Disciplinary Orders and Regulatory Decisions

DATE PUBLISHED: 6 NOVEMBER 2019

Disciplinary Committee Tribunal Orders

Appeal Committee Orders

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. Mr Jayendra Janardan Ved FCA of
Borehamwood, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 10 July 2019

Type of Member Member

Terms of complaint

1. Mr Jayendra Janardan Ved FCA failed to provide by 30 July 2018 the information, explanations and documents requested in a letter dated 12 July 2018 issued under Disciplinary Bye-law 13.

Mr Jayendra Janardan Ved FCA is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c.

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

> 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

10 July 2019

Previous hearing date(s)

None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes (in absence)

All heads of complaint proven Yes (single complaint)

Sentencing order Severe reprimand
Fine of £3,000
Costs of £2,559.50

Parties present	Mr Ved was not present or represented
Represented	The IC was represented by Mrs Silpa Tozer
Hearing in public or private	The hearing was in public
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service.
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle and an email received from Mr Ved at 0827 on 10 July 2019.

Preliminary Matters

1. Mr Ved did not attend the hearing but given the contents of his email sent at 0827 on 10 July 2019, the Tribunal was satisfied that Mr Ved was aware that the complaint against him was due to be determined that day.

2. The Tribunal was not satisfied that the contents of the email amounted to an unequivocal admission to the complaint (even if it went some of the way). The Tribunal concluded that the IC would have to present its case for the Tribunal to consider in the usual way.

3. The IC made an application to proceed in the absence of Mr Ved. The Tribunal considered the relevant factors as set out in *R v Hayward [2001] QB 862, R v Jones [2003] 1 AC 1 and GMC v Adeogba [2016] 1 WLR.* The position was slightly nuanced as it was implicit from Mr Ved's email of 10 July 2019 that he was aware that the hearing would take place in his absence and that he had consented to that. In any event the Tribunal considered the *Hayward/Jones* factors and concluded that even without Mr Ved's email it would have proceeded in his absence given the nature of the offence, any possible unfairness to him (which was negligible), the costs of adjourning further and the public interest in proceeding. The Tribunal was satisfied that there were overwhelming reasons to proceed in absence.

The Investigation Committee's (IC's) case

4. The IC's case was simple. Mr Ved had been asked to provide information about the operation and practice of 'A' Limited. This information was requested on a number of occasions and Mr Ved was sent numerous chasing letters. Mr Ved supplied information in respect of some of the requests, but not all.

5. A final formal request under Disciplinary Bye-Law 13 for the outstanding information was sent on 12 July 2018 requiring that the information be provided by 30 July 2018. Mr Ved failed to provide the requested information by that date.

Conclusions and reasons for decision

6. The Tribunal was satisfied that Mr Ved had not provided all of the information that had been requested by 30 July 2018. His 10 July 2019 email did provide most of the requested information, but almost a year after the deadline had passed. The fact that this email contained much of the requested information for the first time was itself evidence that it had not been provided by the 30 July 2018 deadline.

7. The Tribunal was satisfied that the complaint had been proved.

Matters relevant to sentencing

8. The Tribunal had regard to the ICAEW's *Guidance on Sanctions* and concluded that it fell into section 10(a)(ii) *"There has been a response but not all the information and explanations have been provided".* The starting point is set out as a severe reprimand and a category E financial penalty.

9. The Tribunal concluded that there were no particular aggravating or mitigating factors such as to depart from the starting point. In particular the Tribunal did not place any weight on a previous finding against Mr Ved, due to its age.

10. The Tribunal concluded that the correct sanction was a severe reprimand and a financial penalty of £3,000.

11. The IC applied for costs in the sum of £2,599.50. The Tribunal considered it appropriate to make an order in that sum.

Sentencing Order

12. The Tribunal ordered that:
    a. the defendant be severely reprimanded;
    b. the defendant pay a financial penalty of £3,000;
    c. the defendant pay costs of £2,599.50;

Decision on publicity

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

Non Accountant Chair	Mr Jonathan Kinnear QC
Accountant Member	Mr Jon Newell FCA
Non Accountant Member	Mr Graham Humby

045251

2. Mr David Vernon John Paget ACA of
Bordon, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 10 July 2019

Type of Member Member

Terms of complaint

1. Between 28 July 2017 and 10 August 2018, Mr David Paget ACA failed to submit his Continuing Professional Development (CPD) records for the year ended 31 October 2016 contrary to Principal Bye-law 56c.

2. Between 31 January 2018 and 10 August 2018, Mr David Paget ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2016 to 31 October 2017 in breach of Principal Bye-law 56c.

Mr David Vernon John Paget is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c.

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

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

Hearing date

10 July 2019

Previous hearing date(s)

None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes (in absence)

All heads of complaint proven Yes

Sentencing order	Severe reprimand Fine of £5,000 Costs of £3,274

Procedural matters and findings

Parties present	Mr Paget was not present or represented
Represented	The IC was represented by Mrs Silpa Tozer
Hearing in public or private	The hearing was in public
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service.
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's bundle.

Preliminary matters

1. Mr Paget did not attend the hearing. The Tribunal was satisfied that notice of the proceedings and a copy of the complaint had been properly served upon Mr Paget.

2. The IC made an application to proceed in the absence of Mr Paget. The Tribunal considered the relevant factors as set out in *R v Hayward [2001] QB 862, R v Jones [2003] 1 AC 1 and GMC v Adeogba [2016] 1 WLR.* In reaching its decision the Tribunal took into account that Mr Paget had been spoken to by employees of the ICAEW in 2018 and was aware that he was being asked to provided details of his CPD (as such it could not be suggested that he was completely unaware of the issue), the disadvantage to him of not being present was limited, given the nature of the complaints there was a very low risk of an improper decision being made, the offences were not the most serious in nature, any possible unfairness to him was negligible, the costs of adjourning further and the public interest in proceeding without further delay. The Tribunal was satisfied that there were overwhelming reasons to proceed in absence.

The Investigation Committee's (IC's) case

3. The IC's case was simple. Mr Paget had been asked to provide his CPD records for the year ended 31 October 2016 and, despite a number of requests, he had failed to do so (complaint 1). He had also failed to make his CPD declaration for the year ended 31 October 2017 (complaint 2).

4. On 12 April 2018 an employee of the ICAEW had spoken to Mr Paget on the telephone and he stated that he was aware that the ICAEW had been contacting him about his CPD submissions. He was advised the matter had been referred for investigation. He was sent further reminders but had not provided any response.

Conclusions and reasons for decision

5. The tribunal was satisfied that Mr Paget had not provided his CPD records for the year ended 31 October 2016 and that he had failed to make the necessary CPD declaration for the year ended 31 October 2017. Mr Paget had not advanced any explanation for his failures.

6. The Tribunal considered both complaints separately and was satisfied that both had been proved.

Matters relevant to sentencing

7. The Tribunal had regard to the ICAEW's *Guidance on Sanctions* and concluded that complaint 1 fell into section 7(d) *"Failure to submit evidence of CPD undertaken when requested to do so…".* The starting point is set out as a severe reprimand and a category D financial penalty. Complaint 1 was the more serious of the two complaints.

8. The Tribunal concluded that there were no particular aggravating or mitigating factors such as to depart from the starting point. The Tribunal had regard to the fact that there were no previous findings against Mr Paget.

9. The Tribunal concluded that the correct sanction was a severe reprimand and a financial penalty of £5,000.

10. The IC applied for costs in the sum of £3,274. The Tribunal considered it appropriate to make an order in that sum.

Sentencing Order

11. The Tribunal ordered that:
    d. the defendant be severely reprimanded;
    e. the defendant pay a financial penalty of £5,000;
    f. the defendant pay costs of £3,274;

Decision on publicity

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

Non Accountant Chair	Mr Jonathan Kinnear QC
Accountant Member	Mr Jon Newell FCA
Non Accountant Member	Mr Graham Humby

041960

3. Mr Alistair John Bambridge ACA of
London, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 17 July 2019.

Type of Member Member

Terms of complaint

Mr Alistair John Bambridge ACA failed to provide by 21 December 2018, the information, explanations and documents requested in a letter dated 6 December 2018 issued under Disciplinary Bye-Law 13.

Mr Alistair John Bambridge is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c

Hearing date

17 July 2019

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order Severe reprimand
fine of £3,000
costs of £2790.30

Procedural matters and findings

The tribunal considered two identical complaints made under reference numbers 046201/MATT and 046204/MATT. These related to, in the case of 046201, allegations relating to unsatisfied County Court Judgments, namely,

- A County Court Judgment (CCJ) made against 'A' LLP in favour of 'B' to the value of £10,010
- Four CCJs obtained by other suppliers of 'A' LLP
- One CCJ obtained by a supplier of 'C' Ltd.

The breakdown of the judgements in that case is as follows:

'A' LLP:

1) 27 August 2014 - £1449
2) 16 September 2014 - £2653
3) 21 January 2015 - £8329
4) 9 April 2015 - £503

'C' Ltd:

1) 10 November 2017 - £247

And in the case of 046204, a complaint relating to allegations that the Respondent being the ultimate controlling member of 'A' LLP, has failed to satisfy debts on behalf of that entity which has resulted in seven County Court Judgments (CCJs) totalling £21,370.

The breakdown of the seven judgments is as follows:

1) 5 January 2016 - £1,324
2) 11 April 2017 - £1,652
3) 10 August 2017 – £247
4) 7 December 2017 - £3,009
5) 30 April 2018 - £1628
6) 4 May 2018 - £3,500
7) 9 May 2018 - £10,010

The IC proposed that the tribunal should consider both cases together. The tribunal concurred and this Decision relates to both cases.

Parties present	Mr Bambridge (the Respondent) was not present and was not represented. Ms Jessica Sutherland-Mack represented the Investigation Committee (IC)
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

Proceeding in the absence of the Respondent

The tribunal considered an application by the Investigation Committee to proceed in the Respondent's absence. The tribunal considered the case of R v Jones [Anthony] [2003] 1 AC 1. It concluded that:

- the Respondent had not requested an adjournment or sought to make representations before the tribunal;
- It was likely that that the Respondent would not attend any future hearing;
- there was no likelihood of disadvantage to the Respondent in proceeding in his absence;
- the interests of justice would be best served by a timely hearing.

The tribunal decided the case would proceed in absence of the Respondent

Documents considered by the tribunal

The tribunal considered the documents contained in the Investigation Committee's (IC's) bundles in both cases referred to above.

The Investigation Committee's (IC's) case

It is alleged that the Respondent being the ultimate controlling member of 'A' LLP, has failed to satisfy debts on behalf of the entity which has resulted in seven County Court Judgments (CCJ's) totalling £21,370.

The breakdown of the seven judgments is as follows:

1) 5 January 2016 - £1,324
2) 11 April 2017 - £1,652
3) 10 August 2017 – £247
4) 7 December 2017 - £3,009
5) 30 April 2018 - £1628
6) 4 May 2018 - £3,500
7) 9 May 2018 - £10,010

The Respondent had telephoned ICAEW on 26 July 2018 and explained that all but one of the debts had been settled and that he was disputing the final CCJ of 9 May 2018 of £10,010.

It is also alleged that the Respondent has:

- Failed to satisfy a County Court Judgement (CCJ) made against the firm in favour of a company owned by a Mr 'D', namely, 'B' to the value of £10,010
- Failed to satisfy a further four CCJs obtained by other suppliers of 'A' LLP
- Failed to satisfy one CCJ obtained by a supplier of 'C' Ltd.

The breakdown of the five judgments, apart from the 'B' judgment of £10,010, is as follows:

'A' LLP:

1) 27 August 2014 - £1449
2) 16 September 2014 - £2653
3) 21 January 2015 - £8329
4) 9 April 2015 - £503

'C' Ltd:

1) 10 November 2017 - £247

The Respondent emailed ICAEW on 10 October 2018 and once again stated that all outstanding CCJs were satisfied. It is not clear which debts the Respondent is referring to however it can reasonably be inferred that he is referring to "all judgments".

The Respondent however has not provided any evidence to substantiate that statement and there is currently evidence available to the contrary.

The table below sets out a chronology of communication with the Respondent:

Date	Media	To	From	Detail	Document
20/07/2018	Letter & email	The Respondent	Case Manager	Initial letter regarding the investigation.	**1 & 2**
26/07/2018	Phone call	Case Manager	The Respondent	Regarding the letter sent on 20 July, he is in dispute with one of the CCJ's and the rest are settled. Will provide proof.	**3**
08/08/2018	Email	The Respondent	Case Manager	Chasing the Respondent for a response.	**4**
23/08/2018	Letter	The Respondent	Case Manager	Chasing the Respondent for a response	**5**
17/09/2018	Letter & Email	The Respondent	Head of Investigations	Formal request under Disciplinary Bye-Law 13.	**6 & 7**
10/10/2018	Email	Head of Investigations	Case Manager	Response on another case referencing 'A' LLP	**8**

12/10/2018	Email	The Respondent	Case Manager	The Respondent's partial response requesting evidence to substantiate his claims that all debts have been sorted as well as the other outstanding documents requested in the formal request dated 17 September 2018.	**8**
31/10/2018	Letter & email	The Respondent	Head of Investigations	Formal request under Disciplinary Bye-Law 13	**9 & 10**
06/12/2018	Letter & email	The Respondent	Head of Investigations	Formal request under Disciplinary Bye-Law 13	**11 & 12**

In the Respondent's response on 10 October 2018 he stated that all outstanding CCJs were satisfied, with the exception of the 'B' CCJ of 9 May 2018. However the Respondent has not provided any confirmation that the CCJs have been satisfied.

On 31 October 2018, the Respondent was served with a second notice under Disciplinary Bye-Law 13 requesting documents relating to this complaint and no response was received.

It was then highlighted that the letter dated 31 October 2018 had been sent to the Respondent; however the name 'A' LLP had not been included in the address as per all previous correspondence. (This did not affect the service via email).

For completeness, and to ensure that the Respondent received the formal request under Disciplinary Bye-Law 12 was resent on 6 December 2018.

On 7 March 2019 the Respondent telephoned the ICAEW. When the Respondent was asked to provide an explanation in relation to the unsatisfied CCJs he stated that it would take between 3 – 6 months to get them from the Court.

An updated search report was obtained by ICAEW on 11 June 2019 which confirmed that all CCJs remain to be unsatisfied save for the 30 April 2018 judgement for £1,628 which had been satisfied on 24 August 2018.

The updated search report also further identifies another unsatisfied judgement debt of £4229 dated 28 March 2019.

Since 7 March 2019, the Respondent has not been in contact with the ICAEW.

Responses are required in order to progress with the Institute's underlying investigation. The Institute requires a response from the Respondent in the terms of the letter dated 31 October 2018 and repeated in the letter of 6 December 2018 in order to progress the underlying investigation.

Issues of fact and law

The tribunal had to determine were whether the allegation made against the Respondent had been proved and whether it was satisfied that the act complained fell within Disciplinary Bye-Law 4.1(c). The tribunal had to be satisfied on a balance of probabilities that the Respondent had failed to provide by 21 December 2018, the information, explanations and documents requested in a letter dated 6 December 2018 issued under Disciplinary Bye-Law 13.

Conclusions and reasons for decision

There being no admissions from the Respondent, the Tribunal had regard to the documentary evidence submitted by the IC and was satisfied from that that proper requests had been to the Respondent in accordance with Disciplinary Bye-law (DBL) 13 seeking documentary confirmation of his assertion that all the CCJs with the exception of the 'B' judgment for £10,010 had been satisfied and that he had not provided this by the 21 December 2018 or at all. In those circumstances, the tribunal found the complaint set out in both 046201/MATT and 046204/MATT proved.

Matters relevant to sentencing

Ms Sutherland-Mack explained that the basis for the charge was failure to comply with requests for information made under DBL 13. Although it could be said that the requests were no more than seeking documentary confirmation from the Respondent to support his defence to allegations that he had failed to satisfy a number of county court judgments, if he could prove that he had satisfied these judgments the underlying case could be disposed of without recourse to disciplinary proceedings. The Respondent had partially engaged with the Institute's investigations but had failed to do so since 7 March 2019.

The tribunal was not provided with any further mitigating factors in this case. The tribunal had regard to the Guidance on Sanctions issued on 1 July 2019.

Sentencing Order

The tribunal imposed a severe reprimand and a fine of £3000. The tribunal ordered that the Respondent must provide the information and documentation sought by 17th August 2019. The IC made an application for costs supported by a schedule. The tribunal took the view that the costs were appropriate and properly incurred and awarded the full sum sought against the Respondent, namely £2790.30.

For the avoidance of doubt the sanction and the costs are imposed in respect of both complaints 046201/MATT and 046204/MATT.

Decision on publicity

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

Chairman	Ms Rosalind Wright CB QC
Accountant Member	Mr Martin Ward FCA
Non Accountant Member	Mr Graham Humby

046201

4. Mr Alistair John Bambridge ACA of
London, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 17 July 2019.

Type of Member Member

Terms of complaint

Mr Alistair John Bambridge ACA failed to provide by 21 December 2018, the information, explanations and documents requested in a letter dated 6 December 2018 issued under Disciplinary Bye-Law 13.

Mr Alistair John Bambridge is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c

Hearing date

17 July 2019

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order Severe reprimand
fine of £3,000
costs of £2790.30

Procedural matters and findings

The tribunal considered two identical complaints made under reference numbers 046201/MATT and 046204/MATT. These related to, in the case of 046201, allegations relating to unsatisfied County Court Judgments, namely,

- A County Court Judgment (CCJ) made against 'A' LLP in favour of 'B' to the value of £10,010
- Four CCJs obtained by other suppliers of 'A' LLP
- One CCJ obtained by a supplier of 'C' Ltd.

The breakdown of the judgements in that case is as follows:

'A' LLP:

1) 27 August 2014 - £1449
2) 16 September 2014 - £2653
3) 21 January 2015 - £8329
4) 9 April 2015 - £503

'C' Ltd:

2) 10 November 2017 - £247

And in the case of 046204, a complaint relating to allegations that the Respondent being the ultimate controlling member of 'A' LLP, has failed to satisfy debts on behalf of that entity which has resulted in seven County Court Judgments (CCJs) totalling £21,370.

