



Disciplinary Orders and Regulatory Decisions

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Disciplinary orders

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. **Mr Christopher Anthony Bugden** of
Brighton, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 15 August 2018

Type of Member Former Member

Terms of complaint

1. That between 15 October 2008 and 23 February 2009, Mr C Bugden, in his capacity as director of 'A' Limited made loans totalling £358,000 to 'B' Limited and 'C' Limited in which he was a director when :
 - a. the loans were not disclosed appropriately in the financial statements.
 - b. there were no safeguards in place to ensure the Defendant's objectivity
2. That between 23 January 2008 and 6 September 2011, Mr C Bugden, in his capacity as director of 'A' Ltd, improperly paid items of his personal expenditure totalling £67,733 from the company's bank accounts for his own benefit
3. Mr C Bugden, in his capacity as director of 'A' Limited approved accounts for the three years ended 31 March 2009, 2010 and 31 July 2011 whereby loans to connected companies:
 - (a) were incorrectly recorded as a cash balance; and/or
 - (b) failed to be recorded in compliance with FRSSE 15.1 in that they were not disclosed as related party transactions.

Mr Christopher Anthony Bugden is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.a for complaints 1 and 2 and 4.1.b regarding complaint 3

4.1a: if in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, the Institute or the profession of accountancy.

4.1b. 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.

Hearing date	15 August 2018
Previous hearing date(s)	27 March 2018 – postponed at Defendant’s request
Pre-hearing review or final hearing	Final Hearing
Complaint 1 (a)	Withdrawn by the Investigation Committee
Complaint 1 (b)	Proved
Complaint 2	Not proved
Complaint 3	Proved, by admission
Sentencing order	Reprimand Fine of £3000 Costs of £10,000
Procedural matters and findings	
Parties present	Mr Christopher Anthony Bugden (the Defendant), in person The investigation Committee was represented by Ms Jessica Sutherland-Mack
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 of the Notice of Hearing; however, it transpired that the bundle of documents for the hearing which the Defendant had received was missing some 100 pages. The Defendant was given a complete copy and was given an opportunity to read them with the assistance of Ms Sutherland-Mack, before the hearing recommenced.
Documents considered by the Tribunal	The Tribunal considered the documents contained in the Investigation Committee’s (IC’s) bundle pages 1 – 248, together with 10 additional pages submitted by the Defendant at the hearing.
Findings on preliminary matters	There were no preliminary matters.

1. The Investigation Committee's (IC's) case

1.1 'A' Limited was a property company which was originally wholly beneficially owned by Rev.'D'. The Rev 'D' died on 22 December 2007. The Defendant was appointed as director of 'A' Limited on 24 January 2005 by Rev. 'D' who was a long term family friend. The Defendant said that he had full control to run the company and maximise its profits because he had a background of property expertise.

1.2 The Defendant was sole director of 'A' Limited for 15 months following the death of Rev. 'D' whose 100% interest was bequeathed to several charities. 'A' Limited also held significant cash balances.

1.3 Unaudited abbreviated accounts were filed in respect of 'A' Limited as follows:

Year end	Date filed Co House	Net assets	Of which, cash at bank
31 Mar 2008	19 Sep 2008	398,686	458,083
31 Mar 2009	31 Jan 2010	598,260	689,950
31 Mar 2010	5 Apr 2011	794,723	894,650
31 July 2011	6 Oct 2011	903,543	956,037

1.4 'E' of 'F' LLP was appointed joint liquidator of 'A' Limited on 10 August 2012, when the company entered a members' voluntary liquidation. The liquidator was appointed to realise the assets, wind the company up and pay over the net assets to the executors so that the legacies to the charities could be paid.

1.5 'F' LLP conducted an enquiry into the company's affairs and concluded that certain transactions required further investigation. The transactions included loans totalling £358,000 from 'A' Limited to two entities in which the Defendant was a director:

'C' Limited - Loan of £200,000 on 15 October 2008; and

'B' Limited – Loan of £28,000 on 10 December 2008 and £130,000 on 23 February 2009.

1.6 Payments to third parties regarding goods and services received by the Defendant and his companies between 23 January 2008 and April 2012 were also queried.

1.7 The Defendant was not a shareholder in 'A' Limited but nevertheless made the above-mentioned loans with BPC funds in the year preceding the Rev. 'D's death.

1.8 The Defendant admitted paying for personal items as an offset to services provided by himself or his related companies. He explained that there were personal items on the payment schedule such as school fees. He stated that it was his practice to make these payments in relation to settlement of fee notes for his services and that the invoices were settled by crediting his director's current account.

1.9 The IC first considered this matter on 07 March 2017. The Defendant was notified of the Committee's decision on 13 March 2017.

1.10 Following referral to the Disciplinary Tribunal, the complaints were subject to further legal review. The current complaints were referred from the IC on 03 October 2017. The Defendant was told of this result on 13 October 2017.

2 Complaints 1 (a) and (b)

2.1 **Complaint 1 (a)**

2.1 The IC withdrew this complaint as duplicitous. However, the background to it fed into complaint 3.

The Defendant confirmed that he made two loans from 'A' Limited to entities in which he is a director, as follows:

<i>Date</i>	<i>Amount £</i>	<i>Comment</i>
15 Oct 2008	200,000	Loan to 'C' Limited for the purchase of property 'G',
10 Dec 2008	28,000	Payee was the Defendant personally although the Defendant explained this was a loan to 'B' Limited for 50% of a purchase deposit
23 Feb 2009	130,000	Additional loan to 'B' Limited for purchase of materials from China being part of a final payment for containers of goods
Total	358,000	

2.2 'C' Limited was a company which was incorporated on 16 May 2008 and had three director members: the Defendant, his wife and 'S'.

