportionality. Although the Appellant had (as he now accepts) committed a grave error of judgment, the total ruin of his career and his practice which suspension would entail would not be considered by an objective spectator to be a fair conclusion. The panel decided unanimously that a severe reprimand was and had always been the only correct sentence.

- 18 At the opening of the appeal, Counsel for the Appellant stated that the Appellant's solicitors were holding the sum of £72,000 which they would undertake to offer to the complainant in reimbursement of the Appellant's fees. The panel considered this to be an appropriate offer and accepted the undertaking. Whether the complainant, in his unfortunate mental state, accepts the offer is not the concern of the panel. Thus the undertaking to the panel is to tender the sum to the complainant or, preferably, if he has one, to his solicitor.
- 19 The position of the IC on the appeal had been one of neutrality. No criticism of the IC's conduct of the original hearing was made at any stage. It was not the fault of the IC that the DC fell into error. The Committee thus felt it appropriate to make no order for the costs of the appeal

**Chairman**  
**Accountant Member**  
**Accountant Member**  
**Non Accountant Member**  
**Non Accountant Member**

Mr Richard Mawrey QC  
Mr Lee Manning FCA  
Mr David Hales FCA  
Mr Geoff Baines  
Prof. Susan Bassnett

**011208**

## INVESTIGATION COMMITTEE CONSENT ORDERS

### 5 No publicity of name

Consent order made on 21 September 2016

With the agreement of a member the Investigation Committee ordered that the member pay costs of £1,086 with respect to a complaint that:

On 26 March 2010 Miss 'X' ACA entered into an individual voluntary arrangement under the provisions of the Insolvency Act 1986.

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

---

**031257**

### 6 FKCA Limited

Consent order made on 21 September 2016

With the agreement of FKCA Limited of Prospero House, 46-48 Rothesay Road, Luton, LU1 1QZ, the Investigation Committee made an order that the firm be severely reprimanded, fined £2,500 and pay costs of £1,567 with respect to a complaint that:

On 7 April 2015, Foxley Kingham signed an Independent Accountants' Report on the financial statements of X Limited for the year ended 30 September 2014, which stated that the company satisfied the conditions for exemption from an audit specified in section 4A(1) Friendly and Industrial and Provident Societies Act 1968 when this was not the case as the company's gross assets at the end of the preceding year of account exceeded £2.8m.

---

**032400**

### 7 Chantrey Vellacott DFK LLP

Consent order made on 23 September 2016

With the agreement of Chantrey Vellacott DFK LLP of 150 Aldersgate Street, London, EC1A 4AB, the Investigation Committee made an order that the firm be severely reprimanded, fined £35,000 and pay costs of £6,805 with respect to a complaint that:

Chantrey Vellacott DFK LLP issued unqualified audit opinions on the financial statements of X for the following periods, in breach of audit regulation 3.10, as the audits were not conducted in accordance with ISA 500 Audit Evidence in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions regarding the completeness and valuation of bank and cash balances and prepayments:

- a. Year ended 31 December 2008, audit opinion signed 1 July 2009
- b. Year ended 31 December 2009, audit opinion signed 7 July 2010
- c. Year ended 31 December 2010, audit opinion signed 6 July 2011

---

**023133**

## **8 Mr Anthony John Pearson FCA**

Consent order made on 23 September 2016

With the agreement of Mr Anthony John Pearson of 1 Packington Hill, Kegworth, Derby, DE74 2DF, the Investigation Committee made an order that he be severely reprimanded, fined £7,500 and pay costs of £3,138 with respect to a complaint that:

1. Mr A J Pearson FCA, following a QAD visit on 17 January 2007 confirmed on behalf of his firm, that:
  - a. "I have written to my bank to obtain the confirmation you require" in relation to a QAD point regarding a lack of a bank trust status letter.
  - b. "I will issue letters of engagement to all my clients. I propose to issue the letters over the next 12 months as I complete their accounts".  
but at a subsequent QAD visit on 10 June 2014 it was found that the assurances had not been complied with.
2. Mr Anthony Pearson FCA failed to comply with regulation 22 of Clients' Money Regulations as fees were withdrawn from the client money bank account when a formula had not been agreed in writing and thirty days had not elapsed since the date of delivery to the client of a statement of fees. Full particulars are set out in a letter sent to Mr Pearson dated 22 January 2016 (Appendix 1).
3. Mr Anthony Pearson FCA failed to comply with regulation 21 of the Clients' Money Regulations as he caused or permitted funds to be withdrawn from the client bank account for 11 clients which were greater than the credit balance held for that client. Full particulars are set out in a letter sent to Mr Pearson dated 22 January 2016 (Appendix 2).
4. Mr Anthony Pearson FCA failed to comply with Regulation 11 of the Clients' Money Regulations as on 1 December 2011 he paid £324 into the client bank account which were personal funds of the firm and not Clients' Money.
5. Between 17 January 2007 and 10 June 2014 Mr Anthony Pearson FCA failed to comply with regulation 27b of the Clients' Money Regulations as he failed to carry out and document an annual compliance review.

---

**027738**

## **9 Mr Alan Valembois ACA**

Consent order made on 3 October 2016

With the agreement of Mr Alan Valembois of 115 Whitby Road, Ipswich, IP4 4AG, the Investigation Committee made an order that he be severely reprimanded, fined £10,000 and pay costs of £2,205 with respect to a complaint that:

Between 8 February 2010 and 7 February 2013, Mr A Valembois ACA failed to comply with Regulation 10 of the Clients' Money Regulations in that on 78 occasions clients' money totalling £97,948 was paid into the firm's office bank account. Full particulars were set out in a letter sent to Mr Valembois dated 14 December 2015 (Appendix 1).

---

**020829**

## 10 Mr Greg Stewart

Consent order made on 27 September 2016

With the agreement of Mr Greg Stewart of 4 Beau Vallon Gardens, Le Vier Mont, Jersey, JE2 4NG, the Investigation Committee made an order that he be severely reprimanded and pay costs of £1,068 with respect to a complaint that:

1. On the 18 December 2015 Mr Greg Stewart, whilst in a nightclub, threw a glass to the side of an unnamed male's face causing multiple cuts and thereafter punched him to the face thereby giving the male a black eye. Mr Stewart was subsequently convicted of 'a grave criminal assault' by a Jersey Criminal Court.
2. On the 18 December 2015 Mr Greg Stewart was found to be in possession of 1.48g of Cannabis Resin and was subsequently convicted of 'possession of a controlled drug' by a Jersey Criminal Court.

**033685**

---

## 11 Paul Anthony Durrant ACA

Consent order made on 3 October 2016

With the agreement of Mr Paul Anthony Durrant of 2 The Quadrant, Coventry, CV1 2DX, the Investigation Committee made an order that he be severely reprimanded, fined £10,000 and pay costs of £2,268 with respect to a complaint that:

1. Mr Paul Anthony Durrant ACA, following a QAD visit on 26 February 2009 confirmed on behalf of his firm, that:
  - in respect of documenting the firm's approach to customer due diligence under the Money Laundering Regulations 2007 that, he would introduce this 'by 30 June 2009 with the probable adoption of permanent files for each client'.
  - in respect of the notification to his clients of his basis of charging fees and complaints procedures that he would 'send out engagement letters with appropriate reference to complaint procedures and basis of fee. Returned documents to be retained on permanent files';
  - in respect of registration under the Data Protection Act that 'registration pack and provisional number Z163775X already supplied by I.C.O';
  - in respect of his sole member of staff that he would 'clarify terms and conditions with employee and arrange for a formal contract to be drawn'.

but a subsequent QAD visit carried out on 12 November 2014, it was found that these matters had not been addressed.

2. Mr Paul Anthony Durrant ACA failed to submit the 2011, 2012, 2013 and 2014 ICAEW annual returns by the required deadlines, despite his verbal confirmation on 1 December 2009 that he would ensure the annual returns were submitted in a timely manner.

**029235**

---

## 12 Mrs Lesley White FCCA

Consent order made on 10 October 2016

With the agreement of Mrs Lesley White of Unit 27 Stockwood Business Centre, Redditch, Worcestershire, B96 6SX, the Investigation Committee made an order that she be severely reprimanded, fined £2,000 and pay costs of £1,905 with respect to a complaint that:

On 18 April 2015, Mrs Lesley White FCCA, on behalf of her firm, X Limited, signed an Accountants' Independent Report for Z Limited for the year ended 31 December 2014:

1. as required by the Co-operative and Community Benefit Society Act 2014, when she was ineligible to do so.
2. when the accounts were misleading or incorrect in that they did not comply with section 15.1 of the Financial Reporting Standard for Smaller Entities (effective April 2008) in that related party transactions have not been disclosed in the accounts.