The breakdown of the seven judgments is as follows:

1) 5 January 2016 - £1,324
2) 11 April 2017 - £1,652
3) 10 August 2017 – £247
4) 7 December 2017 - £3,009
5) 30 April 2018 - £1628
6) 4 May 2018 - £3,500
7) 9 May 2018 - £10,010

The IC proposed that the tribunal should consider both cases together. The tribunal concurred and this Decision relates to both cases.

Parties present	Mr Bambridge (the Respondent) was not present and was not represented. Ms Jessica Sutherland-Mack represented the Investigation Committee (IC)
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
Proceeding in the absence of the Respondent	The tribunal considered an application by the Investigation Committee to proceed in the Respondent's absence. The tribunal considered the case of R v Jones [Anthony] [2003] 1 AC 1. It concluded that:

- the Respondent had not requested an adjournment or sought to make representations before the tribunal;
- It was likely that that the Respondent would not attend any future hearing;
- there was no likelihood of disadvantage to the Respondent in proceeding in his absence;
- the interests of justice would be best served by a timely hearing.

The tribunal decided the case would proceed in absence of the Respondent

Documents considered by the tribunal

The tribunal considered the documents contained in the Investigation Committee's (IC's) bundles in both cases referred to above.

The Investigation Committee's (IC's) case

It is alleged that the Respondent being the ultimate controlling member of 'A' LLP, has failed to satisfy debts on behalf of the entity which has resulted in seven County Court Judgments (CCJ's) totalling £21,370.

The breakdown of the seven judgments is as follows:

1) 5 January 2016 - £1,324
2) 11 April 2017 - £1,652
3) 10 August 2017 – £247
4) 7 December 2017 - £3,009
5) 30 April 2018 - £1628
6) 4 May 2018 - £3,500
7) 9 May 2018 - £10,010

The Respondent had telephoned ICAEW on 26 July 2018 and explained that all but one of the debts had been settled and that he was disputing the final CCJ of 9 May 2018 of £10,010.

It is also alleged that the Respondent has:

- Failed to satisfy a County Court Judgement (CCJ) made against the firm in favour of a company owned by a Mr 'D', namely, 'B' to the value of £10,010
- Failed to satisfy a further four CCJs obtained by other suppliers of 'A' LLP
- Failed to satisfy one CCJ obtained by a supplier of 'C' Ltd.

The breakdown of the five judgments, apart from the 'B' judgment of £10,010, is as follows:

'A' LLP:

1) 27 August 2014 - £1449
2) 16 September 2014 - £2653
3) 21 January 2015 - £8329
4) 9 April 2015 - £503

'C' Ltd:

1) 10 November 2017 - £247

The Respondent emailed ICAEW on 10 October 2018 and once again stated that all outstanding CCJs were satisfied. It is not clear which debts the Respondent is referring to however it can reasonably be inferred that he is referring to "all judgments".

The Respondent however has not provided any evidence to substantiate that statement and there is currently evidence available to the contrary.

The table below sets out a chronology of communication with the Respondent:

Date	Media	To	From	Detail	Document
20/07/2018	Letter & email	The Respondent	Case Manager	Initial letter regarding the investigation.	**1 & 2**
26/07/2018	Phone call	Case Manager	The Respondent	Regarding the letter sent on 20 July, he is in dispute with one of the CCJ's and the rest are settled. Will provide proof.	**3**
08/08/2018	Email	The Respondent	Case Manager	Chasing the Respondent for a response.	**4**
23/08/2018	Letter	The Respondent	Case Manager	Chasing the Respondent for a response	**5**
17/09/2018	Letter & Email	The Respondent	Head of Investigations	Formal request under Disciplinary Bye-Law 13.	**6 & 7**
10/10/2018	Email	Head of Investigations	Case Manager	Response on another case referencing 'A' LLP	**8**

12/10/2018	Email	The Respondent	Case Manager	The Respondent's partial response requesting evidence to substantiate his claims that all debts have been sorted as well as the other outstanding documents requested in the formal request dated 17 September 2018.	**8**
31/10/2018	Letter & email	The Respondent	Head of Investigations	Formal request under Disciplinary Bye-Law 13	**9 & 10**
06/12/2018	Letter & email	The Respondent	Head of Investigations	Formal request under Disciplinary Bye-Law 13	**11 & 12**

In the Respondent's response on 10 October 2018 he stated that all outstanding CCJs were satisfied, with the exception of the 'B' CCJ of 9 May 2018. However the Respondent has not provided any confirmation that the CCJs have been satisfied.

On 31 October 2018, the Respondent was served with a second notice under Disciplinary Bye-Law 13 requesting documents relating to this complaint and no response was received.

It was then highlighted that the letter dated 31 October 2018 had been sent to the Respondent; however the name 'A' LLP had not been included in the address as per all previous correspondence. (This did not affect the service via email).

For completeness, and to ensure that the Respondent received the formal request under Disciplinary Bye-Law 12 was resent on 6 December 2018.

On 7 March 2019 the Respondent telephoned the ICAEW. When the Respondent was asked to provide an explanation in relation to the unsatisfied CCJs he stated that it would take between 3 – 6 months to get them from the Court.

An updated search report was obtained by ICAEW on 11 June 2019 which confirmed that all CCJs remain to be unsatisfied save for the 30 April 2018 judgement for £1,628 which had been satisfied on 24 August 2018.

The updated search report also further identifies another unsatisfied judgement debt of £4229 dated 28 March 2019.

Since 7 March 2019, the Respondent has not been in contact with the ICAEW.

Responses are required in order to progress with the Institute's underlying investigation. The Institute requires a response from the Respondent in the terms of the letter dated 31 October 2018 and repeated in the letter of 6 December 2018 in order to progress the underlying investigation.

Issues of fact and law

The tribunal had to determine were whether the allegation made against the Respondent had been proved and whether it was satisfied that the act complained fell within Disciplinary Bye-Law 4.1(c). The tribunal had to be satisfied on a balance of probabilities that the Respondent had failed to provide by 21 December 2018, the information, explanations and documents requested in a letter dated 6 December 2018 issued under Disciplinary Bye-Law 13.

Conclusions and reasons for decision

There being no admissions from the Respondent, the Tribunal had regard to the documentary evidence submitted by the IC and was satisfied from that that proper requests had been to the Respondent in accordance with Disciplinary Bye-law (DBL) 13 seeking documentary confirmation of his assertion that all the CCJs with the exception of the 'B' judgment for £10,010 had been satisfied and that he had not provided this by the 21 December 2018 or at all. In those circumstances, the tribunal found the complaint set out in both 046201/MATT and 046204/MATT proved.

Matters relevant to sentencing

Ms Sutherland-Mack explained that the basis for the charge was failure to comply with requests for information made under DBL 13. Although it could be said that the requests were no more than seeking documentary confirmation from the Respondent to support his defence to allegations that he had failed to satisfy a number of county court judgments, if he could prove that he had satisfied these judgments the underlying case could be disposed of without recourse to disciplinary proceedings. The Respondent had partially engaged with the Institute's investigations but had failed to do so since 7 March 2019.

The tribunal was not provided with any further mitigating factors in this case. The tribunal had regard to the Guidance on Sanctions issued on 1 July 2019.

Sentencing Order

The tribunal imposed a severe reprimand and a fine of £3000. The tribunal ordered that the Respondent must provide the information and documentation sought by 17th August 2019. The IC made an application for costs supported by a schedule. The tribunal took the view that the costs were appropriate and properly incurred and awarded the full sum sought against the Respondent, namely £2790.30.

For the avoidance of doubt the sanction and the costs are imposed in respect of both complaints 046201/ 046204

Decision on publicity

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

Chairman	Ms Rosalind Wright CB QC
Accountant Member	Mr Martin Ward FCA
Non Accountant Member	Mr Graham Humby

046204

5. Mr Roger Nyman [FCA] of
Stanmore, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 11 June 2019

Type of Member Member

Terms of complaint

1. In making the following loans to Mr 'A', a client of 'B' LLP, Mr Roger Nyman FCA failed to comply with section 280.3 of the Code of Ethics (effective until 31 December 2010) which states that a 'firm or principal in the firm should not receive from or make a loan to a client':

On or around 3 August 2010	£5,000
On or around 3 October 2010	£10,000
On or around 14 November 2010	£10,000
On or around 23 December 2010	£10,000

2. In receiving £75,000 on or around 1 April 2011 from Mr 'A', a client of 'B' LLP, Mr Roger Nyman FCA failed to evaluate, as required by section 260 of The Code of Ethics (effective 1 January 2011) whether this was a significant threat to his objectivity and failed to implement and apply any safeguards to reduce the threat to an acceptable level.

3. In facilitating the following loans from Ms 'C' to Mr 'A', a client of 'B' LLP, Mr Roger Nyman FCA failed to evaluate, as required by section 280 of The Code of Ethics (effective 1 January 2011) whether this was a significant threat to his objectivity and failed to implement and apply any safeguards to reduce the threat to an acceptable level:

On or around 12 January 2010 £50,000
On or around 22 March 2010 £40,000

4. On or around 25 June 2011 Mr Roger Nyman FCA failed to comply with the Fundamental Principle of Integrity in that he requested Mr 'D' and Ms 'E' to witness signatures on a loan agreement when the signatories were not present and Mr 'D' and Ms 'E' had not seen the signatories sign the document.

5c. Between on or around 12 January 2010 and on or around 1 April 2011, Mr Roger Nyman FCA failed to inform his firm (through his annual declarations or otherwise) of circumstances that could adversely affect his objectivity and independence in acting as the principal for:

a. 'F' Limited; and/or,
b. 'G' Limited; and/or,
c. 'H' Limited; and/or,
d. Mr 'A'; and/or,
e. Ms 'C'.

6. Mr Roger Nyman FCA incorrectly prepared the self-assessment tax returns of Ms ‘C’ for the following tax year ends:

- 5 April 2010
- 5 April 2011
- 5 April 2012
- 5 April 2013
- 5 April 2014

as he should have known that the loan interest declared as received in each tax year was incorrect.

7. Mr Roger Nyman FCA failed to prepare self-assessment tax returns for Ms ‘C’ for the following tax year ends:

- 5 April 2007
- 5 April 2008
- 5 April 2015

when he should have known that loan interest had been received during each tax year and a self-assessment tax return was required to be submitted to HMRC.

If proven, the member is be liable to disciplinary action under Disciplinary Bye-law 4.1a in respect of complaints 1, 2, 3, 4, and Disciplinary Bye-law 4.1b in respect of complaints 5c, 6, and 7.

Hearing date

11 June 2019

Previous hearing date(s)

None

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes, by admission in respect of complaints 1-4, 5c and 6-7.
Sentencing order	Exclusion Fine of £4,000 Costs of £14,662

Procedural matters and findings

Parties present	Roger Nyman (“the defendant)

Represented	The Investigation Committee by Vicky Morgan The defendant by Jerry Nathan
Hearing in public or private	The hearing was in public
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service
Documents considered by the tribunal	The Tribunal considered the documents contained in the Investigation Committee's (IC's) bundle (pages 1-213) and a number of previous decisions of the Tribunal (Mr 'I', Mr 'J' and 'K').

The Investigation Committee's (IC's) case

1. The defendant was a partner at 'B' LLP. He acted for a Mr 'A' and a number of companies that he owned. In 2010 the defendant made a series of loans, totalling £35,000, to Mr 'A' who he had become friendly with. These loans were made to assist Mr 'A' in completing on a property transaction that he would not otherwise have been able to. No loan agreements were put in place at the time, but they were retrospectively. This was the substance of complaint 1.

2. In 2011 Mr 'A' made a gift to Mr Nyman of £75,000. There was later a dispute about whether this represented a gift or was partly in respect of the repayment of the loans. This was the substance of complaint 2.

3. Ms 'C' was another client of Mr Nyman's. He was engaged to provide personal tax services to her. In 2010 Mr Nyman facilitated a transaction by which Ms 'C' lent Mr 'A' £90,000. He had introduced Mr 'A'/Ms 'C' to each other and had been involved in the drafting of documents. There later arose a dispute in respect of the repayment of the loans. This was the substance of complaint 3.

4. In 2011 Mr Nyman got two employees of 'B' LLP to act as witnesses to the signing of a loan agreement between Mr 'A'/Ms 'C'. The document stated that it was being *"executed as a deed in the presence of"* Mr 'A'/Ms 'C' and was signed by the two employees as if they had witnesses the signatures. In fact, neither Mr 'A'/Ms 'C' were present when the two employees signed this declaration at the behest of Mr Nyman. Mr Nyman should not have asked them to witness the agreement in these circumstances. One of the employees is himself the subject of disciplinary proceedings by the ICAEW on this matter. This was the substance of complaint 4.

5. Each year Mr Nyman was required to fill out a form on which he had to declare any matters that might affect his or the firm's independence. He should have included the loans and gifts arrangements that he had with Mr 'A' but he failed to do so. This was the substance of complaint 5c. It was accepted that this was not done either dishonestly or recklessly.

6. Mr Nyman was engaged to complete Ms 'C's self-assessment tax returns. In respect of the 2010, 2011, 2012, 2013 and 2014 tax returns he failed to include any loan interest, knowing as he did that loan interest had been received by Ms 'C'. He failed to prepare any such self-assessment returns for the 2007, 2008 and 2015 tax years. This was the substance of complaints 6 and 7 respectively.

Matters relevant to sentencing

7. Mr Nathan on behalf of the defendant advanced the following matters in mitigation that were accepted and taken into account by the Tribunal:-

    a. The defendant had admitted the complaints albeit belatedly;
    b. The defendant had been a Member for almost 40 years, 30 years as at the date of the first complaint, and had an unblemished record;
    c. Mr 'A' had become a friend and the loans had been made to help him out of a difficult financial situation at a time when he was facing bankruptcy;
    d. At the time he had made the loans/accepted the gifts he was facing a series of personal difficulties that may have impaired his judgment;
    e. The defective tax returns of Ms 'C' had been remedied;
    f. The defendant was extremely remorseful for his actions and in particular for involving employees in signing a loan agreement when he should not have done;
    g. The defendant was now retired from practice and was unlikely to come into contact with clients in the future.

8. The Tribunal concluded that complaint 4, having the two employees witness a loan agreement when the signatories were not present, was the most serious of all of the admitted complaints, because it involved engaging other parties in the purported legitimisation of a very important document relating to a considerable amount of money and amounted to a breach of the Fundamental Principle of Integrity. It is vital that such documents are properly signed and witnessed, and a Member engaged in any practice which derogates from this important principle substantially erodes confidence in the profession as a whole. The current offence was more serious because it involved other employees who were subordinate to him. He, himself, could have witnessed the document but, for whatever reason, chose not to do so.

9. The Tribunal had regard to the ICAEW's *Guidance on Sanctions* which came into effect on 1 April 2019 and concluded that in respect of complaint 4 the most appropriate guideline was to be found at paragraph c of the section on Ethics entitled "Failure to comply with the Fundamental Principle of Integrity" (see page 32 of the Guidance).

10. The Tribunal took the view that the conduct was "serious", and that there were no Aggravating or Mitigating Factors such as to move the starting point into either the "very serious" or "less serious" brackets. The starting point was Exclusion and a category D financial penalty.

11. The Tribunal was of the view that the mitigation set out at 7 above did not move the sanction from exclusion to a severe reprimand, particularly given the number of admitted complaints which spanned a number of years. Individually they may have been regarded as less serious, but together they were at a minimum serious, and edging towards the very serious category.

12. The Tribunal considered that Mr Nyman's admissions had not been made at the earliest opportunity and had only been made after a date for a contested hearing had been set. Despite this the Tribunal considered that a discount of approximately 20% should still be applied.

13. The Tribunal had regard to the previous decisions of the Tribunal that were brought to its attention but, as Mr Nathan accepted, they were only of marginal assistance as each case must be determined on its own facts.

14. The Tribunal concluded that the correct sanction was exclusion, because of complaint 4, and a financial sanction of £4,000. The financial sanction was reduced from £5,000 to reflect a discount for the defendant's late admission of the complaints (a discount of 20%). The other complaints, individually, would have otherwise resulted in a severe reprimand.

Sentencing Order

15. The Tribunal ordered that:
    a. the defendant be excluded;
    b. the defendant pay a financial sanction of £4,000;
    c. the defendant pay costs of £14,622.

Decision on publicity

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

Non Accountant Chairman	Mr Jonathan Kinnear QC
Accountant Member	Mr Philip Coleman FCA
Non Accountant Member	Mrs Jane Rees

031211

6. Mr Devshi Chothani FCA of
Manchester. United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 5 June 2019.

Type of Member Member

Terms of complaint

1. Mr Devshi Chothani FCA, on behalf of his firm, 'K' Ltd, failed to comply with a condition imposed by the Audit Registration Committee in a letter dated 9 October 2014, in that he failed to obtain and submit the results of a hot file review in respect of the following:

Client	Year ended	Audit report signed
'A' Ltd	31 January 2015	29 October 2015
'B' Ltd	31 January 2015	29 October 2015
'C' Ltd	28 February 2015	26 November 2015
'D' Ltd	31 March 2015	15 December 2015
'E' Ltd	31 March 2015	23 December 2015
'F' Limited	30 April 2015	28 January 2016
'G' Ltd	30 April 2015	26 January 2016
'H' Ltd	30 April 2015	7 January 2016
'I' Ltd	30 June 2015	12 January 2016
'J' Ltd	31 January 2016	28 June 2016
'E' Ltd	31 March 2016	27 June 2016

2. Mr Devshi Chothani FCA, on behalf of his firm, 'K' Ltd, failed to comply with a restriction imposed by the Audit Registration Committee in a letter dated 9 October 2014, in that he failed to obtain the Audit Registration Committee's prior approval before accepting appointment as auditor of 'H' Ltd for the year ended 30 April 2015.

3. In a letter dated 14 November 2014, Mr Devshi Chothani FCA provided false and/or misleading information in that he provided an incomplete list of all audit clients of 'K' Ltd, in response to a request of the Audit Registration Committee in a letter dated 9 October 2014.

   This was dishonest as he knew he had not disclosed all audit clients of DBF Associates.