2.3 The Defendant was also a director and shareholder of 'B' Limited.

2.4 The Defendant stated that one of his roles as director to 'A' Limited was to maximise non property income. He said that, at first, he invested deposit money on the money market but that towards the end of 2009, interest rates fell and so did money market rates. The Defendant said he made the loans to connected parties because they earned substantially higher interest rates than those offered by the company's bankers, at 0.0125%.

2.5 The Defendant's letter of 7 August 2013 stated that both loans were interest bearing at a rate of 2% per annum and guaranteed by him. He said that throughout the period of the loans, he maintained sufficient personal liquidity to repay the loans on demand.

- 2.6 In the Defendant's letter dated 1 September 2015, he said the interest rate charge was 3% and the loans were disclosed under the heading cash at bank and in hand, just as money market deposits were included under the same heading. The capital on each loan was largely repaid by the period ended 31 July 2011. Two interest payments totalling £2,813 were identified as payments made by the Defendant.
- 2.7 The Defendant explained that the loan with 'B' Limited was for purchasing approximately 6 months' worth of goods from China. The Defendant explained that 'B' Limited had never purchased direct from China before but the costs were substantially less than UK suppliers.
- 2.8 The Defendant explained that the loan to 'C' Limited was to assist with the purchase of property 'G', which was occupied by two tenants. 'C' Limited only occupied the ground floor and the upstairs was let to an unconnected company.
- 2.9 The IC submitted that the Defendant should have ensured that there was appropriate disclosure of the loans in the financial statements. The Defendant admitted he should have paid closer attention to detail when he approved them and that the loans were incorrectly recorded as a cash balance. This is relevant to Complaint 3 (below).

2.10. Complaint 1(b)

- 2.11 The IC submitted that the Defendant should have put in place appropriate safeguards to ensure his objectivity, given the nature of the transactions and proximity to him and family members.
- 2.12 A professional accountant in business has a professional obligation to comply with the principle of objectivity as set out in Part 120 of the Code of Ethics.
- 2.13 Specific examples of circumstances that may create self-interest threats are set out in Part C of the Code of Ethics and include:
- Holding a financial interest in or receiving a loan or guarantee from the employing organisation.
 - Participating in incentive compensation arrangements offered by the employing organisation.
 - Inappropriate personal use of corporate assets.
 - Concern over employment security.
 - Commercial pressure from outside the employing organisation.
- 2.14 In respect of safeguarding financial interests specifically, Part 340.2 states:

The significance of any threat shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level. In evaluating the significance of any threat, and, when necessary, determining the appropriate safeguards to be applied to eliminate the threat or reduce it to an acceptable level a

professional accountant in business shall evaluate the nature of the financial interest. This includes evaluating the significance of the financial interest and determining whether it is direct or indirect. What constitutes a significant or valuable stake in an organisation will vary from individual to individual, depending on personal circumstances. Examples of such safeguards include:

Policies and procedures for a Tribunal independent of management to determine the level or form of remuneration of senior management.

Disclosure of all relevant interests and of any plans to trade in relevant shares to those charged with the governance of the employing organisation, in accordance with any internal policies.

Consultation, where appropriate, with superiors within the employing organisation.

Consultation, where appropriate, with those charged with the governance of the employing organisation or relevant professional bodies.

Internal and external audit procedures.

Up-to-date education on ethical issues and on the legal restrictions and other regulations around potential insider trading.

- 2.15 The Defendant contended that the loans were discussed with solicitors at 'H', because part of the moneys needed to make the loans were held by them and were transferred to the 'A' Limited bank account in November 2008. A receipt of £215,000, on 26 November 2008, was listed on the statement of credits received.
- 2.16 The Defendant explained that the loans were repayable on demand and supported by cash and shares which always matched or were greater than the loans outstanding. He commented that the loans were more liquid than money market deposits, which were always one to three months.
- 2.17 The Defendant provided a schedule to 'F' LLP of repayments and 'F' LLP verified repayments of the capital through the current bank account on both loans for varying amounts during 2008, 2009 and 2010.
- 2.17 The IC submitted that the Defendant failed to deal with the self-interest threat to his objectivity. Connected companies with which he was associated benefitted from the provision of loans from 'A' Limited at a time when the Defendant's main responsibility was to effectively, safeguard the assets of the company in the interests of the beneficiaries and liaise with those responsible for the liquidation and distribution of its assets.
- 2.18 The IC noted that The Defendant stated he spoke to 'H' Solicitors, executors of the Rev. 'D's estate, and told them about the loan. However, there was no record of this conversation, no signed loan agreement by the parties to the transactions and no apparent attempt to ask the beneficiaries of the estate whether they were happy for the loans to be made.

- 2.19 It was therefore unknown what was discussed between the Defendant and the executors, whether the beneficiaries were consulted, or whether the outcome of any discussion was safely and properly effected.
- 2.20 The IC submitted that the danger of not objectively having appropriate safeguards in place was heightened by the fact that the loans were not disclosed or documented properly in the accounts and accompanying notes. Both of these factors suggested that there were insufficient safeguards in place to protect the Defendant's position as director and the welfare of the beneficiaries.

3 Complaint 2

- 3.1 The Defendant's final representations for the IC's considerations explained that when he was appointed director, the company had cash flow problems. The company did not have finance to fund repairs required on two properties and it was agreed that the agents on both properties would retain the rents to pay for the repairs. The Defendant said that he agreed his remuneration and fees would not be paid because the company had insufficient funds. He said that he agreed that his director's salary and fees would be credited to his director's current account on the basis that he would be paid when the company had funds and he required the repayment.
- 3.2 The Defendant highlighted that there were also personal items on the payment schedule such as school fees. He states that it was his practice to make these payments in relation to settlement of fee notes for his services on behalf of the company.
- 3.3 A summary of the amounts paid in respect of personal expenditure compared to the total amounts disclosed in the financial statements relating to director's remuneration, accountancy and travel which the Defendant claimed were unpaid and therefore credited to the director's loan account to offset the personal payments, is set out below.

