



# *Disciplinary Orders and Regulatory Decisions*

**DATE PUBLISHED: 2 OCTOBER 2019**

## **Disciplinary orders**

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# DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. **Mr Robert John Bygrave ACA** of  
Flitwick, United Kingdom

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 25 June 2019**

**Type of Member** Member

## **Terms of complaint**

1. Between 4 July 2013 and 23 September 2013 Mr Robert Bygrave ACA failed to exercise due skill, care and diligence in managing the business of 'B' Limited for which he was responsible as CF1 Director (AR) at 'A' Limited.

Mr Robert John Bygrave is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a.

Disciplinary Bye-law 4.1a states:

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

## **Hearing date**

25 June 2019

## **Previous hearing date**

None

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

**Complaint found proved** Yes, on admission

**All heads of complaint proved** Yes, on admission

**Sentencing order** Reprimand

## **Procedural matters and findings**

**Parties present** Robert John Bygrave was present.

**Represented** Mr Bygrave was represented by Mr Ben Hubble QC. The Investigation Committee (IC) was represented by Miss Jessica Sutherland-Mack.

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

**Decision on service** In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service.

**Documents considered by the tribunal** The tribunal considered the documents contained in the IC's bundle together with written submissions from Mr Bygrave and his Regulation 13 answers.

### **The IC's Case**

1. The Respondent works in the insurance sector, which is regulated by the Financial Conduct Authority.
2. At all material times, the Defendant was the Head of Finance at a group of companies including 'A' Ltd and 'B' Limited.
3. In the period 4 July 2013 to 23 September 2013, the Defendant was a CF Director of 'A' Ltd, which had overall responsibility for 'B' Limited.
4. 'B' Limited was a general managing agent (GMA) for a number of insurers including an insurance company called 'C'. 'B' Limited issued insurance policies for solicitors' firms for the policy year 1 October 2012 to 30 September 2013. As such, 'B' Limited received £13.3m of solicitors' professional indemnity premiums.
5. Those premiums should have been paid to 'C', however, they were not. In the period between July 2012 and March 2013 (before the Defendant was approved to perform a controlled function (CF)), the Respondent paid £9.8m to third parties on the instruction of Mr 'D' who owned and controlled the group of companies in question. Mr 'D' represented to the Respondent that the premiums were ultimately due to 'E' Limited, an unrated insurance company (also owned by Mr 'D') and registered in the Union of Comoros, Africa which provided reinsurance to 'C'. Moreover, Mr 'D' said, 'E' Limited loaned these premiums to 'B' Limited for reinvestment within the group.
6. The Respondent failed to take reasonable steps to inform himself whether these premiums, received by 'B' Limited in the first instance, were subject to a valid risk transfer agreement. If they were, they would not be classified as client money and would not have to be segregated in accordance with the Financial Conduct Authorities Client Assets Sourcebook (CASS).
7. The Respondent had been told that there was a valid risk transfer agreement, but did not check for himself that there was one. He relied on what Mr 'D' told him. Thus, he did not treat the premiums as client money and did not segregate them.
8. In fact, what he was told was incorrect. There was no valid risk transfer agreement and the premiums were client money. The Respondent ought to have put the premiums into a designated client account and paid them to 'C' which was providing the insurance to the insured solicitors. He did not, and failed to give this client money the protection it required. This, in turn, exposed the insured firms to significant risk because they might not have been adequately covered.
9. In due course, 'E' Limited failed to provide enough money to 'C' to cover its reinsurance liabilities and 'C' was placed into liquidation. This resulted in an estimated liability of £13.8m for the Financial Services Compensation Scheme.
10. The Respondent was disciplined by the Financial Conduct Authority which found, amongst other things, that he lacked understanding about the arrangements which were in place. He failed to take steps to satisfy himself as to the financial position of 'B' Limited and the transactions which had occurred and he continued to rely on what Mr 'D' told him when he should not have done. The actions described above were performed before the Respondent was appointed CF1 (Director (AR)) at 'A' Ltd; however, his lack of understanding and failings remained outstanding when he was so appointed and even then, he failed to take adequate steps to deal with them.