4. On 26 January 2015, Mr Devshi Chothani FCA, on behalf of his firm 'K' Ltd, signed an unqualified audit report on the financial statements of 'G' Ltd for the year ended 30 April 2015, which stated that the audit had been conducted in accordance with International Standards on Auditing (UK & Ireland), when:

   (a) He failed to obtain sufficient and appropriate audit evidence to consider whether the catastrophic flood was a 'non-adjusting event' under Financial Reporting Standard 21 'Events after the balance sheet date', as per International Standard on Auditing (UK & Ireland) 500 'Audit evidence'; and/or

(b) He did not have a sufficient and appropriate record of the audit work completed to support the audit opinion he reached, or evidence that the audit had been conducted in accordance with International Standards on Auditing (UK & Ireland), as per International Standard on Auditing (UK and Ireland) 230 'Audit documentation'.

5. On 26 January 2015, Mr Devshi Chothani FCA, on behalf of his firm 'K' Ltd, signed an unqualified audit report on the financial statements of 'H' Ltd for the year ended 30 April 2015 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK & Ireland), when:

(a) He failed to obtain sufficient and appropriate audit evidence to consider whether the catastrophic flood was a 'non-adjusting event' under Financial Reporting Standard 21 'Events after the balance sheet date', as per International Standard on Auditing (UK & Ireland) 500 'Audit evidence'; and/or

(b) He did not have a sufficient and appropriate record of the audit work completed to support the audit opinion he reached, or evidence that the audit had been conducted in accordance with International Standards on Auditing (UK & Ireland), as per International Standard on Auditing (UK and Ireland) 230 'Audit documentation'.

6. On 15 December 2015, Mr Devshi Chothani FCA, on behalf of his firm 'K' Ltd, signed an unqualified audit report on the financial statements of 'D' Ltd for the year ended 31 March 2015, which stated that the audit had been conducted in accordance with International Standards on Auditing (UK & Ireland) and the accounts had been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice, when:

(a) the audit was not conducted in accordance with International Standard on Auditing (UK & Ireland) 500 'Audit evidence' in that he failed to perform sufficient procedures in respect of the valuation and existence of the company's fixed asset properties; and/or

(b) the financial statements did not comply with Financial Reporting Standard 15 'Tangible fixed assets' as the company's fixed assets did not comply with the revaluation requirements.

7. Mr Devshi Chothani FCA allowed his firm 'K' Ltd, to breach audit regulation 3.11 in that he failed to keep copies of the audit working papers for 'D 'Limited for a period of six years from the end of the accounting period to which the papers relate, in respect of the following years:

- 31 March 2011
- 31 March 2012
- 31 March 2013
- 31 March 2014

8. Mr Devshi Chothani FCA signed audit reports on the following entities when he was not permitted to do so as he was not eligible to sign audit reports as he was not a responsible individual, in breach of audit regulation 4.04, which states that only responsible individuals can sign an audit report:

- 'G' Limited, year ended 30 April 2016, audit report signed 29 July 2016
- 'H' Limited, year ended 30 April 2016, audit report signed 29 July 2016

Mr Devshi Chothani is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a in respect of complaints 1-3 and 8 and Disciplinary Bye-law 4.1b in respect of complaints 4-7.

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

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

2. 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, ICAEW or the profession of accountancy

Hearing date

05 June 2019

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes (other in relation to head of complaint 6(b) in relation to which no evidence was offered).
All heads of complaint proven	Yes (other in relation to head of complaint 6(b) in relation to which no evidence was offered).
Sentencing order	a) severe reprimand b) fine of £11,000

Procedural matters and findings

Parties present	Mr Devshi Chothani The Investigation Committee (IC)
Represented	Ms Sutherland Mack represented the IC
Hearing in public or private	The hearing was in public
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with submissions from the defendant

Findings on preliminary matters

The IC offered no evidence in relation to head 6(b) of the complaint. The Defendant's admission did not therefore relate to that limb of head 6 of the complaint.

Issues of fact and law

Background

1. The Defendant is the sole director of 'K' Ltd, a firm based in Manchester, providing accountancy services and previously audit services. In May 2014, the Quality Assurance Department (QAD) carried out a routine visit to the firm.

2. The QAD findings were reported to the Audit Registration Committee (the 'ARC') on 9 October 2014. The ARC considered the firm's audit registration based upon the QAD findings. The ARC decided that a number of conditions and restrictions should be placed on the firm's audit registration. These are summarised as follows:

   (a) External hot file reviews of all audits and Solicitors Regulation Authority Accountants Report ('SRAAR') assignments, to be submitted within one month of completion;
   (b) To submit details of all planned audit and SRAAR-related CPD courses, to be undertaken by all staff involved in these assignments during the remainder of 2014;
   (c) To submit the completed 2014 CPD records for all staff involved in the audit and SRAAR assignments, by no later than 28 February 2015;
   (d) To receive a QAD visit if the committee is not satisfied with the results of the external hot file reviews;
   (e) Not to accept any new audit or SRAAR appointments, without the ARC's prior approval;
   (f) Not to sign any audit reports or SRAAR accountants reports until an external hot file review has been carried out; and
   (g) Not to conduct any audit compliance reviews, or file reviews, on behalf of other firms until advised otherwise.

3. On 13 July 2016, the ARC considered the firm's audit registration and decided to accept the firm's request for voluntary withdrawal of its audit registration. In addition, the Defendant's status as Responsible Individual ('RI') was removed with immediate effect. The ARC also decided to refer the Defendant's conduct to the Professional Conduct Department, with regards to a number of matters.

4. See the appendix for the text of relevant regulatory provisions and International Standards on Auditing (UK and Ireland) ("ISAs").

Complaint 1

Summary of audit opinions issued by the Defendant after the ARC conditions were imposed on his firm's audit registration:

	Client	Year ended	Audit opinion signed	Date accounts filed at Companies House	External file review obtained	Date of review
1	'A' Ltd	31 January 2015	29 October 2015	12 November 2015	Yes - CFR	22 January 2016
2	'E' Ltd	31 March 2015	23 December 2015	10 January 2016	Yes - CFR	22 March 2016
3	'E' Ltd	31 March 2016	27 June 2016	6 March 2017	No	
4	'D' Ltd	31 March 2015	15 December 2015	12 January 2016	Yes - CFR	18 March 2016
5	'I' Ltd	30 June 2015	12 January 2016	14 April 2016	No	
6	'F' Ltd	30 April 2015	28 January 2016	8 February 2016	No	
7	'G' Ltd	30 April 2015	26 January 2016	8 February 2016	No	
8	'H' Ltd	30 April 2015	7 January 2016	14 January 2016	No	
9	'C' Ltd	28 February 2015	26 November 2015	6 December 2015	No	
10	'B' Ltd	31 January 2015	29 October 2015	12 November 2015	No	
11	'B' Ltd	31 January 2016	28 June 2016	6 November 2016	No	

5. On 9 October 2014, the Defendant was informed by the secretary to the ARC that he was required to obtain external hot file reviews on all audits and that the results needed to be submitted to the ARC within one month of their completion until the firm was advised otherwise. The Defendant acknowledged this condition in his letter of 14 November 2014.

6. The ARC can impose conditions and restrictions on a firm in respect of its audit registration. This may include the requirement to arrange and submit file reviews by an external reviewer.

7. A hot file review ('HFR') is a review conducted after the financial statements have been finalised and the audit work completed, but before the audit report is signed, to check that the audit work is in accordance with the International Standards on Auditing (UK & Ireland), the APB's Ethical Standards, the audit regulations and the firm's procedures. This was explained to the Defendant in the letter from the ARC so that he was clear that a HFR is conducted prior to the audit report being signed.

'A' Ltd

8. With his letters of 14 November 2014, 26 February 2015 and 2 June 2015, the Defendant attached a timetable, which indicated that the first company audit to be completed after the ARC's conditions and restrictions were imposed was in respect of 'A' Ltd and that the external HFR would be completed in August 2015.

9. In his letter to the audit regulation department dated 25 November 2015, the Defendant confirmed that '*the first hot file review of a trading company audit file should be available very shortly'*. The results of the review for 'A' Ltd for the year ended 31 January 2015 were submitted to the audit regulation case manager on 18 April 2016. The external review is dated 22 January 2016, with an update made to the review on 15 April 2016.

10. The audit report in respect of the accounts for 'A' Ltd was signed by the Defendant on 29 October 2015. The accounts are recorded as filed at Companies House on 12 November 2015. The audit report had therefore been signed before the external review had been conducted; this did not therefore constitute a HFR.

11. In his letter of 18 April 2016, the Defendant explained that the external review had been completed by 'L'. He stated that a detailed review of 'L's report had revealed a series of inconsistencies, which had been fed back to 'L' and the external review report had been amended. In addition to the external review report, the Defendant also submitted the firm's own comments on the external review report for the audit regulation case manager to consider.

12. The Defendant stated that the audit was very late in being carried out, but that this was not due to his firm. The firm was left with no option but to complete the audit and submit the audited accounts to Companies House shortly before the filing deadline, which was the 31 October 2015, to avoid unfairly penalising the client. The Defendant stated that he warned the client that the audit opinion was provisional and that the firm might be obliged to re-submit the accounts at a later date, with a revised audit opinion. The Defendant also stated that despite the warning, he assured the client that he was very confident that the audit opinion would be 'upheld'.

13. The Defendant explained that in January 2016, after the audit report of 'A' Ltd had already been signed, the audit files and client permanent files were submitted to 'L' for the external review. The Defendant states that 'section O' of the files was omitted. In mid-February, the firm received the preliminary report from 'H', and the firm responded to the review points raised before the end of February. On 24 March 2016, 'L' provided an updated report. Further comments were submitted by the firm on 8 April 2016 and the final report was issued to the Defendant on 18 April 2016.

14. On 20 April 2016, the audit regulation case manager wrote to the Defendant and informed him that the firm was in breach of the conditions placed on its audit registration as a cold file review had been completed and not a HFR. The Defendant was informed that the matter needed to be referred to the ARC.

15. In his letter of 28 October 2016 to the investigation case manager, the Defendant states that had the audit regulation case manager informed him when they first received the external review of 'A' Ltd that it was unacceptable because it was a cold review and not a HFR, then the firm would have surrendered its audit registration at that time. The Defendant considered it was not possible to have obtained HFRs on any of the firm's audit engagements.

‘D’ Ltd and ‘E’ Ltd

16. On 20 April 2016, the audit regulation case manager also asked the Defendant about the status of the external reviews of ‘D’ Ltd and ‘E’ Ltd. In his letters of 11 and 12 May 2016, the Defendant confirmed that cold file reviews had also been obtained in respect of these audits, as opposed to the HFRs, as required under the ARC condition.

17. The audit report in respect of ‘D’ Ltd for the year ended 31 March 2015 was signed on 15 December 2015. The accounts are recorded as filed at Companies House on 12 January 2016.

18. The audit report in respect of ‘E’ Ltd for the year ended 31 March 2015 was signed on 23 December 2015. The accounts are recorded as filed at Companies House on 10 January 2016.

19. The Defendant again stated to the audit regulation case manager that the respective clients had been informed that the audit opinions issued were ‘conditional’ on the results of the external review and if they were not upheld, amended accounts would need to be prepared, issued and re-submitted to Companies House.

20. External cold file reviews were obtained for ‘D’ Ltd and ‘E’ Ltd after the audit reports had been signed and filed on public record.

‘I’ Ltd and ‘G’ Ltd

21. In a letter dated 13 May 2016, the audit regulation case manager informed the Defendant that a routine search of Companies House had identified a further three audit reports that had recently been signed by him and for which HFRs had not been submitted to ICAEW.

22. The audit report in respect of ‘I’ Ltd for the year ended 30 June 2015 was signed on 12 January 2016. The accounts are recorded as filed at Companies House on 14 April 2016.

23. The audit report in respect of ‘F’ Ltd for the period ended 30 April 2015 was signed on 28 January 2016. The accounts are recorded as filed at Companies House on 8 February 2016.

24. The audit report in respect of ‘G’ Ltd for the year ended 30 April 2015 was signed on 26 January 2016. The accounts are recorded as filed at Companies House on 8 February 2016.

25. In his letter of 26 May 2016, the Defendant confirmed that neither HFRs nor cold file reviews had been completed in respect of these three audits. The Defendant explained that he had planned to get cold file reviews on both ‘I’ Ltd and ‘F’ Ltd. The Defendant did not plan to get an external review of ‘I’ Ltd due to the loss of the audit files (this matter is considered further at complaint 4).

26. In this letter, the Defendant also requested that he be given permission not to obtain a review of the ‘F’ Ltd audit files on the basis that the client had since changed auditors.

27. The Defendant was also critical of the firm’s external reviewer ‘L’, which he had previously used for cold file reviews on other clients and stated that they had offered the firm little support, their approach had been that of ‘fault finder’, and that they failed to offer constructive feedback to help the firm improve on future audits.

'C' Ltd, 'B' Ltd and 'H' Ltd

28. Prior to the breaches of the conditions on the firm's audit registration being considered by the ARC on 13 July 2016, the audit regulation case manager noted that a further three audit reports had been signed by the firm since the conditions had been imposed, for which no external HFR had been submitted to ICAEW.

29. The audit report in respect of 'C' Ltd for the year ended 28 February 2015 was signed on 26 November 2015. The accounts are recorded as filed at Companies House on 6 December 2015.

30. The audit report in respect of 'B' Ltd for the year ended 31 January 2015 was signed on 29 October 2015. The accounts are recorded as filed at Companies House on 12 November 2015.

31. The audit report in respect of 'H' Ltd for the year ended 30 April 2015 was signed on 7 January 2016. The accounts are recorded as filed at Companies House on 14 January 2016.

32. During the investigation of the matters referred by the ARC, the investigation case manager performed a search of Companies House to ensure that the Defendant had not signed any other audit reports after the date of 25 July 2016, which was when his firm's audit registration, and the Defendant's RI status, had been withdrawn. The results of the search showed that one audit report had been signed after the firm's audit registration had been withdrawn; this matter is covered further in complaint 8. In addition, the Defendant had signed audit opinions in respect of the accounts of 'E' Ltd for the year ended 31 March 2016 and 'B' Ltd for the year ended 31 January 2016. The audit reports were signed on 27 June 2016 and 28 June 2016 respectively. However, the accounts were not filed at Companies House until 6 March 2017 and 6 November 2016 respectively.

33. In accordance with the conditions on the firm's audit registration, the Defendant was required to obtain and submit an external HFR on the audits of 'E' Ltd and 'B' Ltd. The Professional Conduct Department (the 'PCD') wrote to the Defendant to ask why he had not informed the audit regulation case manager that these opinions had been signed at the time the matter was considered by the ARC, and why he had failed to obtain an external HFR on the audits.

Complaint 2

34. On 9 October 2014, the Defendant was informed by the secretary to the ARC that his firm, 'K' Ltd, was required to obtain the ARC's prior approval before accepting any new audit appointments. The Defendant acknowledged this restriction in his letter of 14 November 2014.

35. At the time this restriction was imposed on 'K' Ltd, 'H' Ltd was a client of the firm but the firm was not engaged to provide audit services in relation to this company. 'G' Ltd, a subsidiary undertaking of 'H' Ltd, was an audit client of the firm at the time that the conditions and restrictions were imposed by the ARC.

36. The financial statements for 'H' Ltd for the year ended 30 April 2014 were not audited. 'K Ltd is listed as the company's accountants. These accounts were approved by the directors on 8 January 2015, i.e. after the ARC restriction on 'K' Ltd, had come into place and therefore showing that 'G' Ltd was not an audit client of 'K' Ltd as at 9 October 2014 (the date of the ARC conditions and restrictions).

37. On 14 January 2016, unaudited abbreviated single entity accounts for 'H' Ltd were filed at Companies House for the year ended 30 April 2015. On 18 May 2016, amended audited accounts were filed at Companies House for the year ended 30 April 2015. The amended accounts, as filed at Companies House, were full consolidated group accounts for 'H' Ltd and 'G' Ltd. The audit report for the amended accounts was signed by the Defendant on 7 January 2016.

38. Therefore, the Defendant had accepted appointment as auditor of 'H' Ltd for the year ended 30 April 2015, after the date the ARC had imposed conditions and restrictions on his firm's audit registration.

Complaint 3

39. In the letter to the Defendant dated 9 October 2014, whereby the original conditions were imposed by the ARC, it stated that the Defendant had to provide the ARC with the following information:

- Details of the firm's audit clients;
- The likely timescales for the external HFRs;
- The dates the committee can expect to receive the results; and
- The name of the proposed reviewer.

40. The Defendant replied to this letter on 14 November 2014. With his letter he enclosed a table summarising the information requested above. Under company audits, he listed four trading audit clients, as follows:

- 'A' Ltd
- 'E' Ltd
- 'D' Ltd
- 'G' Ltd

41. In a letter to the Defendant dated 10 June 2016 from the audit regulation case manager, he was asked to explain why 'C' Ltd, 'B' Ltd and 'H' Ltd were all omitted from the list that he had provided with his letter of 14 November 2014.

42. In his response dated 7 July 2016, the Defendant stated that the reason he did not disclose the other three clients was that it was not practical for him to send the files for external HFRs or cold file reviews and still comply with the relevant company filing deadlines. He stated that it was also to save his clients from being penalised and having poor filing history records with Companies House.

43. The Defendant stated that his intention was not to hide anything or to breach the regulatory conditions and restrictions. He stated that he omitted some of the audit clients to demonstrate that his firm was capable of conducting good audits and produce compliant audit files, and for that reason only 'A' Ltd, 'E' Ltd and 'D' Ltd were sent to the external reviewer for a cold file review.

44. A review of the records held at Companies House confirms that the Defendant had previously signed audit reports in relation to the 2014 accounts for 'I' Ltd, 'C' Ltd and the 2014 and 2015 accounts of 'B' Ltd. These were therefore audit clients at the time that the Defendant submitted the list of clients to the ARC. With regards to 'F' Ltd, this was also an existing client at the time that the Defendant provided the list of clients. The Defendant had signed the 'F' Ltd audit report for the year ended 31 October 2013 on 10 July 2014; the next audit report was issued to 'F' Ltd in respect of the extended 18-month period to 30 April 2015.

45. The remaining client, 'H' Ltd, had not filed audited accounts at the time that the Defendant disclosed the list of audit clients to the audit regulation department, and 'K' Ltd was engaged only as the company's accountant not auditor, therefore this client did not require disclosure to ICAEW as an audit client at that time. The acceptance of the audit appointment is considered in complaint 2 above.

46. Consequently, of the five companies that the Defendant did not disclose as an audit client to the ARC, four of those companies ('I' Ltd, 'F' Ltd, 'C' Ltd, and 'B' Ltd) were pre-existing audit clients of the firm and should have been disclosed to the ARC.