---

**027968**

## 13 Gibson Booth

Consent order made on 14 October 2016

With the agreement of Gibson Booth of New Court, Abbey Road North, Shepley, Huddersfield, HD8 8BJ, the Investigation Committee made an order that the firm be severely reprimanded, fined £14,000 and pay costs of £3,505 with respect to a complaint that:

On 13 February 2015, Gibson Booth issued an audit report in respect of the financial statements of X Limited for the year-ended 30 June 2014 when, contrary to Audit Regulation 3.02, the firm failed to comply with the following Ethical Standards (ES):

- a. ES1, *Integrity, objectivity and independence*, in that the firm failed to ensure that those charged with governance of the audited entity were appropriately informed on a timely basis of all significant facts and matters that bear upon the firm's objectivity and independence; and
- b. ES2, *Financial, business, employment and personal relationships*, in that the firm failed to apply appropriate safeguards to eliminate or reduce to an acceptable level a threat to objectivity and independence given that a close family member of a person that might reasonably be considered to be in a position to influence the conduct and outcome of the audit acted as officer of the client.

---

**027599**

#### **14 Graeme Charles Reid FCA**

Consent order made on 20 October 2016

With the agreement of Mr Graeme Charles Reid of 57 Hull Road, Cottingham, North Humberside, HU16 4PT, the Investigation Committee made an order that he be reprimanded and pay costs of £1,192 with respect to a complaint that:

On 28 July 2014, Mr G C Reid FCA issued an accountants report to the Solicitors Regulation Authority for X LLP for the year ended 30 April 2014, on behalf of his firm Y & Co, but failed to obtain a review by a training company before the report was signed in breach of a requirement by a Regulatory Assessor of ACCA imposed on 15 January 2013.

**033659**

---

#### **15 Stopfords (Chesterfield) LLP**

Consent order made on 20 October 2016

With the agreement of Stopfords (Chesterfield) LLP of Synergy House, 7 Acorn Business Park, Commercial Gate, Mansfield, Nottinghamshire, NG18 1EX, the Investigation Committee made an order that the firm be reprimanded, fined £1,000 and pay costs of £2,805 with respect to a complaint that:

That on 17 April 2015, Stopfords (Chesterfield) LLP approved unaudited abbreviated financial statements for the year ended 31 July 2014, which had not been properly prepared in that:

- i) Debtors were understated by £47,049;
- ii) Loans and other debts due to members were understated by £20,331; and
- iii) The balance sheet contained a number of arithmetic errors.

**028923**

---

## REGULATORY DECISIONS

### AUDIT REGISTRATION COMMITTEE

#### ORDER – 15 JUNE 2016

##### 16 Publicity Statement

The registration as company auditor of Zaidi & Co, Amen Corner, 241 Mitcham Road, London, SW17 9JQ, was withdrawn on 12 October 2016 under audit regulation 7.03g of the Audit Regulations and Guidance 2008 for failing to comply with a condition imposed by the Audit Registration Committee. The responsible individual status of Mr Misdaq Zaidi was also withdrawn under audit regulation 4.08e.

---

025406

#### ORDER – 13 JULY 2016

##### 17 Publicity Statement

David Lindon & Co, Avaland House, 110 London Road, Apsley, Hemel Hempstead, Hertfordshire, HP3 9SD has agreed to pay a regulatory penalty of £1,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 3.20 and 6.06 for failing to carry out cold file reviews as part of its annual audit compliance reviews and for the incorrect statements made on the firm's 2013 and 2014 annual returns.

---

033773

#### ORDER – 21 SEPTEMBER 2016

##### 18 Publicity Statement

KPMG LLP, 15 Canada Square, London, E14 5GL, has agreed to pay a regulatory penalty of £2,350, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Rule 4.01b of the Crown Dependency Audit Rules and Guidance (CD Rules), for allowing an audit report to be signed by an individual who had not confirmed, in writing, to the Jersey Financial Services Commission that he agreed to abide by the CD Rules.

---

035090

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