	<i>31 Mar 2012</i>	<i>31 Jul 2011</i>	<i>31 Mar 2010</i>	<i>31 Mar 2009</i>	<i>31 Mar 2008</i>	<i>Total</i>
<i>Per accounts</i>						
	<i>Draft</i>					
<i>Director's remuneration</i>		<i>13,334</i>	<i>10,000</i>	<i>10,000</i>	<i>9,000</i>	<i>42,334</i>
<i>Compensation for loss of office</i>		<i>1,731</i>	-	-	-	<i>1,731</i>
<i>Travel expenses</i>		<i>302</i>	<i>694</i>	<i>901</i>	<i>844</i>	<i>2,741</i>
<i>General expenses</i>		<i>2,477</i>	<i>1,264</i>	<i>2,567</i>	<i>3,080</i>	<i>9,388</i>
<i>Accountancy</i>	<i>1,240</i>	<i>4,980</i>	-	<i>3,634</i>	<i>3,230</i>	<i>13,084</i>
<i>Under provision of accountancy in PY</i>		<i>4,182</i>	-	-	-	<i>4,182</i>
Total	1,240	27,006	11,958	17,102	16,154	73,460
<i>Cheque Payments</i>						
<i>T</i>					<i>6,844</i>	<i>6,844</i>
<i>J</i>		<i>4,914</i>	<i>4,179</i>	<i>16,780</i>	<i>4,659</i>	<i>30,532</i>
<i>K</i>				<i>9,818</i>		<i>9,818</i>
<i>L</i>				<i>6,093</i>		<i>6,093</i>

<i>CA Bugden</i>		<i>6,000</i>	<i>346</i>			<i>6,346</i>
<i>L'</i>		<i>3,000</i>				<i>3,000</i>
<i>M'</i>					<i>5,000</i>	<i>5,000</i>
<i>N'</i>					<i>100</i>	<i>100</i>
Total	-	13,914	4,525	32,691	16,603	67,733
<i>O'</i>	<i>4,999</i>	<i>-</i>	<i>-</i>	<i>-</i>	<i>-</i>	<i>4,999</i>
<i>P'</i>	<i>3,675</i>	<i>3,512</i>	<i>253</i>	<i>-</i>	<i>160</i>	<i>7,600</i>
Net total	8,674	17,426	4,778	32,691	16,763	80,332

- 3.4 The Defendant explained what the payments (summarised by 'F' LLP) related to, in his undated letter received by 'F' LLP on 6 November 2013. Many of the items were attributed as director's remuneration and travel expenses.
- 3.5 Four of the amounts which The Defendant paid to 'J' were explained as accountancy fees. In addition, there was a credit note against one invoice of £3,795.25. The Defendant said that two invoices for the same charge had been issued and while a credit note had been issued for one invoice, the other invoice was valid.
- 3.6 The Defendant stated that payments made to third parties were from his director's current account and were correctly charged to his current account. The total payments for the period covering the year ended 31 March 2008 to 31 March 2012 were £80,332 compared to expenditure disclosed in the analysis of administrative expenses in the accounts of £73,460.
- 3.7 The Defendant did not agree with the statement of payments above and considered that the cheque payments were incorrect and overstated. He disagreed that he received more payments than he was due and commented that he gave a full explanation of all payments linked to the expenses to 'F' LLP who raised no queries.
- 3.8 The IC submitted that the irregular means of payments to third parties to settle the Defendant's personal liabilities which he asserted were set against director's remuneration or fees due have been inappropriately made. It was submitted by the IC that the payments of any fees due to the Defendant should have been made direct to the Defendant or his firms and disclosed as both director's remuneration and related party transactions.
- 3.9 The IC contended that because the Defendant was not in fact a shareholder of 'A' Limited, there was no need for him to have a director's loan account in the first place. Further, the Defendant was effectively acting as custodian of 'A' Limited's funds on behalf of the beneficiaries; the company was not operational and therefore it was inappropriate for him to make personal expenses through the company.
- 3.10 The Defendant acknowledged that the payments related to his personal expenditure, but claimed that the transactions were correctly accounted for by debiting his current account. His current account was then credited with fees due to his firm in respect of his personal remuneration and accounting/secretarial services provided by his companies.
- 3.11 Further, it was submitted that The Defendant should have ensured that any payments due to him or his companies were made direct to the appropriate payee, not submitted to the company for repayment to him. In his representations on the IC's report, The Defendant

stressed that this practice was agreed with the Rev. 'D' when he was first appointed a director (January 2005) as the company had cash flow problems.

3.12 There was no evidence of this agreement, but in any event, the IC submitted that it would have been inappropriate to continue this after the Rev. 'D's death and that subsequent payments should have been agreed by the representatives of the late Rev. 'D's estate.

4 Complaint 3

4.1 The 'A' Limited's accounts were prepared in accordance with the Financial Reporting Standard for Smaller Entities (FRSSE) (effective January 2007).

4.2 The objective of FRSSE is to ensure that reporting entities falling within its scope provide in their financial statements, information about the financial position, performance and adaptability of the entity to assist users of the statements to make informed economic decisions about the company.

4.3 FRSSE requires that where the reporting entity provides or receives financial support to, for, or on behalf of a related party, then such material transactions shall be disclosed including:

- the names of the transacting related parties
- a description of the relationship between the parties
- a description of the transactions
- the amounts involved
- any other elements of the transactions necessary for an understanding of the financial statements
- the amounts due to or from related parties at the balance sheet date

4.4 The definition of related parties in FRSSE confirmed that related parties of the reporting entity included the directors of the reporting entity and their close families.

4.5 There was no disclosure of the loans by 'A' Limited to companies connected to the Defendant as either debtors or related parties in the financial statements of 'A' Limited for the years ended 31 March 2009, 2010 or 31 July 2011. The analysis of loan repayments provided by the Defendant showed balances due to 'A' Limited of £247,850 and £44,854 at 31 March 2009 and 2010 respectively, and a balance due from 'A' Limited at 31 July 2011 of £5,777. The Defendant stated that the loans were shown in the accounts as "cash at bank" as they were repayable on demand and supported by cash and shares. He further comments that the loans were more liquid than money market deposits which were always 1-3 months.