Complaints 4 and 5

47. The firm commenced the audit of 'G' Ltd and its parent company, 'H' Ltd, for the year ended 30 April 2015, in December 2015. The Defendant has stated that he performed a review of the audit work completed to date as at 21 December 2015. At that time he considered the audit to be 99% complete.

48. The intention was for the remaining audit work to be completed over the Christmas holiday period. The audit files were left by the audit team on the client's premises. On 26 December 2015, there was a severe flood at the client's premises, which destroyed the client's systems and data. The audit files stored on-site were also destroyed. The Defendant stated that there were no electronic audit working papers and all audit papers had been on-site at the client's premises.

49. The Defendant has provided a letter dated 27 January 2016 from one of the directors which states:

'As a consequence, all data, documents and stock were destroyed in their entirety because all the files and systems were found to be submerged under the water post catastrophic floods. This also includes 'K's audit files which were kept at our premises as your team were working on them during the course of holiday break. We are now in the process of cleaning the premises and negotiating with the loss assessors on the claim'.

50. Based on his assessment that the audit work was 99% complete, and there were no issues arising on that work, the Defendant decided that it was acceptable to issue an unqualified audit opinion on the financial statements of 'H' Ltd and 'G' Ltd. The Defendant signed the audit opinions on 7 January 2016 and 26 January 2016 respectively.

51. A summary report of 'H' Ltd consolidated 2015 accounts (which incorporate the results of 'G' Ltd also) shows that this is a business with turnover for the 2015 year-end of £13.7m and net assets of £17.8m.

Audit documentation

52. At the time that the Defendant signed the audit reports for both 'H' Ltd and 'G' Ltd, he did not have a sufficient and appropriate record of the audit work completed to support the audit opinion that he had reached, or evidence that the audit had been conducted in accordance with the ISAs. The provisions of ISA 230 have therefore been breached.

53. The Defendant explained that 'G' Ltd used Sage, an electronic accounts package, to record its financial transactions, and the client was able to access a Sage back up of the data which was unaffected by the flood as it was stored offsite. PCD asked the Defendant whether consideration was given to re-performing the audit and documenting the work undertaken by using the back-up data that the client had access to. The Defendant considered that it would have been an extremely time intensive task to attempt to recreate the audit file before the filing deadline of 31 January 2016. The Defendant therefore did not seek to re-perform the audit and document the audit work that had been undertaken prior to the flood.

Non-adjusting event after the balance sheet period

54. There is no disclosure in the accounts of 'H' Ltd or 'G' Ltd regarding the flood at the client's premises. As the flood occurred after the year-end date, but before the date that the audit reports were signed, it would therefore meet the definition of a non-adjusting post balance sheet event as defined by FRS 21, which means that no adjustment to the numbers would be required, but disclosure of the event was required in the financial statements. The financial statements of both entities should have disclosed the nature of the flood and an estimate of its financial effect on the company.

55. The Defendant was asked to provide copies of any documentation provided to the audit team at the time the audit opinion was signed, supporting the director's representation that there was adequate insurance in place for the damage to the fixed assets, stock and business interruption, to demonstrate that he had obtained sufficient and appropriate audit evidence that the flood did not have a material financial effect on the companies' assets and ongoing business operations. If this evidence was unavailable at the time of signing the audit opinion, disclosure should have been made in the financial statements.

56. The Defendant has provided an email dated 11 February 2016, from 'G' Ltd's insurers, confirming a settlement of £480,000. However, this email is dated after the date that the audit opinion was issued. There is no evidence that the impact of the flood and the requirements of FRS 21 were considered by the Defendant prior to issuing both audit reports.

57. The audit reports for 'H' Ltd and 'G' Ltd were signed on 7 January 2016 and 26 January 2016 respectively. On 27 January 2016, the director of the group wrote to the Defendant stating that all data, documents and stock had been lost in the flood and that there was a clean-up exercise being undertaken at the premises. The director also referred to the fact that they were in negotiations with the loss assessor. Therefore, at the dates the audit reports were signed, the Defendant did not know what the financial effect of the flood had been on the business. As well as loss of assets and records, we assume that the day to day operations of the business must have also been affected.

Complaint 6

58. 'D' Ltd is a company that provides care services. Per its 2015 accounts, it owns six care homes in the Greater Manchester area.

59. The audit report for the accounts of the company for the year ended 31 March 2015 was signed on 15 December 2015. A cold file review was carried out by the external reviewer on 18 March 2016.

60. There was no policy of revaluation disclosed in the accounts. However, the balance sheet of the company includes a revaluation reserve of £3,935,999. The balance on this reserve in 2015 remained unchanged from the prior year.

External cold file review

61. The conclusion of the external reviewer with regards to the 2015 audit of 'D' Ltd noted a number of disclosure issues regarding the freehold properties, including an incomplete accounting policy and the lack of disclosure regarding the last formal valuation and carrying value of the properties.

62. The reviewer also noted that there is no assessment as to whether the valuation of the freehold properties is materially correct and that the audit papers appear to suggest that only three of the six properties were subject to revaluation.

2011 financial statements

63. The revaluation gain was first recognised in the 2011 financial statements. A revaluation gain of £3,935,999 was recognised in relation to freehold land and buildings which were revalued in that year. This revaluation gain of £3.9m equates to the balance on the revaluation reserve still held in the 2015 accounts. The 2011 financial statements do not contain a revaluation accounting policy. There is a brief disclosure in the fixed asset note stating:

    'Freehold land and buildings were valued on [sic] open market basis on 18 February 2011 by GVA'.

64. In order to understand the revaluation in further detail, the investigation case manager requested the firm's audit files of 'D' Ltd for the years ended 2011 – 2015. The Defendant has explained that the audit files for 2011 – 2014 have been destroyed and cannot be provided. This matter is considered further in complaint 7.

2015 audit files

65. The 2015 directors' report states that 'D' Ltd has six care homes. The fixed asset working papers state that the revaluation gain in the revaluation reserve relates to the following properties, 'M', 'N' and 'O'. 'P', 'Q' and 'R' are the remaining properties of the company which do not appear to have been revalued.

66. There is no evidence on the audit working paper file to show that the valuation of the properties has been considered by the either the directors or the auditors.

Complaint 7

67. As part of the investigation of complaint 6, PCD asked the Defendant to provide copies of the audit working papers for 'D' Ltd for the years ended 31 March 2011 – 2015**.** The Defendant was unable to provide the audit working papers for 2011-2014 and has stated that they have been destroyed.

68. In accordance with audit regulation 3.11, an audit firm is required to retain its audit working papers for a period of six years from the year-end date to which the audit working papers relate. In addition, part c.2 of audit regulation 2.23 states that disciplinary action can be taken against firms that fail to comply with any regulation that continues to have effect i.e. the requirement to retain audit files for six years.

69. Therefore, the Defendant was required to retain the audit working papers for the 2011 - 2014 audits of 'D' Ltd until 31 March 2017 – 31 March 2020 respectively. These working papers were requested by the investigation case manager on 5 September 2016, and they should therefore have still been in the possession of the Defendant at that time. It is not clear when the audit files were destroyed. The Defendant has explained that he thinks they were destroyed by junior members of staff when clearing out the file archive facility.

Complaint 8

70. As part of PCD's investigation, a search of Companies House was performed to check whether the Defendant had signed any audit reports after the date his firm's audit registration, and his status as RI, was withdrawn on 25 July 2016. From this date, the Defendant was unable to sign audit reports.

71. The search showed that on 29 July 2016 the Defendant signed the audit reports of 'J' Ltd and 'G' Ltd for the year ended 30 April 2016.

72. As the Defendant's firm's audit registration, and his status as RI, were withdrawn with effect from 25 July 2016, he was no longer eligible in accordance with section 1212 of the Companies Act 2006 and audit regulations 2.01 and 4.04 (see further information under the heading "*ICAEW Audit Regulations and Guidance*" of **Error! Reference source not ound.**) to sign any audit report after 25 July 2016.

73. It is recognised that there was a short amount of time between the Defendant receiving notification of the ARC's decision to accept his voluntary withdrawal of the firm's audit registration on 25 July 2016, and the date he signed the audit reports of 'H' Ltd and its subsidiary on 29 July 2016, but the ARC's decision was emailed to the Defendant on 25 July 2016 so that he was made aware that this decision had come into effect immediately. The Defendant should have been aware upon receipt of that email that he was no longer able to sign audit reports on behalf of his firm.

Conclusions and reasons for decision

74. The Tribunal found all the heads of complaint (other than head 6(b) in relation to which no evidence was offered) proven on the Defendant's own admission.

75. The defendant demonstrated either a failure to understand, or in certain aspects a deliberate disregard for the purpose of the conditions and restrictions placed on his firm by the ARC. This was evidenced by his failure to obtain HFRs and by his dishonest disclosure of an incomplete list of his audit clients to the ARC.

76. In addition, there were significant failures by the Defendant to comply with the relevant auditing and accounting standards with regards to the audits of 'G' Ltd and 'D' Ltd, and, in the case of 'D' Ltd, an incorrect audit opinion was then issued in respect of the 2015 audit.

77. The matters set out above individually and cumulatively were likely to give rise to discredit to the Defendant, the Institute or the profession of accountancy. He was in breach of Disciplinary Bye-law 4(1)(a) (conduct likely to bring discredit on himself, ICAEW or the profession of accountancy) in relation to heads 1,3 and 8 and Disciplinary Bye-law 4(1)(b) and in relation to heads 4-7 (a practice that is inefficient or incompetent to such an extent, or on such a number of occasions, as to bring discredit on himself, Institute or the profession of accountancy).

Matters relevant to sentencing

78. The Defendant did not have a prior disciplinary record. He put forward the following points in mitigation:

(a) The Defendant explained that prior to the 2014 QAD review, his firm had been subject to two previous JMU inspections in 2002 and 2008. He stated that there were no significant issues arising from these reviews. There was, he argued, no evidence that he was incompetent at audit.
(b) There had been no loss to any client, no complaints from any clients and no risk to the public.
(c) The Defendant stated that he has only ever accepted audit engagements of clients of low risk, or small family enterprises, and which have no third party reporting.
(d) The Defendant stated that obtaining a HFR of each audit file was impractical and would have resulted in his clients filing their accounts late. This would then have impacted on their trade due to the effect that late filing submissions would have on their credit ratings. The Defendant stated that he was left with no choice but to give up his firm's audit registration.
(e) The Defendant stated that he did not intend to deceive anyone and at no time did he sign an unqualified report when it should have been qualified.

79. The Tribunal took into account the Guidance as to Sentencing and the Defendant's mitigation.

80. The Tribunal was of the view that, whilst there were no indications that the quality of the audit work was deficient (indeed the cold file reviews indicated a sufficient standard), it was of considerable concern that the defendant had shown such a cavalier attitude towards the requirements of his and his firm's regulator. The role of the Institute was to maintain standards in the profession and thereby to protect the public. Being a member required not just compliance with its requirements, rules and regulations, but also cooperation. Persuading himself that he could ignore (in one case in a deliberate and dishonest manner) the ARC's demands on the basis that this was, in his view, better for his clients was to wholly misunderstand the purpose of professional regulation.

81. In the case of the group audit, he again showed a lack of judgement in assuming he was correct that this was not a new audit requiring permission from the ARC. At the very least he could have sought guidance from the ARC.

82. With regard to head 6(a) of the complaint, this breach was aggravated by the fact that this had only been picked up by the external reviewer and the amounts involved (£4m). The defendant had signed off four sets of accounts without spotting the error.

83. That said, there was no evidence that an incorrect opinion had been given in these or any other of the audits under consideration. No clients appeared to have suffered any loss and there was no evidence that the issues identified were systemic.

84. Nevertheless, the defendant's conduct had fallen well below the standard expected of chartered accountants. His lack of judgement and failure to comply with regulatory requirements, along with the more specific audit failings, warranted a severe reprimand and a fine of £11k. The Tribunal had considered each head of complaint on its own, and then cumulatively, in order to come to a proportionate sanction.

Sentencing Order

85. The Tribunal imposed the following sentencing order:
    (a) Severe reprimand
    (b) Fine of £11k
    (c) Costs of £10k

86. The Tribunal reduced the costs award on the basis that one head of complaint had in part been not upheld on the basis that the ICAEW offered no evidence. It, took into account the Defendant's request for time to pay and ordered that the full sum be paid over 12 months in equal monthly instalments, the first payment of £1,750 to be made by 31 July 2019.

87. Publicity with names.

Chairman	Mrs Mary Kelly
Accountant Member	Mr Martin Ward
Non Accountant Member	Mr Graham Humby
Legal Assessor	Ms Melanie Carter

035279

7. Mr Richard Philip McCann [ACA] of
Stockton-on-Tees, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 4 June 2019

Type of Member Member

Terms of complaint

1. On 12 December 2015 Mr Richard McCann ACA assaulted Miss X.
2.

Mr Richard Philip McCann is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a.

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

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

Hearing date

04 June 2019

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

An order for exclusion, and an order that the Respondent pay the costs of the ICAEW, assessed at £6124.50. The costs are to be paid by eleven monthly instalments of £510, and one final instalment of £514.50, the first payment to be made on 1st July 2019

Procedural matters and findings

The Tribunal was satisfied that regulations 3 and 5 of the Disciplinary Regulations have been observed, and that it should proceed in the absence of the Respondent

Parties present

The Respondent was not present nor represented.

Represented

Mrs Silpa Tozar represented the Investigation Committee

Hearing in public or private

The hearing was in public

An application by the Respondent for the hearing to be conducted in private was dismissed by the Chair of the Tribunal on 3rd May 2019, reasons in writing were provided to the parties.

Decision on service

In accordance with regulations 3-5 of the Disciplinary Regulations, the Tribunal was satisfied to service

Documents considered by the tribunal

The Tribunal considered the documents contained in the Investigation Committee's (IC's) bundle and a report from the Respondent's GP dated 13th May 2019

The Investigation Committee's (IC's) case

1. On 26 February 2016, the Respondent pleaded guilty at the Royal Court of Jersey to committing a grave and criminal assault on 12 December 2015. The assault was of a domestic nature, and the Crown accepted the Respondent's plea on his version of events on 8 April 2016. The IC submits that the equivalent UK indictable offence is Assault causing Actual Bodily Harm ('ABH') contrary to section 47 of the Offences against the Person Act 1861.

2. The Respondent was sentenced on 13 May 2016 to 150 hours Community Service Order, unpaid work, together with a 12 month Probation Order. The Probation Order was ordered to be served in the United Kingdom. A direction was added to the order that the Respondent may not return to Jersey without the prior written consent of the Jersey Probation Service for a period of one year.

3. The Respondent had been remanded in custody from the date of the first Magistrates' Court hearing, prior to his solicitors being instructed. A bail application was not made by his solicitors subsequent to this due to concerns that he would not receive the support he required had he been released on bail.

4. The sentencing report sets out the facts of the offence leading to the Respondent's conviction. The offence took place on a Saturday evening at the Respondent's home after he had consumed approximately six cans of lager. The judge commented that the Respondent's assault was '*both alcohol fuelled and involved a significant breach of trus*t', which the judge viewed as aggravating features of the offence. The judge accepted that at the time he had '*mental health issues, and may very well have been moderately depressed*'. However, the judge concluded that the Respondent's explanation of '*self-medicating on alcohol'* could not amount to mitigation, and commented that the '*opposite was true'*. Nonetheless, the judge said that the Court made '*considerable allowance*' for the Respondent's mental state. The judge stated that in the court's view, the Respondent's guilty plea was a '*very important factor in mitigation*'.

5. The judge said that the court acknowledged that the Respondent felt '*genuine remorse*', and he '*engaged positively with the help on offer to him in prison*.' The judge accepted the letters sent on the Respondent's behalf, which spoke well of him.

6. The judge also took into account that the Respondent had served the equivalent of seven months and fifteen days in custody on remand. The judge commented that the court '[sic] *note that this offence has had a devastating effect upon you and upon your family. We do not think that such an offence is likely to be repeated by you and accordingly in our view the best way forward is to give you the opportunity to build your life again*'.

7. In consideration of the above mitigation, the judge sentenced the Respondent to a Community Service Order of 150 hours, the equivalent of nine months in prison, with a Probation Order of twelve months' duration.

8. The Respondent has provided his statement of remorse used during the criminal proceedings. The Respondent says no words can express the amount of remorse he feels for his actions on the night in question. The Respondent provided medical evidence relevant to the offence.

9. The Respondent provided a number of further representations received on 17 March 2017**:**

    9.1.1. He produced medical evidence relating to a long-standing medical condition.

    9.1.2. He has provided a copy of a certificate to show that he has completed his community service. His community service involved working unsupervised in a charity shop and he helped people with learning difficulties. He helped out with local church parish activities and attended a refugee centre. He also helps people with English and Mathematic skills.

    9.1.3. The court papers and other supporting documents make it very clear that his actions were driven by his intention to prevent his victim from having to give evidence in open court. The court papers also demonstrate that he was honest throughout the ordeal and acted with integrity.

    9.1.4. He was in an abusive relationship for over ten years, where he was physically and mentally abused by his wife. He was '*in no position to actually form any judgement'* when the offence occurred and he was a '*broken, battered and bruised man*,' who was pushed to breaking point. This was a major contributing factor to his health issues.

    9.1.5. He was in prison on remand and this does not constitute a prison sentence. He was held in prison because Jersey has little or no proper health provisions. He was in prison for his own safety and he purposely refused bail as he expected that his ex-wife would harass him.

9.1.6. While it appears that exclusion is the only option, he begs the committee to consider the genuine strength of the mitigation presented. He has worked incredibly hard throughout his career to achieve numerous qualifications and his used this to better the people and environment around him. Throughout this process he has clearly demonstrated all of the IFAC professional and ethical values, adopted by ICAEW. While he has made a terrible mistake, he has demonstrated proper remorse and has done everything in his power to show that this was out of character.

9.1.7. The judge stated that an offence was unlikely to be repeated and in their view the best way forward is to give him the opportunity to rebuild his life. If ICAEW exclude him from membership then this is a direct contradiction of the wish of the court. Without his status as a Chartered Accountant, he will not be able to properly rebuild his life, and will not be able to properly provide for his family. He is slowly and steadily recovering and learning to cope with his health challenges, and exclusion from ICAEW will place a greater hurdle in his way.

