Disciplinary Orders and Regulatory Decisions

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. Mr Norman Leighton FCA of
Indre, France

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 31 July 2018

Type of Member Member

Terms of complaint

Between 1 January 2002 and 31 August 2009 Mr Norman Leighton FCA conspired with others to cheat the public revenue.

Mr Normal Leighton is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a.

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

Hearing date	31 July 2018
Previous hearing date(s)	None
Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes
All heads of complaint proven	Yes
Sentencing order	Exclusion
Procedural matters and findings	
Parties present	The Investigations Committee was represented by Mrs Silpa Tozar ICAEW Tribunal Administrator Diane Waller was present The Defendant was not present or represented
Hearing in public or private	The hearing was in public
Decision on service	The Defendant had been in correspondence with the institute and clearly indicated that he had received the Notice of hearing and accompanying documents. 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 together with correspondence between the Defendant and the Institute following the IC's decision.

Proceeding in absence

The Defendant wrote to the Institute on 24th June 2018 asking that he be excused from attending the hearing on 31st July 2018. He said that he lived overseas (in France) and suffered with ill-health. He was not contesting the complaint.

The Tribunal considered that in the circumstances no injustice would be caused to the Defendant if the hearing proceeded in his absence.

The Investigation Committee's (IC's) case

1. Background

1.1 On 12 May 2016, the Defendant was tried and convicted of conspiracy to cheat the public revenue at Birmingham Crown Court.

a. On 24 June 2016, the Defendant was given a suspended prison sentence of twenty four months, suspended for two years. The Defendant was one of five defendants sentenced at the same time.

b. Prior to his conviction, the Defendant ran a business in Monaco which was a corporate services provider. 'A', which was a film finance and production company, was a client of the Defendant's business.

2. The Complaint

2.1. The facts leading to the Defendant's conviction are set out in His Honour Judge Drew's (the "Judge") sentencing comments.

2.2. The conviction of conspiracy to cheat the public revenue relates to an investment scheme centred on the film industry. The scheme was devised and run by four of the defendants, assisted by the Defendant as the corporate services provider. The scheme was set up to raise money from high net worth individuals, who were keen to take advantage of the tax breaks offered by the government to investors in the film industry. In particular, the investors invested in a series of limited liability partnerships ("LLPs") which enabled them to substantially reduce their personal tax liabilities. The Judge commented that the defendants originally intended to set up a legitimate scheme and there was no intention at the outset to cheat the revenue.

2.3 The Defendant's client, 'A', advised the LLPs to enter into ten year agreements with film producers to provide development and pre-production services to them. The LLPs entered into an agreement to purchase those services from another company called the 'B'. The Defendant became a director of 'B', and managed the company

from Monaco. The Judge accepted that the Defendant was initially recruited to provide legitimate management services but when the final scheme was devised and set up at the end of 2002 it must have very quickly become obvious to the Defendant that the scheme was not legitimate. Although the agreements between the LLPs and 'B' were for the provision of services over a ten year period, the payment was made up front for over three hundred films, which meant that in their first accounting years, the LLPs spent over £256 million. The Judge commented that this indicated that the scheme was '*not all it appeared to be*' and that the money was unlikely ever to be recovered.

2.4. The Judge stated that the IFC were in no better position than the LLPs to provide the development and pre-production services and it too also outsourced the film production work to another company, 'C', and paid £234 million to them. However, there is no evidence that 'C' provided any film production services. The only activity identified was that 'A' made producer's packs which contained background and development information for the film producers to use to further their projects. The cost of these producer packs was £3.9 million and was paid for by 'B'. The Judge commented that 'B' would never have been called upon, let alone been able to provide, the quarter of a billion pounds worth of services that the LLPs had paid them for.

2.5. The money that 'C' Ltd received from 'B' was then lent on to a series of other companies, before being invested back into the LLPs. The funds that had been invested into the LLPs were approximately one quarter from individual investors, and three quarters from corporate investors (e.g. 'C' Ltd). Once the money was received back into the LLPs, a further round of investments in films took place. This meant that in their first year, the LLPs spent nearly all of the money that had been invested in them, and 93.18% of this had been on services from 'B'.

2.6. Although only one quarter of the LLPs funds had come from individual investors, the LLP agreements allocated 90% of the LLPs losses to the individuals in the first year, which meant that the individual investors were able to claim losses on their tax returns far in excess of the monies they had invested into the LLPs.

2.7. The Judge commented that the 'cheat' in this case was submitting tax returns which contained false statements about the LLPs allowable losses. They were false because the jury found as a fact either that the expenditure was not wholly and exclusively for the purposes of the LLPs trade, or the trade was not carried out on a commercial basis, because it was not used to pay for development and pre-production services, but was instead diverted and repeatedly circulated around other companies The Judge commented that this was a complex and sophisticated tax evasion scheme which had it succeeded would have deprived HMRC of £98 million in revenue. The Judge commented that the defendants relied on the fact that the investors did not really expect to get their money back, and that it was evidenced by the spreadsheets recovered that they planned on extracting approximately one-third (£25 million) for their own benefit. Once HMRC began to investigate the LLPs returns in 2004, the defendants manufactured documents to fill in the gaps of missing documentation and to give the impression that various companies involved in the scheme were dealing with another at arm's length when

in fact they were not. The Judge commented that seeking to cover up their activities by manufacturing documentation was a seriously aggravating feature of the case.

2.8. In determining sentence for the Defendant, the Judge referred to him having received individual benefit in the order of £217,000 for the work he did for 'B' raised on invoices. The Judge commented that the Defendant had played a lesser role in the conspiracy, and was not one of the early instigators of the scheme, although he had been involved in what had taken place from very early on. The Judge said that the Defendant set up the company ('B'), opened its bank account, acted as company director, and his firm managed 'B's business in Monaco. The Judge said that the jury found that the Defendant knew who the true beneficial owners of 'B' were, who 'B' dealt with and what it provided and did not provide. The Judge said that when HMRC commenced its inquiry, the Defendant deliberately misled the prosecution, for instance falsely stating that all of the decisions and planning took place in Monaco. The Judge stated that the starting point of the sentence was six years, with a range of four to eight years.