4.6 As set out above, by 31 March 2009, loans of £358,000 had been advanced to related companies. The accounts disclose assets almost entirely held as cash with no disclosure of approximately £248,000 due to 'A' Limited at 31 March 2009, in respect of

these loans. At 31 March 2010, the outstanding balance had reduced to £45,000 and further capital repayments were made the following year.

- 4.7 The IC contended that the loans these should have been disclosed as debts on the balance sheet and related party transactions in the account notes. The IC submitted that the disclosure of the loans as cash balances could be misleading to those reading or using them.
- 4.8 The Defendant stated that he never produced accounts for 'A' Limited and that he always relied on other people while in practice. The Defendant explained that he always had a manager who was responsible for each client and that it was their job to review the accounts and ensure that they complied with Company Law and Accounting Standards. The Defendant also explained that he had to rely on other people because, during the years in question, he had multiple other business interests.
- 4.9 The Defendant stated that at 'O' he had no access to the accounting or taxation systems. He commented that he relied on the system of the firm. He nevertheless accepted that he should have paid more attention to detail when signing off the accounts. The Defendant stated that he did not understand why the related party disclosures were not identified. Given the simplicity of the accounts and the materiality of the loans which were provided to the Defendant's connected companies, the IC contended that this was an unacceptable explanation given that the Defendant signed off the financial statements as approved.
- 4.10 The Defendant acknowledged there is a lack of accounting records and attributed this to his departure from the practice of 'Q' on less than amicable terms in March 2011. He said he was asked to vacate his office by the remaining partners, without notice, in the middle of March. His office was emptied in his absence and when he returned, he found that his papers had been left in bin liners on the ground floor of the office building. As a result, some of his records were lost.
- 4.11 The Defendant's final representations for the IC's consideration explained that accounts preparation at both 'Q' and 'O' was the same in that accounts were prepared by an accounts clerk and checked by a manager. He said that 'A' Limited was treated like any other client.
- 4.12 The IC submitted that while it was acceptable to arrange for the accounts of a client to be prepared by a manager in his firm, as a director of 'A' Limited, the Defendant had a statutory responsibility to ensure the 'A' Limited accounts were properly prepared.

5 The Defendant's case

- 5.1 In his submissions to the Disciplinary Tribunal, the Defendant admitted the facts in Complaint 3 but explained that he had always relied on other people to prepare accounts. At both 'Q' and 'O', the accounts had been prepared by a clerk, reviewed by a manager and presented to him to sign off. His mistakes in relation to the way related party transactions were shown in the accounts were not intentional. In relation to Complaints 1(b) and 2, the Defendant reiterated in his oral submissions the points made

in writing to the IC as set out above. He explained again that he had lost some of his files and paperwork when he left his employment at 'O' and the contents of his desk had been deposited by his employers in black bin liners. This explained why there was no documentary record available of the original loan agreement or other corroborative evidence in respect of other matters he sought to prove. He emphasised that he had never withdrawn monies from his director's account without the account being in credit.

- 5.2 In his submissions to the Disciplinary Tribunal, the Defendant admitted the facts in Complaint 3 but explained that he had always relied on other people to prepare accounts. At both 'Q' and 'O', the accounts had been prepared by a clerk, reviewed by a manager and presented to him to sign off. His mistakes in relation to the way related party transactions were shown in the accounts were not intentional. In relation to Complaints 1(b) and 2, the Defendant reiterated in his oral submissions the points made in writing to the IC as set out above. He explained again that he had lost some of his files and paperwork when he left his employment at 'O' and the contents of his desk had been deposited by his employers in black bin liners. This explained why there was no documentary record available of the original loan agreement or other corroborative evidence in respect of other matters he sought to prove. He emphasised that he had never withdrawn monies from his director's account without the account being in credit

6 Conclusions and reasons for decision

- 6.1 The Tribunal found, in relation to Complaint 1(b), that the Defendant had had no or no adequate regard to the necessary safeguards he should have had in place to avoid the self-interest threat to compliance with the fundamental principle of objectivity set out in the Code of Ethics for professional accountants. He considered that by repaying the loans to his connected companies he had provided a sufficient "safeguard"; this, though commendable, was not enough to ensure there was no blurred line between his duties as a director to safeguard the interests of the beneficiaries and his own interests. The Tribunal found that he had compromised his objectivity by failing to provide the necessary safeguards which would have achieved transparency and ensured compliance with the principle of objectivity. The Defendant claimed that he had agreed these loans with the Rev. 'D' during the latter's lifetime and, subsequently, with the executor of his estate. That person, 'R', was not available to corroborate the Defendant's assertion in relation to him and the Tribunal had to form its own judgment, on a balance of probabilities, as to whether any such agreement with him in relation to the loans had indeed been entered into. In any event, the loans were not disclosed or documented properly in the accounts and accompanying notes. The Tribunal considered that in the absence of any corroborative evidence, it was unable to accept the Defendant's evidence in this regard. The Tribunal found that the Defendant had, in the course of carrying out professional work or otherwise committed an act or default, that is, his failure to ensure that adequate safeguards were in place, which was likely to bring discredit on himself, the Institute or the profession of accountancy. The Tribunal therefore found Complaint 1(b) proved.
- 6.2 The Tribunal found that, although unorthodox in his practice of paying himself by undocumented cheques for personal items, such as school fees and holidays out of the bank account of 'A' Limited, and maintaining a director's loan account, he was seeking to recover monies owing to him in relation to work he had done as a director of 'A' Limited.