9.1.8. He lives with his parents because he cannot mentally cope to be alone, and he lives a very solitary life. He has started a college course (CIPD Level 5 in Human Resource Management) to engage with people on a professional level in order to improve his confidence and self-esteem. He disclosed his circumstances to the CIPD and they welcomed him into their institute.

9.1.9. He is working on a reduced hour's contract as part of his personal development and physical rehabilitation. He is currently not fit to engage in work which would be consistent with that of Chartered Accountant. His parents are in ill-health and he provides care and support for them. He has no savings and ensures his ex-wife and child have been adequately provided for, which demonstrates fundamental ethical values.

9.1.10. He does not have the finances to represent himself in person, and therefore is unable to defend himself or add further context in person.

10. In his most recent correspondence, the Respondent states that he no longer wishes to practice in the accountancy field, but does want his hard work to be recognised. He says that his conviction does not relate to his employment or the workplace at all.

11. The IC in summary contends that the Respondent has been convicted at the Royal Courts of Jersey of committing a grave and criminal assault, which is an offence corresponding to an indictable offence in England and Wales, namely Assault causing Actual Bodily Harm, contrary to s47 of the Offences against the Person Act 1861. He was sentenced to 150 hours Community Service Order with a 12 month Probation Order.

12. Pursuant to Disciplinary Bye- law 7.1, a conviction of an offence corresponding to one which is indictable in England and Wales, is conclusive evidence of an act as mentioned in Disciplinary Bye-law 4.1a. The Investigation Committee submits that the complaint can be found proved in its entirety.

The Defence

13. The Respondent accepts, as he must, the conviction before the Royal Court, and the circumstances giving rise to his plea of guilty. The Respondent did not however formally admit the complaint.

Issues of fact and law

14. The Tribunal has to consider the evidence provided by the IC, the relevant regulations, and the submissions made on its behalf of the IC. It has to consider all material provided by the Respondent and the submissions therein contained. It then has to decide whether or not the complaint has been proved, the burden of proof being upon the IC and the standard of proof being on a balance of probabilities.

Conclusions and reasons for decision

15. The Tribunal was satisfied that the Respondent had pleaded guilty before a court of competent jurisdiction in Jersey to an offence corresponding to one which is indictable in England and Wales, namely Assault causing Actual Bodily Harm, contrary to s47 of the Offences against the Person Act 1861. He was sentenced to 150 hours Community Service Order with a 12 month Probation Order. The Tribunal concluded that the Respondent had committed an act likely to bring discredit on himself, the ICAEW or the profession of accountancy. It accordingly found the complaint proved.

Matters relevant to sentencing

16. The Respondent had no previous disciplinary history. The Tribunal considered the Guidance on Sanctions. It considered that the starting point was that the complaint was serious. It considered all the aggravating and mitigating factors. The complaint specific aggravating factors including alcoholic intoxication and breach of trust were considered, as were the mitigating factors including a plea of guilty and remorse. The Tribunal concluded after consideration of all those factors that the starting point was increased to very serious.

17. In those circumstances the Tribunal concluded that the fair, proportionate and reasonable sanction was one of exclusion.

18. No information as to the assets or income of the Respondent were provided, save that he stated by email dated 13th February 2019 that he had no assets and that he worked in a shop two days earning minimum wage. The IC produced a schedule of costs in the sum of £6,124.50. The Tribunal scrutinised the costs and, having been provided with an explanation about the length of time that had been taken to bring this complaint to a hearing, was satisfied that the amount of costs claimed had not been inflated as a result of any proceedings that were not directly relevant to this complaint. Accordingly, the Tribunal was satisfied that the sum claimed was reasonable and proportionate. The Tribunal saw no reason why the costs should be borne by the profession as a whole, and decided that the Respondent should pay the sum of £6,124.50 over a twelve month period. Eleven payments of £510 per calendar month were ordered to be paid, and a final payment of £514.50. The first payment is to be made on 1st July 2019.

Sentencing Order

19. An order for exclusion, and costs in the sum of £6,124.50. The costs are to be paid by instalments over a twelve month period. The Respondent is to make eleven payments of £510 per calendar month, and a final payment of £514.50. The first payment is to be made on 1st July 2019.

Decision on publicity

20. Publication with name.

Non Accountant Chairman	Mr Richard Jones QC
Accountant Member	Mr Mike Ranson FCA
Non Accountant Member	Mr Graham Humby

034166

APPEAL COMMITTEE ORDERS

8. Mr Phillip Jack Levi [FCA] of
United Kingdom

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 7 August 2019

Type of Member	(Life) Member
Date of Disciplinary Tribunal Hearing	19 February 2019
Date of Appeal Committee Hearing	7 August 2019

Terms of complaint found proven before the Disciplinary Tribunal

1. On 20 July 2018 at Harrow Crown Court, Mr Phillip Jack Levi was convicted of twelve counts of indecent assault and three counts of indecency with a child.

Mr Phillip Jack Levi is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(e) and 4.2g.

DBL 4.2.g applies where a person has in a court of competent jurisdiction, been convicted of and indictable offence (or has, in such a court outside England and Wales been convicted of an offence corresponding to one which is indictable in England and Wales.

Appeal against finding?	No
Appeal against Sentencing order?	No
Appeal against Costs	Yes
Decision of Appeal Panel	Appeal dismissed.

Procedural matters and findings

1 Mr Levi was not present in person. With the permission of the Appeal Committee, he was represented by Mr Henry Wyatt (a friend). The Investigation Committee was represented by Victoria Morgan, Barrister.

2 The hearing was in public. The appeal was heard as a conjoined appeal together with File Reference: 039554.

Grounds of appeal

3 The costs order should not have been made because Mr Levi had no means or ability to pay it.

Decision

4 The appeal will be dismissed.

5 Mr Levi shall pay the costs of the appeal, assessed in the sum of £3,250. These costs shall become payable upon his release from prison, either on licence or otherwise.

6 The application by Mr Levi that there should be no publicity of the Appeal Committee's decision is refused.

Reasons for decision

7 The challenge to the costs order was limited to consideration of Mr Levi's ability to pay because Mr Wyatt accepted that the Disciplinary Committee was entitled to make an order for costs given its findings and that the amount of the costs sought and awarded was a reasonable amount.

8 Mr Wyatt submitted that the Disciplinary Committee fell into error because, as Mr Levi had no means to pay, there should have been no order for costs made against him.

9 Although the Disciplinary Committee's record of decision simply confirms its determination, it is agreed that he had provided a confidential statement of his financial circumstances and that there was consideration of Mr Levi's means during the hearing. The Disciplinary Committee plainly recognised his present situation and the affect that it would have upon his financial situation because it deferred his liability to pay costs until he was released.

10 The Appeal Committee carefully considered the financial information which was provided by Mr Levi in writing and expanded upon by Mr Wyatt in his representations. Whilst it was satisfied that there had been reasonable disclosure of Mr Levi's liabilities – both current and contingent – it did not consider that it had been provided with complete and accurate disclosure of Mr Levi's available assets.

11 The confidential statement of financial circumstances which had been updated in preparation for the appeal hearing included an assertion that there was an on-going monthly payment of £75 for storage charges. Mr Wyatt, however, confirmed that Mr Levi had in fact paid from his own funds within the last three or four months an amount to cover all storage charges for the further period of four to five years until he was released, so that there was no on-going payment required. On the evidence before the Appeal Committee therefore, the statement that there was an ongoing monthly liability for storage charges was incorrect and Mr Levi obviously had sufficient funds to have made a payment of between £3,600 and £4,500 earlier this year.

12 However, from the three statements of financial circumstances Mr Levi had completed in the course of the investigation and proceedings, he had disclosed no assets or funds from which such a payment could have been made. The Appeal Committee also noted that ownership of a Daimler motor vehicle (albeit said to be of no value) referred to in the most recent statement of financial circumstances had not been previously declared, even though it was an asset owned for a period in excess of 10 years. It was also surprising that storage charges had been incurred (at an equivalent rate of £450 every six months) in relation to possessions which were said to have a value of only £500.

13 On the information before it, the Appeal Committee therefore considered that Mr Levi's assets were not as limited as he claimed and it therefore could not be satisfied that he would have no ability to discharge the costs order when it became payable on his release. The Disciplinary Committee was therefore entitled to have made the order that it did.

14 In any event, Mr Levi had pursued a wide ranging series of objections to the complaint which was pursued before the Disciplinary Committee. This had caused substantial additional work to be undertaken in dealing with what might have otherwise have appeared to be a straightforward case based upon his criminal convictions. Whilst it was of course a matter for Mr Levi as to how he conducted his defence, it was only right in those circumstances that he should be expected to bear the reasonable costs of the proceedings when the complaint against him was found proved.

15 The appeal against the costs order was therefore dismissed.

16 The Appeal Committee considered that, in all of the circumstances and on the information available to it, it was right that Mr Levi should pay the costs of the appeal. The amount of costs which the Appeal Committee determined it was reasonable for him to pay was £3,250. These costs shall become payable upon his release from prison, either on licence or otherwise.

17 An application for no publicity of this decision was made by Mr Levi on the basis that it may prejudice his current application for Judicial Review against the Institute. This application was refused on the basis that the Appeal Committee did not consider that any such prejudice would be occasioned and that the ordinary principles of open justice applied.

Chairman	Mr Angus Withington
Non Accountant Member	Mr Shahzad Aziz
Accountant Member	Mrs Sandra Mundy
Accountant Member	Mr David Kaye
Non Accountant Member	Ms Ruth Todd

046691

Mr Phillip Jack Levi [FCA]

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 19 February 2019

Type of Member Member

Terms of complaint

2. On 20 July 2018 at a Crown Court, Mr Phillip Jack Levi was convicted of twelve counts of indecent assault and three counts of indecency with a child.

Mr Phillip Jack Levi is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(e) and 4.2g.

DBL 4.2.g applies where a person has in a court of competent jurisdiction, been convicted of and indictable offence (or has, in such a court outside England and Wales been convicted of an offence corresponding to one which is indictable in England and Wales.

Hearing date

19 February 2019

Previous hearing date(s)

None

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes
All heads of complaint proved	Yes
Sentencing order	Exclusion
Parties present	Mr Levi was not present.
Represented	Mr Levi was represented by Mr Henry Wyatt (non-legal). The Investigation Committee (IC) was represented by Ms Victoria Morgan.
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 (a) letter from Mr Levi received by ICAW 22 January 2019 (b) letter from Mr Levi received by ICAEW 29 January 2019 (c) note on the law prepared by Ms Morgan. The tribunal saw copies of all cited case law except on EC authority which was not available in English. The tribunal saw evidence of the Defendant's means.

The tribunal also read a transcript of the sentencing hearing before His Honour Judge Cole dated 7 December 2018. That transcript included Mr Levi's plea in mitigation through Counsel and the sentencing remarks of the Judge as well as impact statements from some of Mr Levi's victims.

Findings on preliminary matters

1. This complaint was heard at the same time as complaint number 039554 pursuant to Disciplinary Committee Regulation 31A.

2. Mr Henry Wyatt, who is not a legal representative, was permitted to represent the Respondent by the tribunal pursuant to Disciplinary Regulation 21.

3. As a preliminary issue, after it was pointed out by the Legal Assessor, the IC applied to correct a small error in the charge pursuant to Disciplinary Committee Regulation 46. The error was the typographical omission of "…4.1 (e) and…" after "…Disciplinary Bye-law…" and before "…4.2(g)…".

4. The tribunal permitted this application because it was obviously a typographical error since (a) the correct phrase "4.1 e and 4.2 g" appears in the IC's report on the following page of the bundle and that (b) in turn, correctly repeats the minute of the IC's minute dated 19 December 2018, which appears at Document 2 of the same bundle. There is no doubt what the charge was meant to say. Moreover, there is no evidence that Mr Levi has misunderstood the charge or suffered any prejudice: his regulation 14 answers deals at length with the complaint based on 4.1 (e) and 4.2 (g). In addition, regulation 46 prohibits objection to technical fault in the charge provided that the proceedings are fair and the relevant bye-laws and regulations have been complied with. There was no evidence that they had not been complied with and there was no reason to believe that the proceedings were not fair.

5. The original charge, which relied on a faulty certificate of conviction provided by the Crown Court, stated that the Respondent was convicted of fifteen counts of indecent assault. This is not quite right. He was convicted of 12 counts of indecent assault and three counts of indecency with a child (that is, gross indecency). An amended certificate of conviction was subsequently supplied and the Respondent has indicated to Counsel for the IC that he agrees with that. The Charge is amended accordingly. There is no risk of unfairness to the proceedings. The Respondent knows the charge he has to answer. There has been no breach of the bye laws or regulations. Importantly, the allegation remains the same pursuant to DBL 4.1(e) and 4.2(g).

6. The tribunal noted that Mr Wyatt's original position, which was to reserve Mr Levi's position to take legal advice, softened when Regulation 46 was pointed out to him and he raised no objection to the proposed amendment.

The IC's case

7. On 20 July 2018, at the Crown Court in Harrow, the Respondent was convicted after his own plea of guilty to twelve counts of indecent assault and three charges of gross indecency/ indecency with a child. He was sentenced to 11 years and 3 months imprisonment.

8. Indecent assault and gross indecency are indictable offences in England and Wales.

9. The Respondent was placed indefinitely on the sexual offenders register and a Sexual Harm Prevention Order was imposed for a period of 15 years pursuant to Section 103 of the Sexual Offences Act 2003.

10. The indecent assaults for which the Respondent was convicted were carried out on boys placed in his care by their parents and aged between 13 and 19 years old; in two cases, they were aged 13 years and most were aged between 14 – 15 years. The assaults occurred in the period 1972 – 1985.

11. DBL 4.1(e) provides that a member of the ICAEW shall be liable to disciplinary action under the disciplinary bye-laws in any of the following cases...; DBL 4.1(g) (which is one of the "following cases") states where a member "has, in a court of competent jurisdiction, been convicted of and indictable offence (or has, in such a court outside England and Wales been convicted of an offence corresponding to one which is indictable in England and Wales."

12. For all these reasons, the matters complained of is liable to disciplinary action as pleaded in the charge.

The Defence

13. The Respondent denied the complaint on various grounds.

Article 8 and 14 ECHR and ultra vires

14. The tribunal has no power to hear the complaint; it is *ultra vires*.

15. This is because, it is submitted, the ICAEW's disciplinary bye-laws in general and DBL 4.2 (g) in particular contravene Section 6 of the Human Rights Act 1998 since they are inconsistent with Articles 8 and 14 of the European Convention of Human Rights. (It is also *ultra vires* because, as a life member of ICAEW, the Respondent is immune from disciplinary action since only death can deprive him from membership. This is dealt with specifically under a separate heading below.)

16. The DBLs contravene Article 8 ECHR (the right to respect for a person's private life) which provides that a public authority must not interfere with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

17. The Respondent submits that has not occurred in his case because ICAEW seeks to discipline a member for a crime which is not related to the practice of accountancy.

18. The Respondent further submits that the reason the DBLs contravene Article 8 is that they do not discriminate between a member who has committed a criminal offence "in his non-professional private life" which does not affect his ability or competence to practice his profession and they ought to.

19. This failure to discriminate between a person's private and professional life also breaches Article 14 ECHR which provides that the human rights set out in the Convention (including those in Article 8) "shall be secured without discrimination".

20. The ICAEW ought to have treated the Respondent (whose offences do not relate to his professional life) differently and has "no objective and reasonable justification" for not doing so (per Thlimmenos v Greece (App no 34369/97)).

ICAEW cannot rely on the Certificate of Conviction

21. The ICAEW is unable to rely on his certificate of conviction because he has appealed the sentence he received; the case has not been concluded yet.

Cause of Action Estoppel

22. The Respondent has been a member of the Chartered Institute of Taxation since 1972. Its regulatory body is the Taxation Disciplinary Board (TDB). On 9 January 2019, the TDB heard complaints substantively similar to the ones brought by IC and made a decision (albeit subject to a pending appeal). ICAEW has no legal right to proceed with its complaints because an action estoppel has arisen. Reliance is placed on *R. on application Mandic-Bozic v BACP* and another [2016] EWHC 3134 which held, it is submitted, that substantially identical charges should not be brought by different regulatory bodies.

Res Judicata

23. The ICAEW is unable to prefer the complaints because *res judicata* applies. He has been tried already in the criminal courts and cannot be tried again in these disciplinary proceedings.

The Respondent's Life Membership of the ICAEW provides immunity from disciplinary action

24. The Respondent submits that once a person has become a Life Member of the ICAEW it is a "*contradiction in terms and ultra vires*" to terminate or suspend that membership for any other reason than his death.

IC's Response to the Defences

Articles 8 and 14 ECHR

25. The DBLs and these proceedings do not breach Articles 8 and 14 ECHR.

26. The DBLs and these proceedings fall within the exception of Article 8. Article 14 is not breached because there has been no discrimination. In order to maintain the reputation of the ICAEW, and as part of its duty to protect the public, there is a clear public interest in the IC and the tribunal dealing with complaints that, while a member of ICAEW in public practice, the Respondent has repeatedly sexually assaulted young men and acted with gross indecency with children. Moreover, applying Bolton v Law Society [1994] 2 All ER p 492, a disciplinary tribunal directs itself to one or other of two purposes: to ensure that an offender does not have the opportunity to repeat the offence and to maintain the reputation of the profession.

27. Thlimmenos is distinguishable on its facts. The relevant paragraph of the judgment is paragraph 47. In particular, that case did not involve the issue of moral turpitude or the public interest.

The Respondent has appealed his sentence

28. The ICAEW is entitled to rely on the certificate of conviction. It is immaterial that the Respondent has appealed; the certificate has legal effect pending an appeal. In any event, the Respondent has only appealed the sentence and not the conviction. Since the material fact of the breach of the DBL is the conviction and not the sentence, the material facts of the matter have not changed notwithstanding the appeal.

Action estoppel and res judicata

29. Action estoppel is not available as a defence because two different chartered, regulatory bodies which are not "sister bodies" (the ICAEW and the CIOT) have regulated two different professional activities under two different sets of professional regulations overseen by two different systems of governance. Action estoppel cannot arise on these facts, where different regulatory bodies are regulating different professional activities: see Mandic-Bozic v BACP & UKCP [2016] EWHC 3134 at para 47.