Issues of fact and law

The Defendant in submitting answers on 24th June 2018 to a request made by the IC under Disciplinary Regulation 13 (Power of Investigation Committee to call for information) admitted the complaint.

Conclusions and reasons for decision

The Tribunal duly found the complaint proved by admission.

Matters relevant to sentencing

The Tribunal had regard to the Judge's sentencing remarks, in which he said that because the Defendant had performed a limited function under direction and received a limited benefit from the role that he performed, he fell into the lesser category of offending. However the level of intended loss to the revenue was Category one (the highest). The Judge said that he took into account the Defendant's previous good character, that he has lost his livelihood, and the impact of any custodial sentence on him and his family would be substantial. The Judge also made reference to the Defendant's wife's circumstances, and the Defendant's poor health. The Judge concluded that the appropriate sentence, taking into account the aggravating and mitigating factors, was two years' imprisonment, suspended for two years. The Defendant was also made the subject of confiscation proceedings.

1.1. The Tribunal took into account mitigating factors put forward by the Defendant to the Institute, namely, that this matter arose from one of the clients of his Corporate Service Provider ('CSP') business in Monaco. The Defendant said that this business was conducted in accordance with all the regulations applicable to a CSP which were enforced by the Monegasque regulatory body. The Defendant said that the client was introduced to him by one of his few trusted introducers in the UK. He said he had this client for approximately eight years and during that time had no reason to undertake anything illegal or criminal. The Defendant said that the client provided less than 5% of his turnover and he was very surprised when a criminal investigation was started. The Defendant said as far as he was concerned he did nothing wrong, and he was working with his business partners on this matter, neither of whom were prosecuted. The Defendant said that nonetheless,

the jury found him guilty of the charge, so he had to accept that decision. The Defendant said that the Judge's view could perhaps be best 'divined' from the sentencing, which for his co-defendants was nine years, whereas the Judge gave the Defendant a two year suspended sentence.

The Defendant said that he appreciated that on the face of it this was a serious matter and would probably lead to his exclusion from ICAEW. The Defendant said that he had written to the membership department and attempted to relinquish his membership. The Defendant said he was fully retired and would undertake no more work as an accountant. He said he had been dealing with this matter for more than six years and he had no wish to prolong the stress for himself or his family.

The Defendant also confirmed he was subject to confiscation proceedings, as a result of which he had to pay £150,000 to the court. The Defendant said that any further imposition of financial penalties would be unaffordable and highly prejudicial, especially as he was retired. He stated that the criminal proceedings cost him a very significant part of his life, and placed immeasurable stress on not only himself, but his wife and family too. The Defendant said that his health was not good. He explained that he could not afford heavy costs, or a fine and he has co-operated as fully as he can with the investigation. He states that he was deeply sorry if it is felt that he has brought the profession into disrepute. The Defendant said that he had dedicated his entire working life to the profession, but now had to live with the 'opprobrium' of a criminal conviction, loss of reputation and the financial and personal costs it has involved.

The Tribunal had regard to the institute's *Sentencing Guidelines* which indicate that where a Defendant has been convicted of an offence involving dishonesty, the starting point as far as sanction is concerned is exclusion.

Sentencing Order

The Tribunal found that the criminal offence in which the Defendant played a major part was a very serious one, doubly so for a professional accountant: namely, conspiracy to cheat the public revenue, albeit that the Defendant had played a comparatively lesser, but significant and key role in it. The sums involved were very large and the Defendant had made a considerable sum of money in return for his involvement. His actions brought discredit on himself, the Institute and the accountancy profession.

The Tribunal excluded him from membership of the Institute.

Costs

The Tribunal had regard to a costs schedule submitted by the case presenter, and to the Defendant's statement of means. The Tribunal ordered the defendant to pay £2,500 towards the costs of these proceedings.

Non Accountant Chair	Mrs Ros Wright CB QC	
Accountant Member	Mr Mike Ranson FCA	
Non Accountant Member	Mr Nigel Dodds	**034957**

2. Mr Jason Spenser Bennett FCA of
London, United Kingdom

A Tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 10 April and 17 July 2018

Type of Member Member

Terms of complaint

1. Mr J S Bennett, FCA on behalf of his firm, 'A' Limited, prepared and signed a letter dated 10 March 2011 regarding Mrs 'B' which contained the following errors:

   (a) Mrs 'B's salary for the year ending 05 April 2011 from 'C' Limited was said to be £5,700.

   (b) Dividend payments for 'D' Limited for the years ending 31 December 2010 and 2011 and 'C' Limited for the year ending 31 August 2011, were said to be based on financial statements when the financial statements had not been prepared at the date of the letter.

   (c) "The figures for dividends available for payment from 'C' Limited and 'D' Limited for each year were calculated without taking into account:
   (i) Corporation Tax
   (ii) Personal Tax"

   (d) 'Dividend figures available for payment for 'C' Limited did not take account of mortgage arrears payable by Mrs 'B.'

   (e) 'The figures for dividends available for payment from 'D' Limited for the year ending 31st December 2010 in the sum of £12,500 were calculated without taking into account negative reserves of £14,465 as at 31 December 2009.

   (f) The figures for dividends available for payment from 'D' Limited for the year ending 31 December 2010 in the sum of £12,500 were calculated without taking into account negative reserves of £10,893 as at 31 December 2010.'

2. Mr J S Bennett FCA on behalf of his firm, 'A' Limited, signed an accountant's certificate dated 09 January 2012 regarding Mrs 'B' which was inaccurate in that:

   (a) The 'D' entry of £14,465 for 2009 was shown as a profit when it should have shown as a loss of £14,465.

   (b) The combined post-tax profit figure for both companies of £13,773 for 2010 had failed to take account of corporation tax amounting to £2,142.

   (c) The dividend received in 2010 of £8,000 for 'C' Limited was stated as being £20,500.