The Tribunal found it regrettable, to say the least, that there was no documentation to support the Defendant's claims; in particular, in relation to an outstanding balance due to him of £13,000 which he claimed should have been shown in the 2008 accounts – but having heard his explanations and on a balance of probabilities, the Tribunal was prepared to believe him in relation to this allegation, and found that the payments he had made out of 'A' Limited's bank account were not improperly made and so dismissed Complaint 2.

- 6.3 In relation to Complaint 3, the Defendant admitted that the loans from 'A' Limited to his connected companies were incorrectly recorded in the company's accounts for 2009, 2010, and 2011 and therefore found that complaint proved.

7 Matters relevant to sentencing

- 7.1 The Tribunal were told that there were two previous disciplinary findings against the Defendant by the Institute: the first, in 2009 for having been disqualified as a Director under Section 6, Company Directors Disqualification Act 1986, for which he was severely reprimanded, fined £1000 and ordered to pay costs of £1076; and secondly, in 2013, confirmed on appeal in 2014, for having improperly instructed an employee to alter audit papers and falsified another accountant's initials in respect of audits of three companies and for having performed his work as an auditor inefficiently or incompetently to such an extent as to bring discredit on himself, the Institute or the profession of accountancy; for that he was severely reprimanded, fined £20,000 and ordered to pay costs of £28,000 and £10,000 costs of the appeal.
- 7.2 The Tribunal took the view that the matters in the present case were serious in that they were not single, isolated incidents but a continuing course of conduct; that the Defendant lacked insight and demonstrated a pattern of incompetence, at best, as a professional accountant.
- 7.3 The Tribunal took into account that the Defendant was now retired from practice and that the matters alleged in the present case preceded the incidents that gave rise to the second disciplinary case mentioned above. He had engaged with the disciplinary process, albeit after a considerable period of silence, and had attended the hearing.
- 7.4 The Defendant declined to reveal his means, simply telling the Tribunal that he was "comfortably off".

8 Sentencing Order

- 8.1 The Tribunal had regard to the *Guidance on Sanctions* (1 July 2018). The Tribunal determined that the appropriate sanctions in this case were a reprimand and a Category E level fine, that is, £3000. The Tribunal ordered the Defendant to pay £10,000 towards the costs. The fine and costs are to be paid within 12 months of the date of the hearing.

9 Decision on publicity

The Tribunal directs that a record of this decision shall be published and the Defendant shall be named in that record.

Chairman

Mrs Rosalind Wright CB QC

Accountant Member

Mr Ian Walker FCA

Non Accountant Member

Miss Jane Rees

016699

2. Mrs Mandy Brown of Hertford, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 18 September 2018

Type of Member Affiliate

Terms of complaint

1. Between 31 March 2014 and 1 June 2015 Mrs Mandy Brown prepared and filed a self- assessment tax return on behalf of her client for the year 2013-14. In doing so Mrs Mandy Brown failed to:
 - a. Verify that the above tax return complied with UK tax legislation. and / or
 - b. Exercise sound judgement and / or professional scepticism in applying professional knowledge and skill when preparing the above tax return.

Mrs Mandy Claire Brown is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b

4.1b states.....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 at the time of the occurrence giving rise to the liability: if he has performed his professional work or the duties of his employment, or conducted his practise, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, the Institute or the professional of accountancy.

Hearing date

18 September 2018

Previous hearing date

None

Pre-hearing review or final hearing	Final Hearing.
Complaint found proved	Yes, on admission.
All heads of complaint proven	Yes, on admission.
Sentencing order	Severe reprimand.
Parties present	Mrs Brown was present.

Represented	Mrs Brown was represented by Mr George Spalton of Counsel. The Investigation Committee (IC) was represented by Miss Jessica Sutherland-Mack.
Hearing in public or private	The hearing was in public.
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service.
Documents considered by the tribunal	The tribunal considered the documents contained in the IC's bundle together with Mrs Brown's Regulation 13 answers, a letter from Kennedys solicitors dated 30 August 2018 with attachments and a skeleton argument from Mr Spalton. No confidential evidence of means was adduced or considered.

The Investigation Committee's (IC's) case

1. The Defendant was at all material times a partner in the firm of 'A' (the firm).
2. The firm had a client (now deceased) called Client D and who was a solicitor and a property developer. The firm was instructed to prepare and file Client D's income tax returns for a number of years.

Client D - Income Tax Return for the year 2010-2011

3. HMRC had investigated Client D's tax return for the year ended 2010-2011 which the Defendant had submitted in March 2012, because it considered that the tax reclaimed by Client D in the sum of £5,042,837 was wrong.
4. After its investigation into this tax return, HMRC concluded: (i) the calculation of self-employment losses of £30,859,057 had not been prepared under the Generally Accepted Accounting Practice; (ii) despite what was asserted, Client D did not have an independent sole trader business and was not entitled to sole trader relief; (iii) the claim for compound interest on tax relief had no British legal basis but was based on inapplicable EU law; (iv) claims for losses for the tax year ended 5 April 2007 was out of time.
5. Revised tax calculations were provided by HMRC and penalty assessments for previously claimed tax losses would be issued unless they were agreed.
6. The reason this is relevant to the current complaint is that the Defendant was actually made aware of what was and was not lawful and acceptable under UK tax legislation and to HMRC, as a result of this investigation. However, for the tax years 2013-2014, she filed another tax return for Client D claiming similar reliefs, including a substantial claim for compound interest.