30. *Res judicata* does not apply because there has not been a final decision on the merits of the issue of whether there has been a breach of the DBLs. Moreover, Ziderman v General Dental Council [1976] 2 All ER 334 applies: expressly, the purpose of a disciplinary proceedings against a dentist who has a criminal conviction is not to punish him a second time for the same offence but to protect the public and to maintain the high standards and good reputation of an honourable profession (per Lord Diplock at p 333).

Issues of fact and law

31. There is no dispute that the Respondent was convicted as alleged in 2018.

32. The tribunal found the complaint, and all heads of complaint, proved. The relevant standard of proof is the civil standard.

33. The following issues of law and fact need to be determined:

35.1 Whether the ICAEW has the power to discipline the Respondent for the matter complained of and specifically under DBL 4.2(g). In particular, whether in so doing, the ICAEW has contravened the Respondent's rights set out in Article 8 and Article 14 of the European Convention of Human Rights.

35.2 Whether action estoppel has arisen because the Respondent has already undergone disciplinary proceedings by another regulator

35.3 Whether the matter before the tribunal is *res judicata*.

35.4 Whether the fact that the Respondent has appealed his sentence means that the ICAEW cannot rely on the certificate of conviction to bring proceedings.

35.5 Whether his life membership of ICAEW means that the Respondent falls outside the scope of the DBL.

Conclusions and reasons for decision

Articles 8 and 14 ECHR

34. The ICAEW Code of Ethics states at paragraph 100.1:

> *"A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest….In acting in the public interest, a professional accountant shall observe and comply with this Code…"*

35. Paragraph 100.5 of the Code states as one of the Fundamental Principles which applies to professional accountants the principle of professional behaviour. The professional accountant must *"…avoid any action that discredits the profession."*

36. The various versions of the DBL, including those dated 15 October 2018, stipulate that an "*investigation and discipline scheme shall apply to all members...*" where "*members*" is defined within DBL as "*a member of ICAEW*". (Underlining added.)

37. DBL 4.1(e) and 4.2(g), when read together state (in summary) that liability to disciplinary action arises when a member is convicted of an indictable offence.

38. It is axiomatic in any profession including ICAEW which acts in the public interest that its members must be of such character and suitability that they are both willing and able to act in the public interest, and know both what that means and entails. It is a corollary of this duty that the member safeguards his own reputation and that of the profession of which he has chosen to be a member. Such a reputation is not only located in the technical abilities and skills of accounting. It includes the willingness and ability to uphold the law and to be trustworthy as a person who engages with the public. It also includes doing nothing which discredits the profession.

39. An example of a member acting in the public interest and safeguarding his and his profession's reputation in the eyes of the public is not committing indictable offences which are crimes considered by society so serious that they can only be tried on indictment. Such crimes include sexually assaulting teenage boys and acting with gross indecency towards children. That standard is recognised by ICAEW. It is material that the crime is so serious that it calls into doubt the member's ability to act lawfully, in the public interest and safeguard his own and his profession's reputation. It is immaterial whether the criminal law in question is directly relevant to the technicalities of accounting.

40. In 2018, the Respondent was convicted of 12 counts of indecent assault and three of gross indecency. All his victims were teenage boys, some as young as 13; they were entrusted to him by their parents.

41. The Respondent argues that his sexually criminal conduct did not discredit himself or ICAEW and was simply and entirely irrelevant to his professional life. The tribunal considers this defence cannot withstand serious scrutiny and to be fanciful. It also appears to demonstrate a remarkable lack of understanding of what professional responsibility entails.

42. In the opinion of the tribunal, any reasonable and fair-minded person would consider that repeatedly sexually assaulting boys is sufficiently serious to negate the Respondent's ability to act properly in a position of trust and to obey the criminal law. Such an offence, which involves the sexual exploitation of the vulnerable and the abuse of position, is therefore an act which brings discredit on the Respondent and the ICAEW and fails to uphold the public interest. The shortcomings in the Respondent's character and suitability to act in a position of trust are plainly relevant to his professionalism.

43. With this regulatory and ethical context in mind, the consideration of Articles 8 and 14 of ECHR is as follows.

44. The Respondent's central argument is that because his conviction in 2018 has (in his opinion) nothing to do with his technical skills as an accountant, the ICAEW cannot take them into consideration when regulating his conduct as a member. The Respondent submits that his sexually criminal offending is a matter for his private life, it does not affect his professional abilities and the ICAEW has no right or justification to merge the two. He prays in aid Articles 8 and 14 of the ECHR to support this position. This argument has no legal merit and is rejected.

45. The Respondent's premise that the ICAEW and other professional bodies cannot sanction members for *"non-professional criminal offences which have no conceivable relevance to their continuing professional skill and/or competence to practice their profession"* is fundamentally misconceived.

46. First, the ICAEW does not do this. It is entitled to discipline members who have committed indictable offences because, in so doing, they have infringed the underlying legal, ethical and moral qualities and obligations which are implied in every membership of the profession. They have, therefore, breached DBL 4.1(e) and 4.2(g).

47. Secondly, it is factually and legally incorrect that his criminality has *"no conceivable relevance"* to his ability to practice his profession.

48. For example, the transcript of the sentencing hearing records that the Respondent sexually assaulted one victim in the Respondent's home; the victim *"…would go to the Respondent's address to help, help him with doing some accountancy work, with some paperwork that he would do at his home address."* (Sentencing hearing transcript - page 10). This highlights the artificiality of drawing a pseudo-ethical distinction between wrongdoing in private and professional life.

49. As another example, in his plea in mitigation, the very first mitigating factor that the Respondent's counsel told the Court was *"He's a member- the court knows he was a chartered accountant. He was a member of the Tax Faculty, somebody who had dedicated many years to pro bono accountancy assistance to people who could ill afford such professional services." (*Sentencing hearing - page 39*).*

50. The purpose of this plea was to draw attention to the professional competence and respectability of the Respondent as a mitigating factor for his criminal conduct. No criticism is made of the Respondent's counsel for doing that. However, this demonstrates the real and meaningful connection (not distinction) between conduct in private and professional life and how one can and does inform the other. These examples also serve to disprove the Respondent's assertion that there is no "conceivable relevance" shared by his so-called private criminality and his professional life. Clearly, there is.

51. The main flaw in the Respondent's reasoning is to assume that immoral conduct (or "moral turpitude", to use language used in Thlimmenos) practised by a member of the ICAEW while he was not actually performing accountancy services is "irrelevant" or has no "conceivable relevance" to the performance of his professional obligations as a member of the ICAEW. This assumption is wrong for the reasons already stated and because the moral turpitude of a member of ICAEW is, by its nature, inimicable to his duty to act in the public interest and to be trustworthy; it works to the detriment of the reputation of ICAEW and to himself as a member of it. This is because not doing anything morally discreditable, such as sexually abusing children and committing indictable offences, is a characteristic of being a chartered accountant in England & Wales.

52. The distinction the Respondent draws between criminal offences committed "in respect of his professional activities" and a criminal offence committed "in his non-professional private life" is therefore an artificial one; it fails to acknowledge the obvious relevance, and detriment, of the moral turpitude of its members to the practice of a profession which expects its members to be trustworthy and to act in in the public interest.

53. The ICAEW is entitled to form a judgment about the Respondent's moral character and trustworthiness when assessing his ability to act in the public interest. To do that, it is rational to take into account his criminal behaviour which is evidenced by convictions (for indictable and non-indictable offences) in the criminal courts.

54. If and insofar as ICAEW as a public body interferes with the Respondent's private life by disciplining him (which is not a finding the tribunal has to make), it does so with justification. This is because it acts in accordance with the law, in the interests of public safety, for the prevention of crime, for the protection of morals, and for the protection of the rights of others. The tribunal rejects the Respondent's assertion that the ICAEW cannot provide "*objective and reasonable justification*". For these reasons, the ICAEW has not breached Article 8 ECHR.

55. The tribunal accepts the IC's submission that *Thlimmenos* is distinguishable on its facts. In summary, that case concerned a man who refused to wear a military uniform on religious grounds. This was a felony in Greece and he was convicted of that felony and imprisoned. When he came to be appointed as a chartered accountant, his appointment was refused because of his conviction. He complained that this exclusion from the profession was discriminatory and in breach of Article 14. The relevant paragraph of the judgment is paragraph 47 which states:

> *"The Court considers that, as a matter of principle, States have a legitimate interest to exclude some offenders from the profession of chartered accountant. However, the Court also considers that, unlike other convictions for serious criminal offences, a conviction for refusing on religious or philosophical grounds to wear the military uniform cannot imply any dishonesty or moral turpitude likely to undermine the offender's ability to exercise this profession…" (underlining added)*

56. That case concerned a felony which, according to the European Court, had nothing to do with being a chartered accountant in Greece. In contrast, the current complaint concerns repeated indecent assaults and gross indecency with children which, because of the serious moral turpitude which they evidence, is relevant to the profession and practice of chartered accountancy in England and Wales for the reasons stated earlier. Insofar as *Thlimmenos* has any relevance for the current complaint, it is to support the proposition that criminal offences involving moral turpitude and dishonesty are legitimate reasons to exclude a person from being a chartered accountant.

57. Because Article 8 has not been breached, the issue of whether the exclusion of the Respondent from his profession as a result of his moral turpitude would be disproportionate does not arise. (*Thlimmenos*, which held that exclusion was disproportionate, is distinguishable because moral turpitude was not relevant in that case.)

58. The Respondent has failed to show any grounds on which he has been the subject to any discrimination in breach of Article 14. Whether or not the Respondent's possible exclusion from membership of ICAEW is disproportionate in the light of the punishments he has already received in the criminal justice system is therefore irrelevant.

The appeal of the sentence

59. This defence has no merit. Disciplinary action lies where a member has been convicted of an indictable offence. The Respondent has been so convicted. The fact that he is appealing his sentence is irrelevant. The tribunal also notes that the Respondent pleaded guilty to the charges. It is unattractive to argue, in the light of that, that he should escape disciplinary proceedings because he has decided to appeal his sentence.

Action estoppel and res judicata

60. The tribunal accepts the IC's submissions on these issues.

61. There can be no action estoppel because there is no preceding action to the current complaint taken by the ICAEW.

62. The fact that CIOT has taken action under its own regulations and disciplinary regime (notwithstanding CIOT and ICAEW may share some similar ethical standards) is not enough to found an estoppel. This is because there is a sufficient professional and legal distinction between the two professional bodies to make their professional membership and status meaningfully distinct.

63. To test this position, if ICAEW were estopped from preferring this complaint because another professional body with whom it shares some professional competencies had done so earlier, it would mean that ICAEW would be prevented from considering whether to keep a convicted criminal in its membership simply by the unsynchronised operation of two professional, regulatory calendars. This would be arbitrary. In fact, this arbitrariness would deprive the ICAEW of any choice. This appears to the tribunal to be an absurd conclusion and manifestly not in the public interest.

64. As to the criminal proceedings brought against the Respondent, they were concerned with a breach of the criminal law, not a set of professional regulations.

65. There is no *res judicata* because there has been no final decision on the subject matter of this complaint. Lord Diplock's statement in *Ziderman* (above) applies. The fact that CIOT has heard similar matters is nothing to the point.

Life membership immune from discipline

66. The assertion that the Respondent's life membership of the ICAEW makes him immune from disciplinary action is not accepted. The various versions of the DBLs shown to the tribunal make it clear that "all members" of ICAEW are capable of being subjected to investigation and disciplinary action. There is no exception for life members express or implied. The Respondent, who has the burden of proving his assertion, is unable to show any provision which rebuts this comprehensive jurisdiction.

Conclusion

67. For all these reasons, the tribunal finds the complaint proved.

Matters relevant to sanction

68. The tribunal considered the Guidance on Sanction and saw no reason to depart from that. As mentioned above, exclusion is not a disproportionate sanction.

69. The Respondent's age and ill-health are not mitigating factors.

70. There are aggravating factors. First, the Respondent has shown no remorse for his actions to the tribunal. The trial judge in his sentencing remarks said *"I accept a degree of remorse, but it is a little ambivalent."* Secondly, the Respondent clearly has no insight into his professional wrongdoing as he considers he has not done anything professionally wrong. Thirdly, the gravity of the Respondent's criminal behaviour is substantial, particularly on the issue of taking advantage of the vulnerable and his lack of trustworthiness. The tribunal noted the trial judge described the Respondent's actions as "a gross breach of trust". He also noted his conduct to be "predatory" and having left a legacy in his victims of "profound shame, guilt, regret, confusion, low self-esteem." The harm that the Respondent has done to others is an aggravating factor.

Sanction

Exclusion

Costs assessed in the sum of £5,204.50

Costs shall become payable upon the Respondent's release from prison, either on licence or otherwise.

Decision on publicity

Publication with name but not address.

Chairman	Mr Ron Whitfield
Accountant Member	Mr Jon Newell
Non Accountant Member	Ms Martha Maher
Legal Assessor	Mr Dominic Spenser Underhill

046691

9. Mr Phillip Jack Levi [FCA] of
United Kingdom

A panel of the Appeal Committee made the decision recorded below having heard an appeal on insert date of hearing

Type of Member	(Life) Member
Date of Disciplinary Tribunal Hearing	19 February 2019
Date of Appeal Committee Hearing	7 August 2019

Terms of complaint found proven before the Disciplinary Tribunal

1. On 25 August 1985, Mr Phillip Jack Levi attempted to indecently assault a boy under the age of 16 years, namely the age of 11 years.
2. Between 10 September 2014 and 27 April 2015, Mr Phillip Jack Levi possessed indecent images of children.
3. Between 30 June 2015 and 27 July 2017, Mr Phillip Jack Levi did not report to ICAEW Head of Staff that he had been convicted of an offence on 30 June 2015.

Mr Phillip Jack Levi is therefore liable to disciplinary action under (i) Disciplinary Bye-law (DBL) 76(a) (now, DBL 4.1(a)) in relation to head of complaint 1; (ii) DBL 4.1(a) in relation to head of complaint 2 and (iii) DBL 4.1(c) in relation to head of complaint 3.

Procedural matters and findings

18 Mr Levi was not present in person. With the permission of the Appeal Committee, he was represented by Mr Henry Wyatt (friend). The Investigation Committee was represented by Victoria Morgan, Barrister.

19 The hearing was in public. The hearing was heard as a conjoined appeal together with File Reference 046691.

Grounds of appeal

20 The costs order should not have been made because Mr Levi had no means or ability to pay it.

Decision

21 The appeal is dismissed.

22 Mr Levi shall pay the costs of the appeal, assessed in the sum of £3,250. These costs shall become payable upon his release from prison, either on licence or otherwise.

23 The application by Mr Levi that there should be no publicity of the Appeal Committee's decision is refused.

Reasons for decision

24 The challenge to the costs order was limited to consideration of Mr Levi's ability to pay because Mr Wyatt accepted that the Disciplinary Committee was entitled to make an order for costs given its findings and that the amount of the costs sought and awarded was a reasonable amount.

25 Mr Wyatt submitted that the Disciplinary Committee fell into error because, as Mr Levi had no means to pay, there should have been no order for costs made against him.

26 Although the Disciplinary Committee's record of decision simply confirms its determination, it is agreed that he had provided a confidential statement of his financial circumstances and that there was consideration of Mr Levi's means during the hearing. The Disciplinary Committee plainly recognised his present situation and the affect that it would have upon his financial situation because it deferred his liability to pay costs until he was released.

27 The Appeal Committee carefully considered the financial information which was provided by Mr Levi in writing and expanded upon by Mr Wyatt in his representations. Whilst it was satisfied that there had been reasonable disclosure of Mr Levi's liabilities – both current and contingent – it did not consider that it had been provided with complete and accurate disclosure of Mr Levi's available assets.

28 The confidential statement of financial circumstances which had been updated in preparation for the appeal hearing included an assertion that there was an on-going monthly payment of £75 for storage charges. Mr Wyatt, however, confirmed that Mr Levi had in fact paid from his own funds within the last three or four months an amount to cover all storage charges for the further period of four to five years until he was released, so that there was no on-going payment required. On the evidence before the Appeal Committee therefore, the statement that there was an ongoing monthly liability for storage charges was incorrect and Mr Levi obviously had sufficient funds to have made a payment of between £3,600 and £4,500 earlier this year.

29 However, from the three statements of financial circumstances Mr Levi had completed in the course of the investigation and proceedings, he had disclosed no assets or funds from which such a payment could have been made. The Appeal Committee also noted that ownership of a Daimler motor vehicle (albeit said to be of no value) referred to in the most recent statement of financial circumstances had not been previously declared, even though it was an asset owned for a period in excess of 10 years. It was also surprising that storage charges had been incurred (at an equivalent rate of £450 every six months) in relation to possessions which were said to have a value of only £500.

30 On the information before it, the Appeal Committee therefore considered that Mr Levi's assets were not as limited as he claimed and it therefore could not be satisfied that he would have no ability to discharge the costs order when it became payable on his release. The Disciplinary Committee was therefore entitled to have made the order that it did.

31 In any event, Mr Levi had pursued a wide ranging series of objections to the complaint which was pursued before the Disciplinary Committee. This had caused substantial additional work to be undertaken in dealing with what might have otherwise have appeared to be a straightforward case based upon his criminal convictions. Whilst it was of course a matter for Mr Levi as to how he conducted his defence, it was only right in those circumstances that he should be expected to bear the reasonable costs of the proceedings when the complaint against him was found proved.

32 The appeal against the costs order was therefore dismissed.

33 The Appeal Committee considered that, in all of the circumstances and on the information available to it, it was right that Mr Levi should pay the costs of the appeal. The amount of costs which the Appeal Committee determined it was reasonable for him to pay was £3,250. These costs shall become payable upon his release from prison, either on licence or otherwise.

34 An application for no publicity of this decision was made by Mr Levi on the basis that it may prejudice his current application for Judicial Review against the Institute. This application was refused on the basis that the Appeal Committee did not consider that any such prejudice would be occasioned and that the ordinary principles of open justice applied.