3. On or around 29 January 2013 Mr J S Bennett FCA prepared the personal tax return for Mrs 'B' for the year 2010/2011 and removed income earned from 'D' Limited, when he knew from the company's payroll that Mrs 'B' had received £3,414 from 'D' Limited.

Mr Jason Spenser Bennett is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b for Complaints 1-2 and 4.1a for Complaint 3.

Disciplinary Bye-law 4.1b renders a member liable for disciplinary action 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.

Disciplinary Bye-law 4.1a renders a member liable for disciplinary action 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 dates	10th April and 17th July 2018
Pre-hearing review or final hearing	Final hearing
Complaints found proved	Yes in part. Complaint 1 proven other than with regard to particulars in 1(c)(ii), complaint 2 proven and complaint 3 not proven
Sentencing order	Reprimanded Fined £3,000 Costs of £10,000
Procedural matters and findings	On 10th April 2018 the Tribunal decided whether or not the complaints were proven. Having found the complaints proven in part the Tribunal adjourned the hearing to another date for decision as to sanction, costs and publicity. The resumed hearing was on 17th July 2018.
Parties present and representation	The Investigation Committee ('IC') was represented by Mrs Silpa Tozar. Mr Bennett was present on 10th April 2018 and was represented on both dates by Mr Christopher Cope.
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 documents from the defendant

Issues of fact and law

1. Mr Bennett, Director of 'A' Limited, was Mrs 'B's accountant at the material times. He prepared her personal tax returns, sole trader accounts and the accounts for her two companies, 'D' Limited (owned 50/50 by Mrs 'B' and her son) and 'C' Limited (owned solely by Mrs 'B'). Mr Bennett's firm also prepared management accounts and carried out payroll services for both companies, alongside the provision of financial references and certificates.

2. Mrs 'B' complained to ICAEW on 07 August 2013. The matter was originally considered by the IC on 04 April 2017. The case was then subject to a further legal review and returned to the Investigation Committee. On 3rd October 2017 the Investigation Committee referred the complaints now facing Mr Bennett and which can be summarised as follows:

    (a) Errors contained in a letter dated 10 March 2011 which was sent by Mr Bennett to Barclays Bank on behalf of Mrs 'B';

(b) An inaccurately prepared and signed accountant's certificate dated 09 January 2012; and

(c) An improperly prepared personal tax return on or around January 2013 regarding salary received by Mrs 'B' from 'D'.

Complaint 1

3. This complaint is that the defendant on behalf of his firm, 'A' Limited, prepared and signed a letter dated 10 March 2011 for Barclays Bank regarding Mrs 'B' which contained the errors set out in paragraph (a) to (f) of the complaint and that these, on their own or cumulatively, amount to a breach of Disciplinary Bye-law 4.1b. Thus, it was alleged that the defendant 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.

Complaint 1(a)

(*a*) *Mrs 'B's salary for the year ending 05 April 2011 from 'C' Limited was said to be £5,700.*

4. The 10 March 2011 letter to Barclay's Bank states that Mrs 'B' received £5,700 from 'D' for the year ended 5 April 2010 and would receive the same amount from 'C' in the year ended 5 April 2011.

5. Mr Bennett's firm prepared the payroll for 'D' Limited and he provided copies of Mrs 'B's P60s for 2010 and 2011 for 'D'. These showed employment income of £5,700 and £3,414 for the years ended 2010 and 2011 respectively. On 09 January 2014 Mr Bennett explained that Mrs 'B' received no salary income from 'C'.

6. Mr Bennett states that it was the intention for Mrs 'B' to have a basic salary from 'C', and any salary would have been voted for in March of the tax year. This would mean that the voting would have been taking place in the same month that the letter was written. Mr Bennett further states that his payroll department would have told him that the salary would be subject to PAYE and therefore a decision was made not to process the salary. It is unknown when this decision was taken.

7. Mr Bennett asserts that while the declaration regarding salary in the 10 March 2011 letter is therefore strictly incorrect, Mrs 'B' would have been entitled to take dividends in lieu of this salary, so the overall declared income is correct. He pointed out that the letter stated 'she will receive a salary of £5700 from the company, 'C', not that the salary was £5,700. The defendant submitted that Barclays was not misled. In the year ended 31st August 2010, 'C' made a profit of £8,058, a figure well in excess of the proposed salary of £5,700.

8. Mr Bennett told the Tribunal that Mrs 'B' had asked him to prepare the figures and email them to Mr 'E' at Barclays Bank. Mr Bennett states that he cannot recall what Mrs 'B' was seeking to do with the bank and while he has a file note referring to a £380,000 mortgage, he cannot recall what the reference letter was for.

9. The IC submitted that this was an error borne of inefficiency or incompetency which brings discredit.

Complaint 1(b)

(b) Dividend payments for 'D' Limited for the years ending 31 December 2010 and 2011 and 'C' for the year ending 31 August 2011, were said to be based on financial statements when the financial statements had not been prepared at the date of the letter.

'D' Limited

10. Mr Bennett argued that the reference to financial statements should not have been read as referring to statutory accounts. It was not in dispute that the statutory accounts for the year ended 2010 had not been prepared when the letter dated 10 March 2011 was written. The defendant told the Tribunal that the accounts for the year ended 2010 were prepared and filed at Companies House in September 2011 and, that the 2011 accounts were never prepared (this company having essentially stopped trading during that year). Therefore, the 2010 and 2011 dividend figures in the letter could not be and never were based on statutory financial statements. It was argued that it would have been apparent to Mr 'E' of Barclays that, upon receipt of the letter of 10th March 2011, the accounts of 'D' Limited to 31st December 2011 would not have been prepared as the trading year had another 10 months to run.

11. Mr Bennett explained that the reference to financial statements was to the Sage printout recently prepared and upon which he had calculated the figures in the letter.

12. The profit and loss accounts for 'D' Limited on Sage for the 12- month period to 31st December 2010 showed a net loss of £11,929.28. Prior to 10th March 2011, Mr Bennett made a series of calculations which produced an adjusted profit of £24,987 or approximately £25,000. To state therefore in the letter to Barclays that a dividend was available to Mrs 'B' for the year ended 31st December 2010 of £12,500 was not unreasonable. Mrs 'B' was a 50% shareholder.