Client D - Income tax Return for the year 2013-2014

7. The Defendant prepared and filed this tax return. It included claims for trading losses of £40.9m and a total tax repayment claim of £136.5m. This claim was particularly large because compound interest at the rate of 29% had been claimed over a 16 year period in the sum of £43.4m. In addition, over £40m was claimed for business expenses as a sole trader.
8. The tax return was filed under cover of a letter dated 29 May 2015 written on the firm's letterhead. The Defendant asserts it was actually written by Client D and signed by the Defendant. That letter refers to the HMRC investigation of the 2010-2011 tax return. The essential difficulty was the 2013-2014 tax return claimed the same sorts of relief, as well as compound interest, which the defendant knew or ought to have known had been rejected by HMRC in respect of the 2010-2011 tax return.
9. Concerned, HMRC invited the Defendant to explain and discuss her role in Client D's tax affairs and how this remarkable tax return came to be filed. In short, huge sums were being reclaimed (and in the case of compound interest, claimed) from HMRC which the Defendant could or should not have reasonably known were recoverable under UK law legislation and rules.
10. Meetings occurred between HMRC and the Defendant between 11 September 2015 and 24 March 2016. In due course, and dissatisfied with the Defendant's explanations, HMRC complained to ICAEW in September 2016. ICAEW undertook its own investigation and the complaint which is the subject of these proceedings was made.
11. Section 130 of the Code of Ethics states:

"The principle of professional competence and due care imposes the following obligations on all professional accountants:

- *To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent [professional service](#);*
- *and*
- *To act diligently in accordance with applicable technical and professional standards*

Competent professional service requires the exercise of sound judgment in applying professional knowledge and skill in the performance of such service. Professional competence may be divided into two separate phases:

- *Attainment of professional competence; and*
- *Maintenance of professional competence.*

The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a professional accountant to develop and maintain the capabilities to perform competently within the professional environment.

Diligence encompasses the responsibility to act in accordance with the requirements of an assignment carefully, thoroughly and on a timely basis."

12. It is submitted that the Defendant has breached this section of the Code for the following reasons.

The First Head of Complaint – failure to verify compliance with UK tax legislation

13. An accountant who prepares a tax return for a client is obliged to do so within the applicable tax legislation. Claims for repayments of tax must be made only where the accountant is satisfied that there is a sustainable and credible basis for doing so, and the accountant must be satisfied about that. If an accountant does not know or understand the necessary legislation or rules to enable an accurate tax return to be prepared they should not act.
14. The Defendant did not know or understand the legislative basis for the preparation of Client D's tax return, including the law and rules for claiming relief for irrecoverable debts as business expenses and carrying losses back to previous years.
15. She also should not have filed a tax return which claimed over £43m of compound interest when she knew or ought to have known that such a claim should not have been made in a tax return (which only should include income and expenses). Furthermore, she should not have allowed a claim for compound interest to have been made since (i) it is HMRC which calculates interest; and (ii) simple interest is only ever awarded; and (iii) the claimed rate of 29% is unprincipled and egregiously high.

Second head of complaint – failure to exercise sound judgment, professional scepticism and professional knowledge and skill

16. It is submitted that the Defendant failed to exercise sound judgement or appropriate professional scepticism and failed to possess appropriate levels of knowledge and skill when filing the tax return. This is aggravated by the fact that the Defendant knew what HMRC's position was on many of the items claimed because the investigation into the 2010-2011 return.
17. For all these reasons, the Defendant is liable to disciplinary action under DBL4.1b.

The Defendant's Position

18. The Defendant does not defend the complaint. She accepts that she was out of her depth when considering and filing the tax return because Client D's tax affairs were very complicated and became increasingly so.
19. At the time she was taking instructions, Client D was dying and she was endeavouring to help him as much as she could. She was under intense emotional pressure from him and from this situation at the time. Moreover, she knew that he was legally qualified and, to justify some of his instructions, he referred to legal advice obtained from his brother who was allegedly a tax barrister. She accepts she was at fault for not pressing Client D to produce this advice.

Issues of fact and law

20. There are no issues of law or fact to determine because the complaint was admitted.
21. The standard of proof was the balance of probabilities.
22. The tribunal found both heads of the complaint and the complaint proved on admission.

Conclusions and reasons for decision

23. The Defendant has admitted to reviewing and filing a tax return on behalf of a client without the requisite knowledge of UK tax legislation and without possessing adequate professional scepticism and skill. The reasons why this matter is serious is because very large sums of money were being claimed from HMRC to which there was no legal justification. This was extremely irresponsible.
24. While no loss has been suffered as a result of these acts and omissions, and HMRC picked up on the problems with the return and spotted the Defendant's errors, it should not be for HMRC to have to do that. It is entitled to trust that professional accountants who represent clients know the tax legislation under which they practice and have the requisite knowledge skill and scepticism required. It does not function to pick up very serious errors in professional work and standards.
25. A further reason why the matter is serious is because the Defendant knew, from her dealings with the 2010-2011 return, that HMRC had a clear position about the status of Client B as an alleged sole trader, its views about claiming compound interest and the legal position about the limitation of relief from previous tax years. Nevertheless, the Defendant appears to have ignored that and filed the 2013-2014 return regardless, notwithstanding the covering letter.
26. As to the covering letter, it was remiss of the Defendant to have allowed a client to have drafted it but sent it out in her firm's name when, she now admits, she did not understand the position.

Matters relevant to sentencing

27. The tribunal considered the Guidance on Sanction and saw no reason to depart from that. It was also satisfied that no lesser penalty than the one imposed was appropriate.
28. Mitigating factors were (i) the Defendant's (a) unblemished disciplinary record of 33 years; (a) sincere regret and remorse; (c) insight into her actions; (d) co-operation with ICAEW and her early admission; (ii) the decision by HMRC not to take any action against the Defendant. In this regard; (iii), it is relevant that no allegation of dishonesty or lack of integrity has been made either by the IC or HMRC.
29. Aggravating factors were (i) the fact that this matter involved a public body; (ii) the sheer scale of the sums involved; and (iii) the prior involvement of the Defendant in Client D's tax affairs in 2010-2011, which rebuts any notion that in 2013-2014 she was encountering unique circumstances of Client D's tax affairs (and HMRC's reaction to them) for the first time.
30. The mitigating factors have persuaded the tribunal not to impose a fine on the defendant. However, the gravity and scale of the conduct complained of must be recognised in the sanction.