Chairman	Mr Angus Withington
Non Accountant Member	Mr Shahzad Aziz
Accountant Member	Mrs Sandra Mundy
Accountant Member	Mr David Kaye
Non Accountant Member	Ms Ruth Todd

Mr Phillip Jack Levi [FCA]

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 19 February 2019

Type of Member: Life Member (retired)

Terms of complaint

1. On 25 August 1985, Mr Phillip Jack Levi attempted to indecently assault a boy under the age of 16 years, namely the age of 11 years.
2. Between 10 September 2014 and 27 April 2015, Mr Phillip Jack Levi possessed indecent images of children.
3. Between 30 June 2015 and 27 July 2017, Mr Phillip Jack Levi did not report to ICAEW Head of Staff that he had been convicted of an offence on 30 June 2015.

Mr Phillip Jack Levi is therefore liable to disciplinary action under (i) Disciplinary Bye-law (DBL) 76(a) (now, DBL 4.1(a)) in relation to head of complaint 1; (ii) DBL 4.1(a) in relation to head of complaint 2 and (iii) DBL 4.1(c) in relation to head of complaint 3.

Hearing date

19 February 2019

Previous hearing date

None

Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes
All heads of complaint proven	Yes
Sentencing order	Exclusion (head 2)

Procedural matters and findings

Parties present	Mr Levi was not present.
Represented	Mr Levi was represented by Mr Henry Wyatt (non-legal). The Investigation Committee (IC) was represented by Ms Victoria Morgan (barrister).
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 (a) letter from Mr Levi received by ICAW 22 January 2019 (b) letter from Mr Levi received by ICAEW 29 January 2019 (c) note on the law prepared by Ms Morgan. The tribunal also saw copies of all cited case law except on EC authority which was not available in English. The tribunal saw evidence of the Defendant's means.

Findings on preliminary matters

71. This complaint was heard at the same time as complaint number 046691 pursuant to Disciplinary Committee Regulation 31A.

72. Mr Henry Wyatt, who is not a legal representative, was permitted to represent the Respondent by the tribunal pursuant to Disciplinary Regulation 21.

73. Regulation 13 answers have not been received in respect of this complaint, 039554. However, they have been received in respect of complaint 046691. Mr Wyatt asked for the defences set out in the Regulation 13 answers of 046691 to be adopted as far as they could be in 039554. The tribunal agreed to do so pursuant to Regulation 31A, noting that those Regulation 13 answers would be applied where there was common ground between the answers and the two complaints.

The IC's case

74. On 29 October 1985, in Alton Magistrates Court, the Respondent pleaded guilty and was convicted of attempting indecently to assault a boy under the age of 16 years, namely 11 years, in contravention of Section 1 of the Criminal Attempt Act 1951. He was fined £500 and ordered to pay costs.

75. On 30 June 2015, in the Crown Court at Winchester, the Respondent pleaded guilty and was convicted of possession of fifteen indecent images of a child in contravention of Section 160 (1) of the Criminal Justice Act 1988. He was sentenced to 9 months imprisonment suspended 24 months concurrent on each count; a Sexual Harm Prevention Order for ten years was also made. The Respondent was placed on the Sex Offenders Register for ten years.

76. Of those fifteen images, there were five counts of category A (the most serious), five of category B, three of category C and 2 of category D. Some of the counts were multiple images.

77. Disciplinary Bye-law (DBL) 9.1 imposes a duty on a member of ICAEW to report to the Head of Staff any facts or matters indicating that he may have become liable to disciplinary action under the DBLs or an investigation and disciplinary scheme where it is in the public interest for him to do so.

78. DBL 9.2 explains that what is "*in the public interest*" for the purpose of DBL 9.1 shall be the subject of guidance issued by the ICAEW's Council.

79. That guidance is found in the document "The duty to report misconduct" which has been in effect and available to all members since 1993. Paragraph 5 of that guidance states that it is in the public interest for the Investigation Committee to consider a member's conduct when that member has been *"convicted of any offence for which he or she has received a custodial sentence, whether suspended or not."*

80. The Respondent failed to report his conviction of 30 June 2015 to the Head of Staff of ICAEW between 30 June 2015 and 27 July 2017. He admitted to it by a letter dated 27 July 2017, when the ICAEW (who learned of it by another means) presented its existence to him and sought an explanation.

81. The convictions in 1985 and 2015 were for indictable offences. The conviction of the 1985 offence is conclusive evidence of the Respondent's commissioning of an act or default mentioned in what is now DBL 4.1 (a), but was DBL 76(a) at the relevant time. Pursuant to DBL 7.1 (in effect at the relevant time), the conviction of the 2015 offences is conclusive evidence of the commissioning of an act or default mentioned in DBL 4.1(a).

82. Moreover, the 2105 conviction should have been reported to the Head of Staff by the Respondent because it was a conviction of an offence which resulted in a suspended custodial sentence.

83. For all these reasons, the matters complained of is liable to disciplinary action as pleaded in the charge.

The Defence

84. The Respondent denied the complaint on various grounds.

Article 8 and 14 ECHR

85. The tribunal has no power to hear the complaint; it is *ultra vires*.

86. This is because, it is submitted, the ICAEW's disciplinary bye-laws contravene Section 6 of the Human Rights Act 1998 since they are inconsistent with Articles 8 and 14 of the European Convention of Human Rights. (It is also *ultra vires* because, as a life member of ICAEW, the Respondent is immune from disciplinary action since only death can deprive him from membership. This is dealt with specifically under a separate heading below.)

87. The DBLs contravene Article 8 ECHR (the right to respect for a person's private life) which provides that a public authority must not interfere with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

88. The Respondent submits that has not occurred in his case because ICAEW seeks to discipline a member for a crime which is not related to the practice of accountancy.

89. The Respondent further submits that the reason the DBLs contravene Article 8 is that they do not discriminate between a member who has committed a criminal offence "in his non-professional private life" which does not affect his ability or competence to practice his profession and they ought to.

90. This failure to discriminate between a person's private and professional life also breaches Article 14 ECHR which provides that the human rights set out in the Convention (including those in Article 8) "shall be secured without discrimination". The ICAEW ought to have treated the Respondent (whose offences do not relate to his professional life) differently and has "no objective and reasonable justification" for not doing so (per Thlimmenos v Greece (App no 34369/97)).

ICAEW allegedly failed to explain the duty to report

91. The ICAEW failed to provide the Respondent with proper notice of his duty to report his convictions.

Action Estoppel and Res judicata

92. The Respondent has been a member of the Chartered Institute of Taxation since 1972. Its regulatory body is the Taxation Disciplinary Board (TDB). On 9 January 2019, the TDB heard complaints substantively similar to the ones brought by IC and made a decision (albeit subject to an appeal). ICAEW has no legal right to proceed with its complaints because an action estoppel has arisen. Reliance is placed on *R. on application Mandic-Bozic v BACP* and another [2016] EWHC 3134 which held that substantially identical charges should not be brought by different regulatory bodies.

93. The ICAEW is unable to prefer the complaints because *res judicata* applies. He has been tried already in the criminal courts and cannot be tried again in these disciplinary proceedings.

Breach of Article 6 ECHR – failure to provide a fair and public hearing in a reasonable time

94. Regarding the 1985 conviction, the ICAEW has failed to permit a trial within a reasonable period of time, in breach of Article 6 ECHR.

The Respondent's Life Membership of the ICAEW provides immunity from disciplinary action

95. The Respondent submits that once a person has become a Life Member of the ICAEW it is a "*contradiction in terms and ultra vires*" to terminate or suspend that membership for any other reason than his death.

IC's Response to the Defences

Articles 8 and 14 ECHR

96. The DBLs and these proceedings do not breach Articles 8 and 14 ECHR.

97. The DBLs and these proceedings fall within the exception of Article 8. Article 14 is not breached because there has been no discrimination. In order to maintain the reputation of the ICAEW, and as part of its duty to protect the public, there is a clear public interest in the IC and the tribunal dealing with complaints that, while a member of ICAEW in public practice, the Respondent practised paedophilia and possessed child pornography (some of the most serious category) and has convictions relating to that reaching back to 1985. Moreover, applying Bolton v Law Society [1994] 2 All ER p 492, a disciplinary tribunal directs itself to one or other of two purposes: to ensure that an offender does not have the opportunity to repeat the offence and to maintain the reputation of the profession.

98. Thlimmenos is distinguishable on its facts. The relevant paragraph of the judgment is paragraph 47. In particular, that case did not involve the issue of moral turpitude or the public interest.

Alleged failure to give notice

99. The Respondent has been a member of ICAEW since 1967. He been given proper notice of his duty to report convictions for indictable offences. First, every member of ICAEW is a member of the professional library at Chartered Accountants' Hall in London and has the right of access to all regulatory materials there which includes the ones related to self-reporting. Deemed notice of such materials is given by such library membership. Secondly, until 1999, every member was sent a paper copy of the Annual Handbook each year which contained the relevant regulations. Since 1999, the material is freely available online. Thirdly, the guidance about the duty to report misconduct has been available to all members since 1993 first on paper and latterly online. Fourthly, it is an implied contractual obligation on every member of the ICAEW to keep himself or herself up to date on the regulations and fifthly, ignorance of a regulation is no defence to the obligation to obey it.

Action estoppel and res judicata

100. Action estoppel is not available as a defence because two different chartered, regulatory bodies which are not "sister bodies" (the ICAEW and the CIOT) have regulated two different professional activities under two different sets of professional regulations overseen by two different systems of governance. Action estoppel cannot arise where different regulatory bodies are regulating different professional activities: see Mandic-Bozic v BACP & UKCP [2016] EWHC 3134 at para 47.

101. *Res judicata* does not apply because there has not been a final decision on the merits of the issue of whether there has been a breach of the DBLs. Moreover, Ziderman v General Dental Council [1976] 2 All ER 334 applies: expressly, the purpose of a disciplinary proceedings against a dentist who has a criminal conviction is not to punish him a second time for the same offence but to protect the public and to maintain the high standards and good reputation of an honourable profession (per Lord Diplock at p 333).

Article 6 ECHR

102. There has been no unreasonable or unjustifiable delay in bringing this matter to a hearing. Time started to run at the earliest in July 2017 when the Professional Conduct Department began to investigate this matter and first broached the matter of the 1985 conviction with the Respondent in correspondence. This is about 20 months, to a final hearing which is within reasonable parameters. Without prejudice to that position, the Respondent cannot show any unfairness resulting from any delay. If it be said that the historic offence of 1985 affects matters, it does not. The Respondent's assertion that there is no public interest in disciplining him for the 1985 conviction because of the lapse of time is misconceived where the regulator acts in the public interest and when the regulator only became aware of the matter comparatively recently.

Issues of fact and law

103. There is no dispute that the Respondent was convicted as alleged in 1985. It is also common ground that he was convicted as alleged in 2015 and that he failed to report this conviction to the ICAEW.

104. The tribunal found the complaint, and all heads of complaint, proved. The relevant standard of proof is the civil standard.

105. The following issues of law and fact need to be determined:

35.1 Whether the ICAEW has the power to discipline the Respondent for the matter complained of. In particular, whether in so doing, the ICAEW has contravened the Respondent's rights set out in Article 8 and Article 14 of the European Convention of Human Rights.

35.2 Whether action estoppel has arisen because the Respondent has already undergone disciplinary proceedings by another regulator

35.3 Whether the matter before the tribunal is *res judicata*.

35.4 Whether at the relevant time the Respondent was given sufficient notice by ICAEW of his obligation to report the 2015 conviction.

35.5 Whether there has been an unreasonable delay in providing the Respondent a fair trial (Article 6 ECHR).

35.6 Whether his life membership of ICAEW means that the Respondent falls outside the scope of the DBL.

Conclusions and reasons for decision

Article 8 and 14 ECHR & whether this matter is ultra vires

106. The ICAEW Code of Ethics states at paragraph 100.1:

> *"A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest….In acting in the public interest, a professional accountant shall observe and comply with this Code…"*

107. Paragraph 100.5 of the Code states as one of the Fundamental Principles which applies to professional accountants the principle of professional behaviour. It is noted in that paragraph that the professional accountant must *"…avoid any action that discredits the profession."*

108. The various versions of the DBL, including those dated 15 October 2018, stipulate that an "*investigation and discipline scheme shall apply to <u>all</u> members...*" where "*members*" is defined within DBL as "*a member of ICAEW*". (Underlining added.)

109. DBL 7.1 stipulates that pleading guilty to or being found guilty of an indictable offence is conclusive evidence of a breach of DBL 4.1(a).

110. It is axiomatic in any profession which acts in the public interest that its members must be of such character and suitability that they are both willing and able to act in the public interest, and know both what that means and entails. It is a corollary of this duty that the member safeguards his own reputation and that of the profession of which he has chosen to be a member. Such a reputation is not only located in the technical abilities and skills of accounting. It includes the willingness and ability to uphold the law and to be trustworthy as a person who engages with the public. It also includes doing nothing which discredits the profession.

111. An example of a member acting in the public interest and safeguarding his and his profession's reputation in the eyes of the public is not committing indictable offences which are crimes considered by society so serious that they can only be tried on indictment. Such crimes include possessing indecent images of children. That standard is recognised by ICAEW. It is material that the crime is so serious that it calls into doubt the member's ability to act lawfully, in the public interest and safeguard his own and his profession's reputation. It is immaterial whether the criminal law in question is directly relevant to the technicalities of accounting.

112. In 1985, the Respondent was convicted of sexually assaulting a boy of 11. In 2015, he was convicted of possessing indecent images of children, some of those images being in the most serious category of offence that is category A (which includes within its definition, penetration).

113. The Respondent argues that his sexually criminal conduct towards children did not discredit himself or ICAEW and was simply and entirely irrelevant to his professional life. The tribunal considers this defence cannot withstand serious scrutiny and to be fanciful. It also appears to demonstrate a remarkable lack of understanding of what professional responsibility entails.

114. In the opinion of the tribunal, any reasonable and fair-minded person would consider that sexually assaulting a child of 11 is, either by the societal norms of 1985 or 2019, sufficiently serious as to negate the Respondent's ability to act properly in a position of trust and to obey the criminal law. Such an offence, which involves the sexual exploitation of the vulnerable and the abuse of position, is therefore an act which brings discredit on the Respondent and the ICAEW. The shortcomings in the Respondent's character and suitability to act in a position of trust are plainly relevant to his professional competence. It does not matter whether the offence with which the Respondent was charged was an indictable offence. There would be a breach of DBL 4.1(a).

115. It is also obvious for the reasons set out above that the Respondent's conviction for the indictable offence of possessing a number of indecent images of children in 2015, including category A images, proves that the Respondent has acted in such a way as to bring discredit on himself and the ICAEW. This would also be a breach of DBL 4.1(a).

116. With this regulatory and ethical context in mind, the consideration of Articles 8 and 14 of ECHR is as follows.

117. The Respondent's central argument is that because his convictions of 1985 and 2015 have (in his opinion) nothing to do with his technical skills as an accountant, the ICAEW cannot take them into consideration when regulating his conduct as a member. The Respondent submits that his sexually criminal offending is a matter for his private life, it does not affect his professional abilities and the ICAEW has no right or justification to merge the two. He prays in aid Articles 8 and 14 of the ECHR to support this position. This argument has no legal merit and is rejected.

118. The Respondent's premise that the ICAEW and other professional bodies cannot sanction members for *"non-professional criminal offences which have no conceivable relevance to their continuing professional skill and/or competence to practice their profession"* is fundamentally misconceived.

119. First, the ICAEW does not do this. It is entitled to discipline members who have committed indictable offences because, in so doing, they have infringed the underlying legal, ethical and moral qualities and obligations which are implied in every membership of the profession. They have, therefore, breached DBL 4.1(a).

120. Secondly, it is factually and legally incorrect, in the case of the Respondent, that his criminality has *"no conceivable relevance"* to his ability to practice his profession.

121. The main flaw in the Respondent's reasoning is to assume that immoral conduct (or "moral turpitude", to use language used in Thlimmenos) practised by a member of the ICAEW while he was not actually performing accountancy services is "irrelevant" to the performance of his professional obligations as a member of the ICAEW. This assumption is wrong because the moral turpitude of a member of ICAEW is, by its nature, inimicable to his duty to act in the public interest and to be trustworthy; it works to the detriment of the reputation of ICAEW and to himself as a member of it. This is because not doing anything morally discreditable, such as sexually abusing children and committing indictable offences, is a characteristic of being a chartered accountant in England & Wales.

122. The distinction the Respondent draws between criminal offences committed "in respect of his professional activities" and a criminal offence committed "in his non-professional private life" is therefore an artificial one; it fails to acknowledge the obvious relevance, and determinant, of the moral turpitude of its members to the practice of a profession which expects its members to be trustworthy and to act in in the public interest.

123. The ICAEW is entitled to form a judgment about the Respondent's moral character and trustworthiness when assessing his ability to act in the public interest. To do that, it is rational to take into account his criminal behaviour which is evidenced by convictions (for indictable and non-indictable offences) in the criminal courts.

124. If and insofar as ICAEW as a public body interferes with the Respondent's private life by disciplining him (which is not a finding the tribunal has to make), it does so with justification. This is because it acts in accordance with the law, in the interests of public safety, for the prevention crime, for the protection of morals, and for the protection of the rights of others. The tribunal rejects the Respondent's assertion that the ICAEW cannot provide "*objective and reasonable justification*". For these reasons, the ICAEW has not breached Article 8 ECHR.

125. The tribunal accepts the IC's submission that *Thlimmenos* is distinguishable on its facts. In summary, that case concerned a man who refused to wear a military uniform on religious grounds. This was a felony in Greece and he was convicted of that felony and imprisoned. When he came to be appointed as a chartered accountant, his appointment was refused because of his conviction. He complained that this exclusion from the profession was discriminatory and in breach of Article 14. The relevant paragraph of the judgment is paragraph 47 which states:

> *"The Court considers that, as a matter of principle, States have a legitimate interest to exclude some offenders from the profession of chartered accountant. However, the Court also considers that, unlike other convictions for serious criminal offences, a conviction for refusing on religious or philosophical grounds to wear the military uniform cannot imply any dishonesty or moral turpitude likely to undermine the offender's ability to exercise this profession…" (underlining added)*

126. That case concerned a felony which, according to the European Court, had nothing to do with being a chartered accountant in Greece. In contrast, the current complaint concerns criminal convictions for child abuse and possession of child pornography which, because of the serious moral turpitude which they evidence, is relevant to the profession and practice of chartered accountancy in England and Wales for the reasons stated earlier. Insofar as *Thlimmenos* has any relevance for the current complaint, it is to support the proposition that criminal offences involving moral turpitude and dishonesty are legitimate reasons to exclude a person from being a chartered accountant.