13. Based upon the financial statements to 31st December 2010 and the 68% increase in turnover from 2009 to 2010 (up from £178,000 to £299,000) Mr Bennett argued he had applied the same percentage projected increase for the 2011 figures. A 68% increase in the dividend of £12,500 would produce a figure of £20,500 in the following year. To project a dividend of £20,000 for the year ended 31st December 2011 was not therefore unreasonable.

14. The defendant contended that it is inaccurate for the Investigation Committee to suggest that financial statements can only relate to final accounts. Financial statements can include Sage printouts and VAT returns, on which the defendant did place reliance.

15. Conversely the IC argued that the defendant was wrong to say that the 'D' Limited figures as stated in the letter were based on financial statements, which would be commonly understood to refer only to statutory financial statements.

'C' Limited

16. Mr Bennett, in his letter to Barclays, indicated a possible dividend to Mrs 'B' of £45,000 for 'C' Limited and the year ended 31st August 2011.

17. The Sage printout to 31st August 2011 showed manuscript adjustments prepared by Mr Bennett prior to 10th March 2011. These calculations indicated that the profit for 'C' Limited to 31st August 2011 would amount to £45,000. As Mrs 'B' was the 100% shareholder, it was not unreasonable for Mr Bennett to suggest a dividend for that amount.

18. The IC argued that the reference to "financial statements" would have been interpreted by Mr 'E' as meaning statutory financial statements. Regarding 'C' Limited, given that the 2011 year end was not until August 2011 and the financial statements were not approved by the board until 23 May 2012, when he wrote the letter of 10 March 2011, the figures could not have been based on the financial statements for the year ended August 2011. Mr Bennett argued that Mr 'E', working for Barclays, a large sophisticated company, would understand this.

19. By contrast, the accounts for the year ended 31 August 2010 were approved by the board on 26 May 2011 only two months after the date of the letter. The Defendant states that the accounts would have been prepared leading up to the date of filing. Therefore, on the balance of probabilities, the figures for 31st August 2010 in the letter of 10 March 2011 could have been based on the financial statements that were ultimately filed in 26 May 2011.

20. The IC argued that Mr 'E' would have been likely to construe "financial statements" as meaning statutory accounts and would therefore have been misled. This amounted to incompetency or inefficiency that brings discredit.

Complaint 1(c)

(c) "The figures for dividends available for payment from 'C' Limited and 'D' Limited for each year were calculated without taking into account:
(i) Corporation Tax
(ii) Personal Tax"

21. The IC told the Tribunal that it was not offering evidence with regard to subparagraph (ii), the personal tax element of these particulars.

22. Mr Bennett confirmed that corporation tax was not taken into account in arriving at the profit/dividend estimates contained in the letter of 10 March 2011 for 'D' Limited and 'C' Limited. He argued that at the date of the letter, the final accounts for 'C' Limited were not prepared, the letter was based on management accounts and therefore, corporation tax was not considered. He adds that he would have concurred that corporation tax ought to have been considered if the final accounts had been prepared and submitted. The denial of any breach of Byelaw 4.1b by the defendant was on the basis that first, no bank considering a loan application would take any notice of projected future income and second, that at 20%, the impact of corporation tax would have been immaterial. For these reasons it was asserted that there was no discredit.

23. The Investigation Committee rejected Mr Bennett's assertion that tax should only be considered when the final accounts are produced. Given the letters were based on an expected position, showing significant profits and significant growth from the 2009 actual results, it was submitted that Mr Bennett ought to have estimated corporation tax expected to be payable before concluding on the profits and surpluses available for dividends; the impact of corporation tax in particular would significantly reduce the profits available to pay dividends and therefore should have been considered. The IC further contested that the effect of corporation tax would not have been minimal and argued that his actions amounted to incompetency or inefficiency that would bring discredit.

Complaint 1(d)

(d) 'Dividend figures available for payment for 'C' Limited did not take account of mortgage arrears payable by Mrs 'B'.'

24. Mr Bennett explained that Mrs 'B' inherited properties on the death of her husband which were registered in his name. Some lenders would not transfer the mortgages into Mrs 'B's name and Mr Bennett said it was decided to leave it as it was, namely, legal title with Mr 'B'. The decision had been made to form a limited company, 'C' Limited, which would run the management of the properties and charge Mrs 'B' a management fee. Mrs 'B' ran a sole-trader rental practice which collected rent from the tenants and incurred the associated costs (including the management charge from 'C' Limited).

25. Mr Bennett's defence was in effect that even if Mrs 'B' had decided to pay the mortgage, Mr 'B's estate remained liable such that once probate had been granted she may have been paid back the sums she had paid.

26. Mr Bennett had provided Mrs 'B's sole-trader figures for 2010 and 2011. He manually adjusted the reported figures to arrive at what he called 'the true trading position' of the combined businesses.

27. While the IC accepted the logic in removing the mortgage arrears when calculating 'real' profits, the letter of 10 March 2011 was setting out the actual and expected surplus available to Mrs 'B' in the current and forthcoming period. On the basis that she had clearly decided, even if voluntarily, to continue to pay the mortgage interest arrears, it is unclear why they were added-back as the adjusted numbers would not represent amounts available to Mrs 'B' to remove from the businesses.

28. In his representations of 28 November 2014 Mr Bennett explains that the figures in the 10 March 2011 letter were the 'expected' surpluses based on normal rental position with historic arrears being cleared. They show the figures on an ongoing basis to show that the properties can financially support the loan payments. He adds that he assumed the loan (for which the 10 March 2011 reference was required) was to bring the historic arrears up to date, but adds that he 'did not know what the loan was being used for'.

29. While the mortgage arrears may have been consolidated into a new loan, with a new repayment terms such that the monthly outgoings were reduced, Mr Bennett accepts he did not know what the Barclays loan was for. Mr Bennett's assumption in eliminating the arrears therefore ignores the possibility that the new loan was to be taken out in addition to the existing loans.