Sentencing Order

Severe reprimand.
Costs in the sum of £9,312.

Decision on publicity

Publication with name.

Non Accountant Chairman
Accountant Member
Non Accountant Member

Mr Ron Whitfield
Mr Mike Ranson FCA
Ms Mary Kelly

Legal Assessor

Mr Dominic Spenser Underhill

035903

INVESTIGATION COMMITTEE CONSENT ORDERS

3. Mr James Kenney FCA

Consent order made on 9 October 2018

With the agreement of Mr James Kenney of Coventry, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £4,000 and pay costs of £1,698 with respect to a complaint that:

1. Mr James Kenney FCA, as a partner of James Kenney & Co, following a QAD visit on 18 April 2008, confirmed that:
 - a. In respect of the requirement to document an annual compliance review as required by regulation 27b of the Clients' Money Regulations - "A documented annual compliance review will be carried out as soon as possible"
 - b. In respect of obtaining a letter from the bank confirming the trust status of the firm's client bank account as required by regulation 9 of the Clients' Money Regulations - "We have contacted the Bank and requested they update the terms and conditions of the client accounts in writing" but at a subsequent QAD desktop review in October 2015 it was found that these assurances had not been complied with.
2. Between 7 May 2008 and 30 September 2016, Mr James Kenney FCA, as a partner of James Kenney & Co. failed to comply with regulation 9 of the Clients' Money Regulations as the firm failed to obtain written confirmation from the bank of the trust status of its client money bank account.
3. Mr James Kenney FCA, as a partner of James Kenney & Co. failed to comply with regulation 26 of the Clients' Money Regulations as the firm failed to maintain and retain records of its client account transactions sufficient to support reconciliations of its client money accounts every five weeks between the following periods Between 1 August 2015 and 25 April 2016; and Between 26 May 2016 to 30 September 2016.
4. Between 7 May 2008 and 3 February 2016, Mr James Kenney FCA, as a partner of James Kenney & Co. failed to comply with regulation 27b of the Clients' Money Regulations as the firm failed to carry out and document annual compliance reviews.

042426

4. Grant Thornton UK LLP

Consent order made on 9 October 2018

With the agreement of Grant Thornton UK LLP of 30 Finsbury Square, London, EC2A 1AG the Investigation Committee made an order that the firm be severely reprimanded, fined £40,000 and pay costs of £10,755 with respect to a complaint that:

1. On 23 October 2009, Grant Thornton UK LLP issued audit reports in respect of the financial statements of the following companies for the year-ended 31 December 2008:
 - 'A' Limited
 - 'B' Limited
 - 'C' Limited
 - 'D' Limited
 - 'E' Limited
 - 'F' Limited

when the audits had not been conducted in accordance with the following International Standards on Auditing (UK & Ireland) (ISA):

- a. ISA 315, Understanding the entity and its environment (effective December 2004) in that the firm failed to obtain an understanding of internal control relevant to the audit of sales, including a failure to obtain an understanding of the companies' information systems.
- b. ISA 330, The auditor's procedures in response to assessed risks (effective December 2004) in that the firm failed to audit or perform other audit procedures in combination with inquiry to test the operating effectiveness of controls over the sales system and the financial statement closing process.
- c. ISA 230, Audit Documentation (effective June 2006) in that when documenting the nature, timing and extent of audit procedures performed, the firm failed to
 - i) record the extent and timing of the engagement partner's review of 'matters for partner attention' identified during the course of the audits,and
 - ii) prepare audit documentation sufficient to enable an experienced auditor, having no previous connection with the audit, to understand the results of the audit procedures performed and the audit evidence obtained in respect of balances owed to/from other group companies.

2. On 5 August 2010, Grant Thornton UK LLP issued audit reports in respect of the financial statements of the following companies for the year-ended 31 December 2009:

- 'G' Limited
- 'A' Limited
- 'B' Limited
- 'H' Limited
- 'C' Limited
- 'I' Limited
- 'D' Limited
- 'J' Limited
- 'E' Limited
- 'F' Limited

when the audits had not been conducted in accordance with the following International Standards on Auditing (UK & Ireland) (ISA):

- a. ISA 315, Understanding the entity and its environment (effective December 2004) in that the firm failed to obtain an understanding of internal control relevant to the audit of sales, including a failure to obtain an understanding of the companies' information systems.
- b. ISA 330, The auditor's procedures in response to assessed risks (effective December 2004) in that the firm failed to audit or perform other audit procedures in combination with inquiry to test the operating effectiveness of controls over the sales system and the financial statement closing process.
- c. ISA 230, Audit Documentation (effective June 2006) in that when documenting the nature, timing and extent of audit procedures performed, the firm failed to record the extent and timing of its clearance of the 'matters for partner attention' to enable an experienced auditor, having no previous connection with the audit, to understand the results of the audit procedures performed and the audit evidence obtained in respect of balances owed to/from other group companies.
- d. ISA 500, Audit evidence (effective December 2004) in that the firm failed to obtain sufficient appropriate documentation on which to draw reasonable conclusions on which to base the audit opinion in respect of balances owed to/from other group companies.

007701

5. Mr Alan Lovell Verinder FCA

Consent order made on 9 October 2018

With the agreement of Mr Alan Lovell Verinder of Liverpool, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £3,500 and pay costs of £1,655 with respect to a complaint that:

Mr Alan Verinder FCA, while a director of 'X' Ltd, demonstrated by his behaviour that he was unfit to be a director of a company. Full particulars of the matters which were deemed to have rendered him unfit are set out in the 'matters of unfitness' schedule to the undertaking given by Mr Verinder under the Company Directors Disqualification Act 1986 and signed by him on 9 October 2017.