11. The FCA found that the Respondent failed to exercise due skill, care and diligence in managing the business of 'B' Limited for which he was responsible in his role as CF1 (Director (AR)) at 'A' Ltd, which had responsibility for 'B' Limited.
12. By a Final Notice dated 1 February 2016, the FCA imposed a fine on the Respondent of £37,400 and prohibited him from performing any significant influence function in relation to regulated activities carried on or by any authorised or exempt persons or exempt professional firm. The FCA stated that the fine would have been for £53,400 had the defendant not settled with the FCA at an early stage.
13. The ICAEW considers the Respondent's conduct described above is a breach of Disciplinary Bye-law (DBL) 4.1(a).

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

14. There were no issues of fact or law to determine because the complaint was admitted.
15. The tribunal found the complaint proved on admission.

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

16. The Respondent was placed into a position of considerable professional responsibility in respect of a large sum of money. The way in which that money was treated by him had far reaching potential consequences for policyholders as well as for 'B' Limited and 'C'. The decisions to rely on what Mr 'D' had said, in contrast to checking the position for himself in relation to the placement of monies and the systems and agreements in place and exercising independent professional judgment, had its origins before the Respondent was appointed CF1 Director at 'A' Ltd. The lack of skill, care and diligence persisted after that role was assumed.
17. The IC has, in effect (and quite properly), adopted the findings of fact of the FCA, and relied on its decisions and sanction when deciding whether or not the Respondent had breached the DBL 4.1(a).
18. This is a serious matter. The lack of skill, care and diligence was serious and sustained failure over a long period of time. It is important to note, in fairness, that it is not alleged that the Respondent was dishonest or lacked professional integrity.

### **Matters relevant to sentencing**

19. The Tribunal considered the *Guidance on Sanction* dated 1 April 2019 and saw no reason to depart from that. The relevant parts of the Guidance were drawn to the tribunal's attention by the IC's representative and this was not in issue.
20. There was persuasive mitigation in this case, helpfully explained by Mr Hubble. There was no attempt to deny the seriousness of what happened, nor to persuade the tribunal that it was not as serious as the FCA had described. There were four substantial mitigating factors. In summary: (i) the Respondent stepped into an existing commercial system when he took on his roles. While there is no shying away from his failings, he did not invent the situation he was in and the systems which gave rise to them and his misconduct was not deliberate; (ii) there was demonstrable and real insight by the Respondent into his actions. He has not run away from this situation, but has taken active, remedial and professional steps to improve the situation (that occurred several years ago with no repetition). He has obtained glowing testimonials from others who are aware of what happened as a result; (iii) the Respondent was mortified by what happened, apologised to the profession unconditionally, and has co-operated with the ICAEW in the investigation of this matter and with the FCA; (iv) the Respondent had already been punished by the FCA, which is a factor recognised in the ICAEW's own *Guidance on Sanction* at page 10.

21. The Tribunal accepted this mitigation, and was conscious of the risk of meting out punishment twice and thus acting disproportionately and unfairly. The mitigation in this case reduced the possible sanction from a severe reprimand to a reprimand, and the substantial fine imposed by the FCA obviated the need for the ICAEW to impose a second one, which would have served no sensible purpose.

### **Sentencing Order**

Reprimand

Costs in the sum of £7,500

### **Decision on publicity**

Publication with name.

**Non Accountant Chair**  
**Accountant Member**  
**Non Accountant Member**

Mr Ron Whitfield  
Mr Martin Ward FCA  
Mr Nigel Dodds

**Legal Assessor**

Mr Dominic Spenser Underhill

**032331**

**2. Mr Kent Ning Louis Leung ACA of  
Hong Kong Sar**

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 2 July 2019**

**Type of Member** Member

**Terms of complaint**

Mr Kent Ning Louis Leung ACA, failed to comply with paragraphs 290.4 and 290.6 of the Hong Kong Code for Professional Ethics as he signed the audit report for 'A' Ltd for the year ended 31 December 2010 when he was not sufficiently independent as he acted as the Chief Financial Officer of 'A' Ltd during the year.

Mr Kent Ning Louis Leung 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, the Institute or the profession of accountancy'.