30. Furthermore, while the figures in Mr Bennett's calculations above may illustrate a 'true' or normalised profit from the property business, this is not what the letter was stating. The 10 March 2011 letter was setting out what was available to Mrs 'B' for the two particular financial years. The letter ignored that Mrs 'B' had chosen to pay interest arrears for both years commented on, and as such she did not have the level of profits available that the reference letters claim were available to her.

31. The IC argued that this amounted to incompetency or inefficiency that brings discredit.

Complaint 1 (e) and (f)

> *(e) 'The figures for dividends available for payment from 'D' Limited for the year ending 31st December 2010 in the sum of £12,500 were calculated without taking into account negative reserves of £14,465 as at 31 December 2009.*
>
> *(f) The figures for dividends available for payment from 'D' Limited for the year ending 31 December 2010 in the sum of £12,500 were calculated without taking into account negative reserves of £10,893 as at 31 December 2010.'*

32. The defendant admitted the particulars at 1(e).

33. The accounts for 'D' Limited show that there was £14,465 worth of negative reserves carried over from 2009. The accounts also show that when the profit made in 2010 (£3572.00) is deducted from this loss, there remains a loss of £10,893. Neither of these losses was considered when the dividends for 2010 were considered. The IC submitted that 'D' Limited had insufficient distributable reserves to pay a dividend in the year-ended 31 December 2010:

- 'D' Limited could only pay Mrs 'B' a dividend of up to 50% of the distributable reserves as at 31 January 2012 (i.e. a maximum dividend of £2,824);
- Mrs 'B' received a dividend of £8,000 from 'C' Limited in 2010; and
- 'C' Limited had insufficient distributable reserves to pay any dividends in 2011.

34. Mr Bennett argued that the negative reserves of £10,893 only became apparent when the accounts for 'D' Limited to 31st December 2010 came to be prepared. Mr Bennett was not aware (and could not have been) at 10th March 2011 that the company would sustain negative reserves in a year which had ten months of trading to run.

Complaint 2 – Incorrect information contained in accountant's certificate

35. The defendant admitted that the particulars set out in complaint 2 constituted a breach of Disciplinary Bye-law 4(1)(b).

36. Mrs 'B' wrote to the Institute on 08 April 2015 enclosing an accountant's certificate addressed to 'F'. The certificate was signed by Mr Bennett and dated 9 January 2012. It related to a loan from 'F' for £77,480. Mrs 'B' explains that the loan was to assist 'D' Limited to buy new stock.

37. Mr Bennett pointed out that the document was prepared by a member of Mr Bennett's staff and signed by him. When staff came to prepare the accountant's certificate, Mr Bennett suggested they refer back to the letter of 10th March 2011.

38. In the accountant's certificate, there were the following inaccuracies:

(a) The 'D' entry of £14,465 for 2009 was shown as a profit rather than a loss.

(b) The combined post-tax profit figure for both companies of £13,773 for 2010 had failed to take account of corporation tax amounting to £2,142.

(c) The dividend received in 2010 of £8,000 for 'C' Limited was stated as being £20,500.

Complaint 3 – Preparation of Personal Tax Return

39. On 12 November 2012 Mr Bennett contacted Mrs 'B' to enquire whether her new accountant, Ms 'G' FCCA, was going to complete and file her 2010 and 2011 self-assessment tax returns. Mrs 'B' confirmed, via Ms 'G', that she wanted Mr Bennett to complete them.

40. On 20 December 2012 Mr Bennett sent Mrs 'B' her 2010/11 tax return, via a colleague at 'A' Limited, noting that:

"Ms 'G' of 'H' asked for me to prepare and submit your Tax Return for the year ended 5 April 2011. I have now completed the preparation of the Tax Return, which you will find attached to this email, together with supporting information. Your Tax Return should include all sources of income and I have identified you as having the following sources of income:

- Rental accounts
- Employment from 'D' Ltd

- State pension”

41. On 22 December 2012 Mrs ‘B’ replied to Mr Bennett asking him to remove the salary from ‘D’ Limited claiming that she had not received any.

42. Mr Bennett’s colleague replied on 29 January 2013 stating that the salary from ‘D’ Limited had been amended. Mrs ‘B’ confirmed her approval of the revised tax return on 31 January 2013.

43. In his letter of 09 January 2014, Mr Bennett confirms that Mrs ‘B’s 2010/11 tax summary does not include Mrs ‘B’s salary from employment. He states that while he previously advised that Mrs ‘B’ had received a salary and that it generated a tax liability, she told him the salary was wrong and to remove it, which he did.

44. As noted above, Mr Bennett’s firm maintained the payroll for ‘D’ Limited. Mr Bennett knew when the tax return was prepared, that Mrs ‘B’ had, as a matter of payroll, earned £3,414 from that employment in the 2010/11 tax year.

45. Mr Bennett emphasised that Mrs ‘B’ asked him to remove the payroll figure from her tax return. As he was filing only, and he was not her accountant anymore, he removed the payroll from the tax return, emailed Mrs ‘B’ the revised tax returns, she approved them and he filed them online with HMRC.

46. The sum of £3,414 had not actually been paid to or received by Mrs ‘B’ in respect of income earned from ‘D’ Limited for the year 2010/11. All that had occurred was that that amount had been credited to Mrs ‘B’s director’s loan account (DLA). To rectify this, Mr Bennett argued that the amount could simply be deleted.

Conclusions and reasons for decision

47. The Tribunal found complaint 1 proven other than with regard to the particulars in 1(c)(ii), personal tax, in relation to which the IC had offered no evidence. The defendant had admitted the particulars at complaint 1(e) and the breach set out in complaint 2. The Tribunal did not uphold complaint 3.

Complaint 1

48. The letter dated 10 March 11 is alleged to contain the six "errors" alleged in 1a to f, only one of which was admitted. Neither party addressed the tribunal as to what was meant by errors in this context and the Tribunal takes the allegation to mean inaccuracies or mistakes on the face of the letter or in the context in which the letter was being read.