127. Because Article 8 has not been breached, the issue of whether the exclusion of the Respondent from his profession as a result of his moral turpitude would be disproportionate does not arise. (*Thlimmenos*, which held that exclusion was disproportionate, is distinguishable because moral turpitude was not relevant in that case.)

128. The Respondent has failed to show any grounds on which he has been the subject to any discrimination in breach of Article 14. Whether or not the Respondent's possible exclusion from membership of ICAEW is disproportionate in the light of the punishments he has already received in the criminal justice system is therefore irrelevant.

Failure to report the 2015 conviction

129. It is noted that the Respondent now accepts that he ought to have reported the matter; his defence was that until recently he was not aware of this obligation. The tribunal is satisfied for the reasons given by the IC that the Respondent knew or ought to have known that he had a duty to report an offence triable on indictment. Moreover, the tribunal notes that it is common knowledge and practice in professions such as the ICAEW that self-reporting of misconduct, which is a well-known ingredient of self-regulation, is part of membership of the profession.

Action estoppel and res judicata

130. The tribunal accepts the IC's submissions on these issues.

131. There can be no action estoppel because there is no preceding action to the current complaint taken by the ICAEW.

132. The fact that CIOT has taken action under its own regulations and disciplinary regime (notwithstanding CIOT and ICAEW may share some similar ethical standards) is not enough to found an estoppel. This is because there is a sufficient professional and legal distinction between the two professional bodies to make their professional membership and status meaningfully distinct.

133. To test this position, if ICAEW were estopped from preferring this complaint because another professional body with whom it shares some professional competencies had done so earlier, it would mean that ICAEW would be prevented from considering whether to keep a convicted criminal in its membership simply by the unsynchronised operation of two professional, regulatory calendars. This would be arbitrary. In fact, this arbitrariness would deprive the ICAEW of any choice. This appears to the tribunal to be an absurd conclusion and manifestly not in the public interest.

134. As to the criminal proceedings brought against the Respondent, they were concerned with a breach of the criminal law, not a set of professional regulations.

135. There is no *res judicata* because there has been no final decision on the subject matter of this complaint. Lord Diplock's statement in *Ziderman* (above) applies. The fact that CIOT has heard similar matters is nothing to the point.

Article 6 ECHR

136. There is no merit in the argument that there has been an unreasonable delay in prosecuting any complaint in respect of the 1985 proceedings. The tribunal accepts the IC's submission that once the 1985 conviction had come to the attention of the IC, proceedings were commenced and prosecuted within a reasonable period of time. Article 6 ECHR has not been breached.

Does ICAEW life membership bring immunity from suit?

137. The assertion that the Respondent's life membership of the ICAEW makes him immune from disciplinary action is not accepted. The various versions of the DBLs shown to the tribunal make it clear that "all members" of ICAEW are capable of being subjected to investigation and disciplinary action. There is no exception for life members express or implied. The Respondent, who has the burden of proving his assertion, is unable to show any provision which rebuts this comprehensive jurisdiction.

Conclusion

138. For all these reasons, the tribunal finds the complaint, and all three heads of the complaint, proved.

Matters relevant to sanction

139. The tribunal considered the Guidance on Sanction and saw no reason to depart from that. In respect of the 1985 conviction, the tribunal was mindful of the sanctions which would have existed at the time that offence was committed. As mentioned above, exclusion is not a disproportionate sanction.

140. Normally, a clean disciplinary record is a mitigating factor. However, it is not in this case. The 1985 conviction has remained unknown to ICAEW for over thirty years. Had it been known in the mid- 1980s, the Respondent would in all likelihood not have had a clean disciplinary record from that time.

141. The period in which it appeared the Respondent had a clean disciplinary record was also artificially extended from at least 2015 by his failure to report his criminality.

142. The Respondent's age (he is 74) and ill-health are not mitigating factors.

143. There are aggravating factors. First, the Respondent has shown no credible remorse for his actions. Secondly, the Respondent, clearly, has no insight into his professional wrongdoing as he considers he has not done anything professionally wrong. Thirdly, the gravity of the Respondent's criminal behaviour is substantial, particularly on the issue of taking advantage of the vulnerable and his trustworthiness.

Sentencing Order

Exclusion

Costs assessed in the sum of £6,924.50

Costs shall become payable upon the Respondent's release from prison, either on licence or otherwise.

Decision on publicity

Publication with name but not address.

Chairman	Mr Ron Whitfield
Accountant Member	Mr Jon Newell
Non Accountant Member	Ms Martha Maher
Legal Assessor	Mr Dominic Spenser Underhill

039554

CESSATION OF MEMBERSHIP

The following individual has ceased to be a member because of failure to pay outstanding fines and costs:

10. Mr David Vernon John Paget of
Borden, United Kingdom

The ICAEW takes all necessary steps including legal proceedings to recover the money it is owed.

INVESTIGATION COMMITTEE CONSENT ORDERS

11. Mr Stephen Douglas FCA

Consent order made on 9 September 2019

With the agreement of Mr Stephen Douglas FCA of Malton, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £4,500 and pay costs of £1,588 with respect to a complaint that:

1. Between February 2011 and 30 April 2012, Mr Stephen Douglas FCA failed to undertake appropriate client due diligence in relation to Mr 'X' and / or Mr 'Y' in breach of Regulation 7 of The Money Laundering Regulations 2007

033837

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12. Mr John Gormley FCA

Consent order made on 9 September 2019

With the agreement of Mr John Bernard Arthur Gormley FCA of Ashford, United Kingdom the Investigation Committee made an order that he be reprimanded, fined £700 and pay costs of £1,617 with respect to a complaint that:

1. Mr John Gormley FCA, on behalf of his firm, following a QAD visit on 2 June 2010, confirmed the following:

    a. In respect of the requirements to document the risk assessment and confirm the identity of all clients to comply with the Money Laundering Regulations 2007:

    "I will use the kestrian checklist and complete this as each client's work is undertaken".

And/or

b. In respect of notifying all of the firm's clients of the complaints procedure:

    "This is included in my terms of business. I will supply clients with an up to date copy of my terms of business".

And/or

c. In respect of providing all clients with the PII details as required by The Provision of Services Regulations 2009:

    "I will update my terms of business to include this".

but at a QAD visit on 4 April 2018 it was found that the assurances had not been complied with.

047235

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13. Mr Derek Ian McAllan ACA

Consent order made on 9 September 2019

With the agreement of Mr Derek Ian McAllan ACA of Reading, United Kingdom, the Investigation Committee made an order that he be reprimanded and pay costs of £1,292 with respect of a complaint that:

On 14 November 2017 Mr McAllan ACA drove a motor vehicle after consuming alcohol in excess of the prescribed limit.

046941

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14. Mr Stuart Delmege ACA

Consent order made on 9 September 2019

With the agreement of Mr Stuart Delmege ACA of Southampton, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £700 and pay costs of £1,755 with respect to a complaint that:

Mr Stuart Delmege ACA, following a QAD visit on 25 August 2009, confirmed on behalf of his firm that:

a. In respect of the requirement to formally train staff on compliance with the Money Laundering Regulations:

‘….staff will be provided with appropriate training (BY 30/9/09)’

And/or

b. In respect of the requirement to carry out client due diligence (CDD) on all clients:

‘Client due diligence will be performed and documented for all existing and prospective clients [using the procedures and checklist improved above] (BY 31/10/09)’

And/or

c. In respect of the requirement to undertake a periodic review of the firm’s compliance with the Money Laundering Regulations:

‘A review will be undertaken periodically to ensure that our procedures are in line with the latest Money Laundering Regulations (ANNUALLY)’

but at a subsequent QAD visit on 7 June 2017, it was found that these assurances had not been complied with.

043202

15. Mr Paul Allan Beer FCA

Consent order made on 09 September 2019

With the agreement of Mr Paul Allan Beer FCA of Northwood, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £3,500 and pay costs of £772 with respect to a complaint that:

1a. Between on or around 16 September 2015 and on or around May 2016, Mr Paul Beer FCA was reckless in that he failed to inform his firm/Ethics Partner (through his annual declarations or otherwise) of circumstances that could adversely affect the firm's objectivity and independence in acting as the auditor of 'X' Limited, causing his firm to be in breach of APB Ethical Standard 1.

And/or

1b. Between on or around 16 September 2015 and on or around May 2016, Mr Paul Beer FCA failed to inform his firm/Ethics Partner (through his annual declarations or otherwise) of circumstances that could adversely affect the firm's objectivity and independence in acting as the auditor of 'X' Limited, causing his firm to be in breach of APB Ethical Standard 1.

041547

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16. Mr Naresh Shamji Samani FCA

Consent order made on 9 September 2019

With the agreement of Mr Naresh Shamji Samani FCA of Harrow, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £3,500 and pay costs of £1,017 with respect to a complaint that:

1a. Between on or around 16 September 2015 and on or around May 2016, Mr Naresh Samani FCA was reckless in that he failed to inform his firm/Ethics Partner (through his annual declarations or otherwise) of circumstances that could adversely affect the firm's objectivity and independence in acting as the auditor of 'X' Limited, causing his firm to be in breach of APB Ethical Standard 1.

And/or

1b. Between on or around 16 September 2015 and on or around May 2016, Mr Naresh Samani FCA failed to inform his firm/Ethics Partner (through his annual declarations or otherwise) of circumstances that could adversely affect the firm's objectivity and independence in acting as the auditor of 'X' Limited, causing his firm to be in breach of APB Ethical Standard 1.

041546

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17. Mr Alisdair James Fraser Findlay ACA

Consent order made on 9 September 2019

With the agreement of Mr Alisdair James Fraser Findlay ACA of Cheltenham, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £17,500 and pay costs of £4,117 with respect to a complaint:

1. That as liquidator of 'X' Limited Mr AJF Findlay ACA failed to comply with the fundamental principles of the Code of Ethics, in particular Professional Competence and Due Care, by failing to reply to correspondence sent to him and his staff in connection with the stock held by 'X' Limited in sufficient detail or in a timely manner including but not limited to the following:

    a. An email from Ms 'Y' to Ms 'Z' on 17 June 2016 which Ms 'Y' responded to on 28 June 2016 but with insufficient detail; and

    b. Emails from Ms 'Y' to Ms 'Z' on 30 June 2016, 26 July 2016 and 9 August 2016 which were not responded to until 17 August 2016 following receipt of a formal complaint from Ms 'Y' on 16 August 2016.

2. That as liquidator of 'X Limited' Mr AJF Findlay ACA failed to comply with the fundamental principles of the Code of Ethics, in particular professional competence and due care and/or professional behaviour, and/or paragraph 9 of Statement of Insolvency Practice 2 in failing to make sufficient enquiries to be able to confirm either the location or destruction of 555 hoverboards which he was aware were subject to withdrawal notices issued by Trading Standards.

3. That as liquidator of 'X' Limited Mr AJF Findlay ACA failed to comply with paragraph 400.75 and the fundamental principles of the Code of Ethics, in particular professional competence and due care and/or professional behaviour, by failing to create or keep any contemporaneous records as regards the realisation of the hoverboard stock and the relationship with 'W' Limited in connection with the same.

038932

18. Kingston Smith LLP

Consent order made on 13 September 2019

With the agreement of Kingston Smith LLP of London, United Kingdom, the Investigation Committee made an order that the firm be reprimanded, fined £12,750 and pay costs of £6,000 with respect to a complaint that:

1a. On 30 September 2014 Kingston Smith LLP issued an unqualified audit report on the financial statements of 'X' for the year ended 31 December 2013 which stated that the auditor's responsibility is to conduct the audit of the financial statements in accordance with International Standards on Auditing (UK and Ireland), when the firm had failed to obtain sufficient appropriate audit evidence in respect of accrued income, in breach of International Standard on Auditing (UK and Ireland) 500 'Audit evidence'.

And/or:

1b. On 30 September 2014 Kingston Smith LLP issued an unqualified audit report on the financial statements of 'X' for the year ended 31 December 2013 which stated that the auditor's responsibility is to conduct the audit of the financial statements in accordance with International Standards on Auditing (UK and Ireland), when the firm had failed to prepare, on a timely basis, audit documentation in respect of the testing of accrued income that provided:

a) a sufficient and appropriate record of the basis for the auditor's report; and

b) evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements.

in breach of International Standard on Auditing (UK and Ireland) 230 'Audit documentation'.

029578

19. Mr Paul Ross FCA

Consent order made on 13 September 2019

With the agreement of Mr Paul Ross FCA of Harrow, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £5,000 and pay costs of £2,455 with respect to a complaint that:

1. Mr Paul Ross FCA issued the following audit reports in the name of his firm, P H Ross & Co, in respect of 'A' Ltd when he was ineligible to act as auditor under section 27 of the Companies Act 1989, in that Mr Ross was an officer of the audited entity at the time the respective audit reports were issued:

   a. On 22 July 2004 for the year ended 31 August 2003;
   b. On 31 May 2006 for the year ended 31 August 2005;
   c. On 31 August 2007 for the year ended 31 August 2006.

2. On 25 October 2006, Mr Paul Ross FCA issued an audit report in the name of his firm, P H Ross & Co, in respect of 'B' Ltd for the year ended 31 March 2006, when he was ineligible to act as auditor under section 27 of the Companies Act 1989, in that Mr Ross was an officer of the audited entity at the time the respective audit report was issued.

3. Mr Paul Ross FCA issued the following audit reports in the name of his firm, P H Ross & Co, in respect of 'C' Ltd when he was ineligible to act as auditor under section 27 of the Companies Act 1989, in that Mr Ross was an officer of the audited entity at the time the respective audit reports were issued:

   a. On 31 May 2006 for the year ended 31 March 2006;
   b. On 4 March 2008 for the year ended 31 March 2007.

047556

20. Mr Leo William Paul Wright ACA

Consent order made on 13 September 2019

With the agreement of Mr Leo William Paul Wright ACA of Watford, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £6,800 and pay costs of £5,274 with respect to a complaint that:

1. Mr Leo Wright ACA prepared the accounts of 'B' for the year ended 31 March 2014, which contained the following errors:

    a) Included wages expenses that were not in accordance with the payroll records; and/or

    b) The incorrect amount of depreciation was charged; and/or

    c) Revenue expenditure was incorrectly capitalised.

2. Mr Leo Wright ACA prepared the accounts of 'B' for the year ended 31 March 2015, which contained the following errors:

    a) Bank transactions for:

        i. January 2014;

        ii. February 2014; and

        iii. March 2014

    had been incorrectly included; and/or

    b) Invoices that were for the disposal of fixed assets were incorrectly accounted for; and/or

    c) Fixed assets had not been disposed of; and/or

    d) Revenue expenditure was incorrectly capitalised.

3. Mr Leo Wright ACA claimed writing down allowances in the Corporation Tax Return of 'J' Ltd for the year ended 31 March 2011, which was incorrect because balancing allowances should have been claimed.

4. Mr Leo Wright ACA incorrectly claimed writing down allowances in the Corporation Tax Return of 'J' Ltd for the year ended 31 March 2012 which was incorrect because no allowance should have been claimed.

5. Mr Leo Wright ACA advised Mr 'E' to keep 'J' Ltd active for the following incorrect reasons:

    a) To take advantage of state pension and other state benefits when these were already protected by him paying tax on his self-employment; and / or

    b) To utilise Corporation Tax losses when Mr Wright should have known that the losses could not be utilised because the subsequent profits arose from a different trade; and/or

c) To avoid setting up a new PAYE scheme when he should have known that the PAYE scheme could be transferred from 'J' Ltd to 'B'.

6. Between 19 May 2015 and 29 January 2017, Mr Leo Wright ACA issued invoices to clients of 'C' through his company, 'D' Ltd, which was incorrect because they should have been issued through 'C'.

7. Mr Leo Wright ACA failed to comply with Disciplinary Bye-Law 11.1 in that he failed to ensure that the following clients were informed in writing of the name of the principal to be contacted in the event of a complaint about the firm's services, and of their right to complain to ICAEW:

- Mr 'E';
- Ms 'F';
- Mr 'G'; and
- Mr 'I'

033065

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21. Mr David Wesley-Yates FCA

Consent order made on13 September 2019

With the agreement of Mr David Peter Christiern Wesley-Yates BA (Hons) FCA CTA of Manchester, United Kingdom, he Investigation Committee made an order that he be severely reprimanded, fined £6,400 and pay costs of £6,930 with respect to a complaint that:

1 On 13 March 2015, Mr David Wesley-Yates FCA gave incorrect advice to Mr 'B' in relation to Entrepreneurs' Relief, on the incorporation of 'C' Ltd.

2 Mr David Wesley-Yates FCA failed to accurately complete the 2014-15 self-assessment tax return for Mr 'B' as the return failed to disclose the disposal of Mr 'B's sole trader business for Capital Gains Tax purposes.

3 Mr David Wesley-Yates FCA filed the 2014-15 self-assessment tax return for his client Mr 'B' without first obtaining his client's approval to file the return.

4 Mr David Wesley-Yates FCA failed to comply with section 110 of the Code of Ethics in that he failed to deal fairly with his client, Mr 'B', in relation to his fees, by failing to make the basis of charging fees clear.

037463

REGULATORY PENALTY ORDERS

Insolvency Licensing Committee

ORDER – 13 AUGUST 2019

22. **Mrs Michaela Samantha Daly** of
Stoke-on-Trent, United Kingdom

to pay a regulatory penalty of £250 for failure to undertake an annual compliance review and thereby failing to comply with Regulation 3.13 of the Insolvency Licensing Regulations and Guidance Notes.

050422

Audit Registration Committee

ORDER – 16 JANUARY 2019

23. Publicity statement

The registration as company auditor of N.S. Amin & Co, 334-336 Goswell Road, London, EC1V 7RP, was withdrawn on 8 October 2019, under audit regulation 7.03g of the Audit Regulations and Guidance 2008 for its failure to comply with the requirements of the audit regulations. The responsible individual status of Mr Nitin Shantilal Amin was also withdrawn under audit regulation 4.08e.

009276

Audit Registration Committee

ORDER – 21 AUGUST 2019

24. Publicity statement

Charles Alexander & Co Limited, of London, has agreed to pay a regulatory penalty of £1,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 6.06 and 3.20 for failing to comply with undertakings to notify ICAEW of a new audit client and failing to arrange and submit the results of an external cold file review.

049698