<b>Hearing date</b>	02 July 2019
<b>Previous hearing date(s)</b>	None
<b>Pre-hearing review or final hearing</b>	Final Hearing
<b>Complaint found proved</b>	Yes
<b>All heads of complaint proven</b>	Yes
<b>Sentencing order</b>	a) Severe Reprimand b) Costs of £5762

**Procedural matters and findings**

<b>Parties present</b>	Investigation Committee
<b>Represented</b>	Mrs Silpa Tozar represented the IC
<b>Hearing in public or private</b>	The hearing was in public
<b>Documents considered by the tribunal</b>	The Tribunal considered the documents contained in the Investigation Committee's (IC's) bundle.
<b>Decision on service</b>	See below

## Findings on preliminary matters

The Tribunal decided that the Respondent had been properly served by reason of service on his registered address. On 1 May 2019, the papers were posted to the Respondent's registered address and also a second address obtained from the Hong Kong Institute of Certified Public Accountants (HKICPA). They were also sent to two email addresses from which he had corresponded with the ICAEW. The hard copy papers were returned to sender and there were bounceback messages from the email addresses. Mindful however that it is the responsibility of members to update their contact details and that he had previously engaged in the investigation by the Institute, the Tribunal concluded that it was appropriate to rely upon Principal Bye-law 1.6 and regulation 22 of the Disciplinary Bye-laws as to service and proceeding in the absence of the Respondent. In this latter regard the Tribunal took into account that he resided in Hong Kong so it was not wholly surprising that he might have decided not to attend. He had been aware that the Institute were considering disciplinary proceedings against him and indeed had provided representations on a possible complaint. There had been no application at any time for any pause in the investigation or more specifically for an adjournment. There was no indication therefore that he would want to ask for an adjournment or how long one would be needed in order for him to attend. It was in the public interest for disciplinary matters such as these to proceed in a timely fashion balancing the need to protect the public and also the legitimate interests of the member concerned. Whilst the Tribunal would only proceed in rare circumstances in the absence of the Respondent, given the above considerations it concluded it was appropriate to do so on this occasion.

A further preliminary issue taken into account in the above decisions to go ahead in the Respondent's absence and also more generally was whether there was any question with regard to abuse of power, *res iudicata* and, had this been a criminal set of proceedings, double jeopardy. The Tribunal concluded that these issues did not apply here given that, as explained by the IC's representative, the alleged disrepute if the Tribunal found the particulars set out in the complaint proven (which related to Hong Kong auditing standards, as UK ones did not apply), was as to the fact of the disciplinary finding by the HKICPA. As such there could not, if found proven on this basis, be any overlap.

## Background

1. The Respondent is an ICAEW member and is also a member of ACCA and the HKICPA. The Respondent is a former director and shareholder of 'B' Limited. The firm provided audit and accountancy services in Hong Kong. ICAEW received a letter dated 17 August 2015 from HKICPA enclosing a press release in relation to an Order made by their Disciplinary Committee in relation to the Respondent.
2. This notification disclosed that the Disciplinary Committee of HKICPA found that the Respondent had "failed or neglected to observe, maintain or otherwise apply paragraphs 290.4 and 290.6 of the [Hong Kong] Code of Ethics for Professional Accountants".
3. Paragraph 290.4 of the Hong Kong Code of Ethics for Professional Accountants states:

*"In the case of audit engagements, it is in the public interest and, therefore, required by this Code of Ethics, that members of audit teams, firms and network firms shall be independent of audit clients"*
4. Paragraph 290.6 of the Hong Kong Code of Ethics for Professional Accountants states:

*"Independence comprises:*

...

*Independence in Appearance*

*The avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances, that a firm's, or a member of the audit team's integrity, objectivity or professional scepticism has been compromised"*
5. The Disciplinary Committee of HKICPA found that *"the Respondent's appointment as CFO of 'C' was not routine/mechanical or administrative in nature. The Respondent held a position of responsibility and was involved in the management and financial control of the 'C'"*.
6. The Disciplinary Committee of HKICPA went on to say "as the engagement director of 'B' Limited who signed off the Audit Report, the Respondent should be independent of 'A' Ltd".
7. The HKICPA ordered that:
  - (a) The practising certificate issued to the Respondent in 2015 be cancelled
  - (b) A practising certificate shall not be issued to the Respondent for the year 2016
  - (c) The Respondent pay a penalty of HK\$100,000.00
  - (d) The Respondent pay the costs and expenses in the sum of HK\$100,000.00
8. At the time of this investigation, HK\$100,000.00 equated to approximately £10,200.