49. No evidence was provided from Barclays as to what Mr ‘E’ took from the letter or indeed how or to what extent he or Barclays relied on the letter. Mt Bennett confirmed in evidence that he had made a note of the figure of 380k in his file but said he was unsure what this related to

50. The tribunal is mindful that liability to disciplinary action arises in the present case under DBL 4.1.b only if the Respondent has performed his professional work or the duties of his employment or conducted his practice inefficiently or incompetently to such an extent as to bring discredit on himself, the ICAEW or the profession of accountancy. Therefore, the acts or omissions complained of, on their own or taken together, must be of a serious nature. That said, inefficiency or incompetence even if serious will not on its own lead to a breach of this Bye-law. In addition the acts or omissions complained of must, again on their own or taken together, be such as to be capable of bringing discredit.

51. The decision as to whether the defendant has performed his professional work to such an extent as to bring discredit on himself, the ICAEW or the profession of accountancy has to be made by the panel in the exercise of its own skilled judgement on the facts and circumstances and in the light of all the evidence.

Complaint 1(a)

52. The Tribunal took the view that the 10th March letter was so poorly worded and unclear that it lacked accuracy and transparency. It should have indicated that the accounts had not yet been prepared and Mrs 'B' had not done any tax planning yet. Whilst he had been correct with regard to her tax code, there had not been a vote as to salary. On the letter's wording Mr 'E' was likely to have assumed the salary figures were further to a vote. There were sufficient uncertainties within 'C' Limited as to salaries and dividends that these figures amounted to errors. The defendant should have made this clear to the recipient of the letter that there was no firm commitment as to salary.

53. Indeed the letter is to be read in the context of the email dated 10 March 2011 covering it, and the Tribunal notes that the email reads "As we prepare regular bookkeeping for both companies we know trading performance is in the current period to date..."

However in examination the defendant admitted that he had not consulted the bookkeeper Mrs 'I' about the salary payroll position prior to sending the letter to Mr 'E'. His use of the words "will receive a salary" in this context was inaccurate as he had not checked the position. He accepted that he could have said in the letter that the salary was "to be confirmed."

54. The Tribunal took the view that Mr Bennett's actions in this regard were incompetency or inefficiency. Viewed alone these errors were not so incompetent or inefficient as to bring discredit, but viewed together with the other errors found below, they were of such quality as to bring discredit to the defendant, the institute or the profession of accountancy.

Complaint 1(b)

55. The Tribunal concluded that it was misleading to say that monetary figures in a reference letter to a bank were *"based on the financial statements*" when it was in fact, based on SAGE management figures. Financial statements would reasonably be construed as referring to statutory accounts.

56. The confusion could have been easily rectified by being clear as to the source of the information or indicating that the figures were not yet confirmed (particularly since the financial statements had not been prepared and tax calculated). The defendant should have provided the journal adjustment information. It was not appropriate for the defendant to rely upon further due diligence by the bank.

57. In the circumstances, the Tribunal took the view that Mr Bennett's actions in this regard amounted to incompetency or inefficiency. Again, viewed alone these errors were not so incompetent or inefficient as to bring discredit, but viewed together with the other errors found above and below, they were of such quality as to bring discredit to the defendant, the institute or the profession of accountancy.

Complaint 1(c)(i)

58. Mr Bennett argued that no bank would take notice of future income for a loan, hence there was no need to include corporation tax. The Tribunal did not accept this as clearly the letter was meant to assist the bank in terms of assessing affordability and therefore future income. Had corporation tax been taken into account, it would have reduced the figures

59. The Tribunal did not moreover accept that the impact of corporation tax would be minimal.

60. The actions of the defendant were based on incompetency or inefficiency. Again, viewed alone these errors were not so incompetent or inefficient as to bring discredit, but viewed together with the other errors found above and below, they were of such quality as to bring discredit to the defendant, the institute or the profession of accountancy.

Complaint 1(d)

61. The Tribunal was of the view that the letter should have shown the position inclusive of the mortgage arrears. Given that he was preparing the accounts for the rental business, Mr Bennett must have known the extent of the arrears and that Mrs 'B' was paying these. This would clearly have an impact on the rental business and its ability to pay management charges to 'C' Limited, and then in turn 'C Limited's ability to pay dividend payments /salary to Mrs 'B'. Whilst Mrs 'B' was not liable personally for any of the mortgage arrears arising up to the date of Mr 'B's death the practical situation was that either she or the estate would become ultimately liable. The evidence was that she had chosen to pay the mortgage arrears and was likely to continue to do so voluntarily. This represented a likely call on 'C' Limited's income.

62. The Tribunal accepted that the exclusion of the mortgage interest arrears was incompetency or inefficiency. Again, viewed alone these errors were not so incompetent or inefficient as to bring discredit, but viewed together with the other errors found above and below, they were of such quality as to bring discredit to the defendant, the institute or the profession of accountancy.

Complaint 1(e) and (f)

63. The Tribunal noted that the particulars for subheading (e) were admitted, namely that:

'The figures for dividends available for payment from 'D' Limited for the year ending 31st December 2010 in the sum of £12,500 were calculated without taking into account negative reserves of £14,465 as at 31 December 2009.

64. The Tribunal found the particulars at subheading (f) also proven:

'The figures for dividends available for payment from 'D' Limited for the year ending 31 December 2010 in the sum of £12,500 were calculated without taking into account negative reserves of £10,893 as at 31 December 2010.'

and was of the view that, taken together, Mr Bennett's failure not to consider both amounts of losses amounted to incompetence or inefficiency that brings discredit.

65. It was accepted that Mr Bennett would not have known what the figure would be for that year, given that there were so many months still to run, but a huge negative figure for the previous year should have put him on notice that the figures put forward were very likely inaccurate. It was not credible that the financial position would improve to such an extent so as to make the company profitable.

66. The covering email to Mr 'E' enclosing the 10 March 2011 letter stated: ….." *"As we prepare regular bookkeeping for both companies we know the trading performance in the current financial period to date. As such our estimate for the accounts ending 2011 we believe are a good estimate of what will occur."*

67. Mr Bennett had the management accounts up to December, but beyond that was just relying on the SAGE information. Nevertheless, he had sufficient information to know that the company's ability to pay at that level would have been in severe doubt and any references geared around the payment of dividends should have highlighted the position with regard to those reserves. This was particularly so since he had prepared the 2009 accounts and knew they had an adverse reserves position brought forward.