041293

6. Mr Robert Franz Keller ACA

Consent order made on 9 October 2018

With the agreement of Mr Robert Franz Keller of Bristol, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £10,000 and pay costs of £4,005 with respect to a complaint that:

- 1 Between 7 March 2014 and 5 January 2017 Mr Robert Keller ACA failed to provide a response in writing to issues notified to him on 12 February 2014 following a QAD visit as required by Practice Assurance Regulation 15.
- 2 Mr Robert Keller ACA failed to provide a full response to a letter dated 7 July 2014 from the secretary to the Practice Assurance Committee by 9 September 2014 contrary to Practice Assurance Regulation 8.
- 3 Between 16 May 2009 and 18 August 2013 Mr Robert Keller ACA failed to notify the Members' Registrar of ICAEW of the appointment of Miss 'X' ACCA as a director of Keller Accountancy Services Ltd within 10 business days as required by Practice Assurance Regulation 9.
- 4 Between the following dates Mr Robert Keller ACA incorrectly allowed his firm, Keller Accountancy Services Ltd to use the description 'chartered accountants' when it was not entitled to do so contrary to Principal Bye-law 55:
 - a. 1 May 2009 and 7 October 2013 as 'X' was not an affiliate of ICAEW
- 5 Mr Robert Keller ACA failed to accurately complete the annual returns of his firm, Keller Accountancy Services Ltd for the returns dated 31 May 2007 to 31 May 2014 inclusive.
- 6 Mr Robert Keller ACA failed to perform annual reviews of his firm's client money compliance from May 2006 to May 2013 inclusive, contrary to regulation 27b of the Clients' Money Regulations.
- 7 Between 1 April 2006 and 17 August 2015 Mr Robert Keller ACA failed to have a bank trust letter in place contrary to Regulation 9 of the Clients' Money Regulations.

024778

7. AEL Partners LLP

Consent order made on 9 October 2018

With the agreement of AEL Partners LLP of London, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £4,900 and pay costs of 2,238 with respect to a complaint that:

1. Between 25 September 2012 and 17 April 2015, AEL Partners LLP failed to comply with regulation 10 of the Clients' Money Regulations in that on 26 occasions the firm did not pay clients' money or mixed monies immediately into a client bank account.
2. Between 24 February 2015 and 6 July 2015, AEL Partners LLP failed to comply with regulation 13 of the Clients' Money Regulations as the firm held sums over £10,000 and in excess of 30 days for one client, but did not pay the funds into a Client Bank Account designated by the name of the client or by a number or letters allocated to that account.
3. AEL Partners LLP failed to conduct annual reviews in breach of Regulation 27b of the Clients' Money Regulations in respect of the following years:
 - Year ended 31 March 2011
 - Year ended 31 March 2012
 - Year ended 31 March 2013
 - Year ended 31 March 2014
 - Year ended 31 March 2015

034666

8. AEL Markhams Ltd (formerly AEL Accountancy Limited)

Consent order made on 9 October 2018

With the agreement of AEL Markhams Ltd (formerly AEL Accountancy Limited) of London, United Kingdom, the Investigation Committee made an order that the firm be reprimanded, fined £1,400 and pay costs of £1,210 with respect to a complaint that:

Between 8 May 2015 and 12 March 2018, AEL Markhams Ltd (formerly AEL Accountancy Limited) failed to comply with regulation 10 of the Clients' Money Regulations in that on 21 occasions the firm did not pay clients' money or mixed monies immediately into a client bank account.

041782

INVESTIGATION COMMITTEE FIXED PENALTY ORDERS

9. Mr Andrew Paul Shimmin FCA

Penalty order made on 2 October 2018

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

With the agreement of Mr Andrew Paul Shimmin FCA, the Investigation Committee ordered that Mr Andrew Paul Shimmin FCA, of Isle of Man, be reprimanded, with no order for costs with respect to a complaint that:

Between 1 July 2013 and 30 May 2017, Mr Andrew Paul Shimmin FCA failed to comply with Regulation 6 of the Regulations, governing the use of description 'Chartered Accountants' as he used the description 'Chartered Accountants' for the firm Paul Shimmin Limited of 13-15 Hope Street, Douglas, Isle of Man, IM1 1AQ

042086

AUDIT REGISTRATION COMMITTEE

ORDER – 13 JUNE 2018

10. Publicity Statement

BDO Limited, Windward House, La Route de la Liberation, St Helier, Jersey, JE1 1BG, has agreed to pay a regulatory penalty of £2,593, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.03b, 2.07 and 2.11 for failing to notify ICAEW within 10 business days of a change in its structure and for continuing to act as a registered auditor when it did not meet the eligibility criteria.

042628

ORDER – 12 SEPTEMBER 2018

11. Publicity statement

Hodgsons, 12 Southgate Street, Launceston, PL15 9DP, has agreed to pay a regulatory penalty of £7,500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Audit Regulation 3.01, by continuing to act as auditors of two clients in the three years immediately after a principal in the firm, who continued to be a consultant to the firm, became director of the clients, contrary to APB Ethical Standard 2.

045227

ORDER – 15 AUGUST 2018

12. Publicity statement

Mitchells (Derbyshire) Limited of 91-97 Saltergate, Chesterfield, Derbyshire, S40 1LA has agreed to pay a regulatory penalty of £3,800 which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 2.03a in that the firm failed to ensure that two directors held audit affiliate status between 2017 and 2018.

045958

ORDER – 15 AUGUST 2018

13. Publicity statement

MCA Breslins Solihull Ltd, Regus Building, Central Boulevard, Blythe Valley Park, Shirley, Solihull, West Midlands, B90 8AG, has agreed to pay a regulatory penalty of £500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of the eligibility requirements of audit regulation 2.03d by failing to update its Articles of Association despite being on notice to do so since 2012.

044339

ORDER – 12 SEPTEMBER 2018

14. Publicity Statement

Currie Accountancy Limited, First Floor, 13a High Street, Edenbridge, Kent, TN8 5AB, has agreed to pay a regulatory penalty of £5,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Audit Regulation 3.20 by failing to carry out annual cold file reviews for two years.

045035

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