## Issues of fact

9. In a letter dated 29 August 2016 from the Respondent to ICAEW, the Respondent provided copies of the evidence referred to in the HKICPA proceedings, together with his complaint against the registrar of HKICPA. The evidence provided contained some documents in Mandarin and the relevant documents have been translated into English. The evidence provided discloses the following:
10. The Respondent was appointed CFO of the 'C' on 12 January 2010. 'C' issued an internal announcement on this date confirming this appointment and stating that the Respondent, as CFO, was responsible for the financial management of 'C' and would visit store managers and chefs from time to time to check the operation status of the store and that all of the store managers and chefs would need to do their best to assist the Respondent.
11. On 12 January 2010, the Respondent attended a management meeting for 'C'. He was introduced by the Chairman as the new CFO of 'C' and that he was responsible for working on the company's revenue and expenditure, especially on cutting costs.
12. On 5 May 2010, the Respondent attended a 'C' board meeting. He is referred to as 'CFO' in the minutes of that meeting. In that meeting, the Board resolved to hire an accountant and the Respondent was tasked with referring a candidate to fill the position for 'C'. The Board also resolved to discuss with the Respondent the feasibility of changing the business of one shop.
13. On 5 October 2010, the Respondent sent an email to the Chairman of 'C', Mr 'D', and the Vice Chairman, Mr 'E', in which he stated:

*"In September meeting. I have given you the cashflow forecast for September to December 2010 which indicated that there will be a shortage of cash of around 10 million by end of year. Now that we have obtained loan from 'F' of 7 million, there will still be shortage of 3 million."*
14. In an email dated 19 November 2010 from the Respondent to Mr 'E', the Respondent expressed concern over his handling of the financial situation and provided his view of the operations of 'C' in respect of food price increment and personnel management.
15. The Respondent stated in that email that unless there was a major breakthrough in management and business, the company had a great chance of failure.
16. On 30 December 2010, the Respondent attended a 'C' board meeting. It was agreed at that meeting that the Respondent would follow up on the registration of two brands in China. It was also agreed that the Respondent would complete the warehouse operational cost calculation and discuss the same directly with other Board members.
17. On 6 January 2011, the Respondent sent an email to Mr 'D' enclosing the cashflow statement for January 2011. He states:

*"There will be a shortage of 5.2 million for Jan and there is also 5.2 million in arrear that has not been included in the above figure.....Please note that the situation is very critical now and it can force the company to collapse at any moment"*
18. In a letter dated 8 August 2012 from the Respondent to HKICPA, the Respondent states that he officially stopped working for 'C' in February 2011, but thereafter he still assisted in reviewing 'C's operation and gave advice without being remunerated.

19. The financial statements of 'A' Ltd were audited by 'B' Limited and the Respondent signed the Independent Auditors Report for the year ended 31 December 2010.
20. In an email dated 20 February 2017 from the Respondent to ICAEW, he states that he "was the signing partner for the 'C' for 2008, 09 and 10 and thereafter, we were removed by 'C'".
21. Accordingly, the Respondent signed the audit report for 'A' Ltd for year ended 31 December 2010, which was a period when he acted as CFO and undertook the above responsibilities as part of his role.
22. The Investigation Committee submitted that the Respondent should not have been performing those tasks (which included advising on financial and cashflow matters as well as operational strategies of 'C') because of the threat to his independence as auditor.
23. The Investigation Committee submitted that the Respondent should have recognised that in providing services to 'C' there was a threat to his and his firm's audit independence, and therefore should have resigned as auditor once he started to provide such services.