68. The Tribunal accepted that the failure to take account of negative reserves in calculating dividends amounted to incompetency or inefficiency. Again viewed alone these errors were not so incompetent or inefficient as to bring discredit, but viewed together with the other errors found above admit they were of such quality as to bring discredit to the defendant, the institute or the profession of accountancy.

69. The Tribunal concluded with regard to complaint 1 that, other than with regard to particulars (c)(ii), cumulatively the heads of complaint were such as to bring discredit and that there had been a breach of Disciplinary Bye-law 4(1)(b).

Complaint 2

70. The defendant admitted this complaint. Mr Bennett explained that whilst prepared by staff, he should have checked the accountant's certificate more thoroughly before sending it out of the office. His failure to do so was, in the opinion of the Tribunal, incompetency and inefficiency such as to bring discredit.

Complaint 3

71. This complaint was not upheld.

72. The Tribunal was doubtful as to whether the IC had proven that Mrs 'B' had received the salary given that it had been credited to the Directors Loan Account at some point, but had not been clear as to when. That said, its reason for not upholding this complaint was that this had not led to any discredit. It was clear he had a direct instruction from the client to change the figures in this regard. It was technically possible to make a prior year adjustment, given the accounts had not yet been prepared for 'D' Limited, and tell HMRC subsequently. That this had not happened had been a result of 'D' Limited ceasing to trade such that no accounts for that year were made up.

73. In the circumstances, the Tribunal did not consider that Mr Bennett's actions in this regard would bring discredit.

Matters relevant to sentencing

74. There were no previous disciplinary matters recorded against Mr Bennett.

75. Mr Cope submitted that both of the complaints that were proved were of some antiquity and that the length of time it had taken to bring these matters to a hearing had taken a toll on Mr Bennett. Mr Bennett apologised for his failings and had taken steps in his practice to ensure they would not be repeated. The Tribunal also took into account the submissions Mr Cope made regarding Mr Bennett's personal and financial circumstances. Mr Bennett had been a member of the ICAEW for 19 years and Mr Cope submitted that it was unlikely he would be the subject of any further complaints to the Institute.

76. The Tribunal had regard to ICAEW's *Guidance on Sanctions*. The Tribunal was of the view it was appropriate to have regard to the Guidance which was current at the date the hearing commenced in April 2018. The Tribunal considered that the conduct in question came under the section in the Guidance on 'General Accountancy Failings'. The issue for the Tribunal was whether the failings in question should be considered serious, in which case the starting

point was a severe reprimand, or less serious, in which case the starting point was a reprimand. In either situation, the Guidance indicated it would be appropriate to additionally impose a financial penalty.

77. Third parties should be able to have confidence in information provided by accountants on behalf of their clients. Making multiple errors is on the face of it a serious departure from acceptable standards. In the Tribunal's view, it was an aggravating factor that Mr Bennett had the relevant information available to him to provide the correct figures but, for whatever reason, failed to check it.

78. However, the Tribunal did not consider that the conduct in this case should be regarded as being at the upper end of the scale. The figures in question were relatively small. The Tribunal felt it was appropriate to mitigate the sanction in light of Mr Bennett's long and otherwise unblemished record as a member of the Institute and the length of time that had elapsed since the events in question.

79. In the Tribunal's view the appropriate and proportionate sanction was to reprimand Mr Bennett and to impose a fine of £3,000.

80. The Tribunal recommended that if Mr Bennett's firm has not been subject to a Practice Assurance Review in the last 12 months the Institute should consider scheduling an early compliance visit.

81. The IC applied for costs in the sum of £15,582, though Mrs Tozar accepted it would be within the Tribunal's discretion to adjust this figure to reflect the fact that Complaint 3 was found not proven.

82. Mr Cope submitted that the costs of the investigation, which had been commenced nearly five years ago, were excessive. A large number of different individuals had been involved in the investigation and preparation of the case and Mr Cope submitted that there must inevitably be an element of duplication in the work done by them.

83. Mr Cope submitted that 8.5 hours for 'report writing' and a charge of £3,425.50 for file reviews were excessive. He noted that the complainant had originally made a large number of complaints. Five of those had been preferred by the IC in April 2017 but that had subsequently been reduced to the three complaints that were considered by the Tribunal, of which one was found not proven. Therefore, time had clearly been spent investigating complaints which had not been substantiated.

84. The Tribunal accepted there was force in these points. They principally related to the investigation costs, which amounted to £6,500 of the total claim, and which the Tribunal accepted was too high. It also accepted that some reduction should be made in light of the fact Complaint 3 was found not proven.

85. Taking all factors into account, the Tribunal considered the appropriate figure for costs was £10,000.

Sentencing order

86. The Tribunal reprimanded Mr Bennett and fined him £3,000.

87. The Tribunal ordered the defendant to pay costs of £10,000.

Decision on publicity

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

Non Accountant Chairman	Ms Mary Kelly
Accountant Member	Mr Michael Barton FCA
Non Accountant Member	Ms Martha Maher
Legal Assessor	Ms Melanie Carter (on 10th April 2018), Mr Andrew Granville Stafford (on 17th July 2018)

016235

INVESTIGATION COMMITTEE CONSENT ORDERS

3. Michael J Dodden & Co

Consent order made on 13 September 2018

With the agreement of Michael J Dodden & Co of 34 North Street, Bridgwater, TA6 3YD the Investigation Committee made an order that the firm be severely reprimanded, fined £6,000 and pay costs of £1,443 with respect to a complaint that:

1. Between 21 May 2010 and 22 March 2017 Michael J Dodden & Co failed to comply with regulation 7 of the Money Laundering Regulation 2007 as the firm failed to ensure that they applied customer due diligence measures on all clients.