### **HKICPA Proceedings**

24. In the letter dated 8 August 2012 from the Respondent to HKICPA, the Respondent explained that in late 2009, the managing director and vice chairman of 'A' Ltd, Mr 'E', approached him requesting assistance because 'C' was in a critical situation. The Respondent discussed the issues with Mr 'E' and agreed that he would go to the company offices three afternoons every week to help sort the matter out.
25. The Respondent states that there was no written agreement or contract because of their long term relationship (Mr 'E' had been a client of the firm for over 20 years). The Respondent also states that there was no limit on the scope of his work and, in order to let the Respondent carry on his work more effectively in front of 'A' Ltd staff, Mr 'E' put his photograph in 'C's organisational structure as CFO and printed a name card to that effect. The Respondent states that he did not ask for those things to be done.
26. The Respondent stated that he structured his work in three parts:
  - (a) Advisory and management support to the Board of directors
  - (b) Financial planning and control
  - (c) Operational
27. The Respondent explained that these works were carried out on a continual basis until February 2011. Thereafter, he still assisted in reviewing its operation and gave advice without being remunerated.
28. The Respondent provided copies of the invoices to 'C' for his work for the period January 2010 to February 2011 (HK\$20,000 per month), which totalled HK\$280,000 (at the time of investigation, this equated to £28,500). The invoices were invoiced by 'G' Limited. This was a company owned by the Respondent and another. The statement as at 9 May 2012 is for consultancy fees due to "Louis Leung".
29. In comparison, the financial statements for the year ended 31 December 2010 disclose there were audit fees of HK\$183,100 (at the time of investigation, this equated to £18,500). The Investigation Committee submitted that this was a threat to the audit independence of the Respondent and his firm.

30. The Tribunal considered the HKICPA Disciplinary Committee's order and reasons for their decision. This document sets out the Respondent's case in those proceedings. This can be summarised as follows:
- The Respondent denied he was the CFO of 'C'. He states "*CFO' was a mere title*".
  - "*The Respondent did not have any management power in the 'C'. He did not involve himself in preparing and/or exerting any influence in preparing financial records and/or financial statements for 'C'. He was a mere consultant*".
  - The Respondent was not a signatory of the bank accounts and did not approve expenses.
  - The Respondent's appointment as CFO ended in February 2011 and the 2010 audit started in June 2011.
31. The Disciplinary Committee for HKICPA rejected the Respondent's arguments on the basis that he did hold "*a position of responsibility and was involved in the management and financial control of the 'C'*".
32. They also found that as the engagement director of 'B' Limited who signed off the audit report of the 2010 financial statements of 'A' Ltd, he was required to be independent not just in fact, but in appearance as well.
33. The Disciplinary Committee found that the Respondent's role as CFO and his involvement in the group's operation, management/financial control was "*a fact and circumstance so significant that a reasonable and informed third party would be likely to conclude that his and his practice's objectivity and professional scepticism as the auditor had been compromised*".
34. They found that the Respondent served as CFO of the audit client during the period covered by the audit.

### **Respondent's Representations to ICAEW**

35. In a letter dated 4 January 2018 from the Respondent to ICAEW, the Respondent made the following representations:
- The Respondent states that "*he was really acting as the consultant and advisor to the group and had never been appointed the CFO*".
  - The Respondent points out that the "*announcement did not come from the Board*" and that the "*so called appointment was from a subsidiary company but not from the holding company. If there were a real appointment, should it not be from the holding company because it relates to authority and responsibility for 'C' and not only the subsidiary*".
  - He further states that the "*content of the announcement said that I was fully responsible for the financial management of 'C' but in fact I did not even have the authority to approve payment of expense*".

- The Respondent highlights that the announcement said he would visit the shops to review their operation. He states that the “*CFO is a senior management staff and can freely access to any shop when he so desired, why the announcement specifically mentioned this point*”. He goes on to say that the “*announcement served to seek the shop staff to co-operate so they gave me a title of CFO*”.
- He also states that he “*was never a staff of ‘C’ and had never received any remuneration from ‘C’*” and that “*all fees were received or accrued to ‘G’ Ltd where I was only representing the company to perform the service*”.
- The Respondent raises the question that “*if ‘C’ really engaged me as their CFO, how is it possible that they only issued the appointment notice but did not send me any written form of engagement letter to that effect*”.
- With one exception, the Respondent states that all of the other meeting minutes were extracted from his computer and were in draft only. The Respondent states that it is possible for these to have been altered and that HKICPA should not have used them in evidence before ascertaining their validity.

36. The Respondent lodged a complaint with the Ombudsman Office in Hong Kong against HKICPA regarding the handling of his case because he believes there has been a miscarriage of justice. The Ombudsman is not taking the Respondent’s complaint forward on the basis that they do not have jurisdiction over HKICPA.

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

37. The Tribunal found the complaint proven.

38. The Respondent fulfilled a role and undertook a number of responsibilities for the ‘C’ during the period ended 31 December 2010 as outlined above. Whilst the Respondent denies being appointed as CFO for ‘C’, the Tribunal noted the internal announcement and the meeting record evidence and were satisfied that the Respondent was performing the role of CFO. The tasks undertaken by the Respondent were such that he should not have signed the audit report for ‘A’ Ltd for the year ended 31 December 2010 because of the threat to his independence. By doing so, the Respondent breached the Hong Kong Code for Professional Ethics as reflected in the finding of breach by the HKICPA.

39. The Tribunal formed the view that the finding of breach and sanction by the Hong Kong Institute amounted to discredit against himself, the Institute and the profession. As such he was in breach of Disciplinary Bye-law 4(1)(a).

### **Matters relevant to sentencing and Sentencing Order**

40. The Tribunal had regard to its *Guidance on Sentencing*.

41. The Tribunal took into account that the Respondent did not have a prior disciplinary record.

42. The Tribunal also took into account the HKICPA sanctions and those of the ACCA which had already considered the matters. In light of these the Tribunal decided, acting proportionately, not to impose a fine. Nevertheless, as in its view the conduct underlying the finding of the HKICPA giving rise to the breaches, fell far below that expected of a chartered accountant, the Tribunal decided to impose a severe reprimand. He was further ordered to pay costs of £5,762.

**Decision on publicity**

43. Publicity with names.

**Non Accountant Chair**  
**Accountant Member**  
**Non Accountant Member**

Mr Ron Whitfield  
Mr Martin Ward FCA  
Mr Nigel Dodds

**Legal Assessor**

Ms Melanie Carter

**029662**

**3. Mr Mark Lomax ACA of Bolton, United Kingdom**

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 2 July 2019**

**Type of Member** Member

**Terms of complaint**

Mr Mark Lomax ACA failed to provide by 25 July 2018 the information, explanations and documents requested in a letter dated 9 July 2018 issued under Disciplinary Bye-law 13.

Mr Mark Lomax 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.

<b>Hearing date</b>	02 July 2019
<b>Previous hearing date(s)</b>	None
<b>Pre-hearing review or final hearing</b>	Final Hearing
<b>Complaint found proved</b>	Yes
<b>All heads of complaint proven</b>	Yes
<b>Sentencing order</b>	<b>a) Severe Reprimand b) £5,000 fine c) Order that the Respondent provide the information requested in the 9 July 2018 letter by the 31 August 2019 d) £1,171.67</b>

**Procedural matters and findings**

<b>Parties present</b>	The Investigation Committee (IC)
<b>Represented</b>	Mrs Silpa Tozar represented the IC
<b>Hearing in public or private</b>	The hearing was in public
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service.
<b>Documents considered by the tribunal</b>	The Tribunal considered the documents contained in the IC's bundle.

## Findings on preliminary matters

The Tribunal considered whether to proceed in the Respondent's absence. Service had been to his registered address and there had been no word from him requesting an adjournment. As he had not been in touch with the Institute for some considerable time, despite knowing that there was an investigation against him (and indeed seeking an extension for provision of the requested information at one point), the Tribunal considered it was appropriate to proceed in his absence.