2. Between 21 May 2010 and 22 March 2017 Michael J Dodden & Co failed to comply with regulation 8 of the Money Laundering Regulations 2007 as the firm failed to conduct ongoing monitoring of the relationship they had with all clients.

041055

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4. Mr Iqbal Gulam Hussein FCA

Consent order made on 13 September 2018

With the agreement of Mr Iqbal Gulam Hussein of Dundee, United Kingdom, the Investigation Committee made an order that Mr Iqbal Gulam Hussein be reprimanded, fined £1,000 and pay costs of £1,004 with respect to a complaint that:

Mr Iqbal Gulam Hussein FCA, following a QAD visit on 25 February 2008, confirmed on behalf of his firm, in respect of obtaining registration under the Data Protection Act: 'Will apply for registration' but at a subsequent QAD desktop review carried out on 9 June 2015, it was found that this assurance had not been complied with.

034683

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5. Mr Nicholas David Gore ACA

Consent order made on 13 September 2018

With the agreement of Mr Nicholas David Gore of Shepton Mallet, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £5,000 and pay costs of £1,498 with respect to a complaint that:

Between 28 November 2003 and 14 August 2017 Mr Nicholas Gore ACA, engaged in public practice without holding a practising certificate contrary to Principal Bye-law 51a.

036327

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6. Hatfield & John Ltd

Consent order made on 13 September 2018

With the agreement of Hatfield & John Ltd of 1 North Road, Aberaeron, Dyfed, SA46 0JD, the Investigation Committee made an order that the firm be reprimanded, fined £1,000 and pay costs of £1,230 with respect to a complaint that:

Hatfield & John Ltd, following a QAD visit on 1 September 2008, confirmed that:

'We have downloaded Clients due diligence review forms and will arrange for these to be completed as assignments are conducted'

but at a subsequent QAD cyclical visit conducted on 11 April 2016 it was found this matter had not been addressed.

037188

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7. Mr Misdaq Husain Zaidi FCA

Consent order made on 13 September 2018

With the agreement of Mr Misdaq Husain Zaidi of London, United Kingdom the Investigation Committee made an order that he be severely reprimanded, fined £6,350 and pay costs of £2,805 with respect to a complaint that:

1. Mr Misdaq Zaidi FCA failed to obtain and submit to ICAEW the results of external hot file reviews within one month of their completion in breach of a condition imposed by the Audit Registration Committee, set out in a letter dated 9 March 2015, in respect of the following five audit reports issued by his firm, Zaidi & Co:

Company	Year end	Date of audit report
'A' Limited	31 October 2014	7 August 2015
'B'	31 March 2015	7 January 2016
'C' Limited	31 March 2015	29 February 2016
'E'	30 September 2015	10 March 2016
'D' Limited	30 November 2015	10 March 2016

2. On 29 February 2016, Mr Misdaq Zaidi FCA signed an audit report on the amended abbreviated accounts of 'C' Limited for the year ended 31 March 2015 with Companies House when those accounts did not comply with the requirements of paragraph 4 of The Companies (Revision of Defective Accounts and Reports) Regulations 2008".

035089

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8. Mr Timothy John Le Cornu ACA

Consent order made on 13 September 2018

With the agreement of Mr Timothy John Le Cornu of Guernsey, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £1,000 and pay costs of £1,317 with respect to a complaint that:

Between 3 May 2013 and 30 January 2018 Mr Timothy Le Cornu ACA has engaged in public practice without holding a practising certificate contrary to Principal Bye-law 51a.

033456

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9. Mr Michael Logan Rutt FCA

Consent order made on 13 September 2018

With the agreement of Mr Michael Logan Rutt of High Wycombe, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £1,150 and pay costs of £2,086 with respect to a complaint that:

1. Between 30 April 2014 and 1 April 2017, Mr Michael Rutt FCA failed to comply with Regulation 6 governing the use of the description 'Chartered Accountants', as his firm, Business Development Support Ltd, described itself as a firm of Chartered Accountants when not eligible to do so because two directors were not members or affiliate members of ICAEW.

2. Between 15 December 2007 and 1 January 2012, Mr Michael Rutt FCA failed to comply with the Money Laundering Regulations 2007, because his firm was not supervised by an appropriate anti-money laundering supervisory authority".

038968

INVESTIGATION COMMITTEE FIXED PENALTY ORDERS

10. Mr Richard John Wilkinson FCA

Penalty order made on 17 September 2018

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

With the agreement of Mr Richard John Wilkinson FCA, the Investigation Committee ordered that Mr Richard John Wilkinson, of Lingfield, United Kingdom be reprimanded, and a fixed penalty of £700 representing a financial penalty of £1,000 to which a discount of 30% has been applied with respect to a complaint that:

> Between 1 January 2008 and 20 November 2017, Mr Richard John Wilkinson FCA engaged in public practice, without holding a practising certificate contrary to Principal Bye-Law 51a.

041079

AUDIT REGISTRATION COMMITTEE

ORDER – 15 AUGUST 2018

11. Publicity Statement

Feltons (Bham) Limited, 8 Sovereign Court, 8 Graham Street, Birmingham, B1 3JR, has agreed to pay a regulatory penalty of £943, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.03b and 2.11 for the failure to ensure a majority of the firm's voting rights were held by audit qualified individuals or registered auditors and for the firm's failure to notify ICAEW within 10 business days of a change in structure.

044467

ORDER – 15 AUGUST 2018

12. Publicity statement

G P Boyle & Co Ltd, Old Fire Station, Cecil Street, Newry, County Down, BT35 6AU, has agreed to pay a regulatory penalty totalling £3,613.50 which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 2.03a and 6.06 in that the firm failed to ensure that a director held audit affiliate status since November 2015 and for incorrectly completing its 2016 and 2017 annual returns.

044140

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13. Publicity Statement

H Miller Limited of Pilgrim House, Packhorse Road, Gerrards Cross, Buckinghamshire, SL9 7QE, has agreed to pay a regulatory penalty of £500, which was decided by the Probate Committee, for failure to provide diversity data, in accordance with Regulation 2.7(s) of the Probate Regulations and submitting the data after the deadline.

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