## Issues of fact and law

### Background

1. A complaint had been made to the ICAEW against the Respondent. This alleged that the Respondent had:
  - Failed to amend the Corporation Tax return for Company A for the year ended 30 September 2015 to include the Research & Development tax credit claim.
  - Failed to prepare the Corporation Tax return for Company A for the year ended 30 September 2016 to include the Research & Development tax credit claim
  - From 28 June 2017 has failed to reply to the professional clearance and handover request from the new accountants for Company A and Company B.
2. The Complainant had engaged the Respondent to prepare and submit the Research & Development tax claim for his Company A. The necessary information was prepared by a third party and supplied to the Respondent on 10 May 2017. The Complainant chased the Respondent for a response on a number of occasions by telephone and by email as the tax refund was important to the company's cash flow. The Respondent did not reply and the Complainant appointed new accountants on 26 June 2017. The new accountants wrote to the Respondent for handover information but no response has been received.
3. The Professional Conduct Department's (the 'PCD') of the ICAEW attempted to investigate the complaint and contacted the Respondent as follows:

Date	From	Details
1 September 2017	Case Manager	Initial letter to begin investigation and explaining the complaints being investigated.
28 September 2017	Case Manager	Letter chasing the Respondent for a response to letter of 1 September.
16 November 2017	Case Manager	Letter chasing the Respondent again for a response to letter of 1 September.

3 January 2018	Case Manager	Letter chasing the Respondent for a response to letter of 1 September and explaining Disciplinary Bye-law 13.
25 January 2018	The Respondent	Email requesting an extension until 5 February 2018.
26 January 2018	Case Manager	Email agreeing to extension.
26 February 2018	Case Manager	Letter chasing the Respondent again for a response to letter of 1 September and explaining Disciplinary Bye-law 13.
9 July 2018	Head of Investigation	Letter containing formal request under Disciplinary Bye-law 13.

- There had been no further communication from the Respondent. No letters or emails sent to him have been returned undelivered.

### Conclusions

- The Tribunal found the complaint proven.
- PCD first wrote to the Respondent on 1 September 2017 such that this matter has been ongoing for some time. The Respondent's request for an extension to respond on 25 January 2018 demonstrates he had received correspondence sent to him by PCD.
- The Respondent had been required to explain why he failed to complete work he had agreed to undertake, respond to correspondence from his client and also to the request for professional clearance from the new accountants who were appointed to complete the claims that he had failed to submit. The underlying matters are potentially serious and require the Respondent to cooperate with the investigation process.
- The Respondent has failed to respond to a letter dated 9 July 2018 by 25 July 2018, requesting explanations and information with regards the complainant's allegations against him. This is contrary to Disciplinary Bye-law 13 and he is consequently in breach of Disciplinary Bye-law 4.1c.

### Matters relevant to sentencing

- The Tribunal was of the view that the Respondent had failed to cooperate with his regulator. The role of the ICAEW included the maintenance of professional standards and the protection of the public. It was not open to the Respondent to simply choose not to engage with the investigation against him. He had been given an extension to reply and nevertheless he had failed to comply with the Regulation 13 letter. The Tribunal took the further view that the matters under investigation were potentially serious.
- The Respondent had a previous disciplinary record but as this dated back to 2004, the tribunal did not take this into account. The Tribunal did however have regard to the fact that the Respondent was also, this same day but in a different case, found to be in breach of Disciplinary Bye-law 4(1)(c), again for failing to respond to another DBL 13 letter.

For that breach he had been given a severe reprimand, a fine of £5k, an order to provide the required information and an order to pay costs. That was an aggravating feature. Whilst he was facing two fines and costs orders on the same day, as he had not provided any information as to his means and these were unrelated matters, the Tribunal did not consider it necessary or proportionate to reduce the amounts imposed.

### **Sentencing Order**

11. The tribunal took into account its Guidance on Sentencing and imposed the following :
- (a) Severe Reprimand;
  - (b) £5k fine;
  - (c) Costs of £1,171.67;
  - (d) Order that the Respondent provide the information requested in the 9 July 2018 letter by the 31 August 2019.

### **Decision on publicity**

12. Publicity with names.

**Non Accountant Chair**  
**Accountant Member**  
**Non Accountant Member**

Mr Ron Whitfield  
Mr Martin Ward FCA  
Mr Nigel Dodds

**Legal Assessor**

Ms Melanie Carter

**045784**

**4. Mr Mark Lomax ACA of Bolton, United Kingdom**

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 2 July 2019**

**Type of Member** Member

**Terms of complaint**

Mr Mark Lomax ACA failed to provide by 3 August 2018 the information, explanations and documents requested in a letter dated 17 July 2018 issued under Disciplinary Bye-law 13.

Mr Mark Lomax is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.c

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.

<b>Hearing date</b>	02 July 2019
<b>Previous hearing date(s)</b>	None
<b>Pre-hearing review or final hearing</b>	Final Hearing
<b>Complaint found proved</b>	Yes
<b>All heads of complaint proven</b>	Yes
<b>Sentencing order</b>	<b>a) Severe Reprimand b) £5,000 fine c) Order that the Respondent provide the information that was requested in the 17 July 2018 letter by the 31 August 2019 d) Costs of £2,516.17</b>

**Procedural matters and findings**

<b>Parties present</b>	The Investigation Committee (IC)
<b>Represented</b>	Mrs Silpa Tozar represented the IC
<b>Hearing in public or private</b>	The hearing was in public
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service.
<b>Documents considered by the tribunal</b>	The Tribunal considered the documents contained in the IC's bundle.

## Findings on preliminary matters

The Tribunal considered whether to proceed in the Respondent's absence. Service had been to his registered address and there had been no word from him requesting an adjournment. He had been aware of a different investigation against him and been in touch in relation to that matter in January 2018. He had not been in touch with the Institute since then on either that or this investigation. In all the circumstances, the Tribunal considered it appropriate to proceed in his absence.

## Issues of fact and law

1. Complaints had been made by individuals to the ICAEW with regard to the Respondent that he:
  - 1.1.1. Failed to prepare and submit their personal Self-Assessment Tax Returns for the year ended 5 April 2016.
  - 1.1.2. Raised a fee note for the preparation and submission of their Self-Assessment Tax Returns for the year ended 5 April 2016 when the work has not been completed.
  - 1.1.3. Failed to respond to telephone calls made and email messages sent by the Complainants.
  - 1.1.4. Failed to supply handover information to the new accountant appointed by the Complainants when requested to do so.
2. The Complainants met with the Respondent in February 2016 and engaged him to prepare their Self-Assessment Tax Returns for the year ended 5 April 2016. The Complainants were unable to make contact with the Respondent for some time afterwards. After the Complainants made contact in November and the Respondent missed some pre-arranged appointments, the Respondent collected the necessary documents from the Complainants on 24 January 2017. The Complainants tried to contact the Respondent on several occasions before the filing deadline of 31 January 2017 as they had not received confirmation from him of their tax liabilities.
3. The Respondent visited the Complainants on 24 April 2017 to give them his fee note for the preparation of the 5 April 2016 tax returns and to inform them of their liabilities. The Complainants paid the tax liabilities and the fee note. In June 2017, HMRC issued penalty notices as the Tax Returns for 5 April 2016 for the Complainants had not been submitted. The Respondent assured the Complainants that it was a 'portal failure' with HMRC and he would provide them both with the submission receipts for their returns.
4. The Complainants made repeated attempts to contact the Respondent by telephone and email. The Respondent has not supplied the submission receipts and has not replied to their request for a refund of his fee and reimbursement of the HMRC penalties. When the Complainants notified the Respondent that they had appointed new accountants he did not respond and has not replied to requests from the new accountant for professional clearance or for handover information.

5. The Professional Conduct Department's (the 'PCD') of the ICAEW attempted to contact the Respondent as follows:

<b>Date</b>	<b>From</b>	<b>Details</b>
9 May 2018	Case Manager	Initial letter to begin investigation and explaining the complaints being investigated.
1 June 2018	Case Manager	Letter chasing The Respondent for a response to letter of 9 May.
26 June 2018	Case Manager	Letter chasing the Respondent for a response to letter of 9 May and explaining Disciplinary Bye-law 13.
17 July 2018	Head of Investigation	Letter and email containing formal request under Disciplinary Bye-law 13 as response had been received.

6. There has been no communication on this matter from the Respondent. No letters or emails have been returned undelivered.

7. The Respondent was required in the DBL 13 letter dated 17 July 2018 to provide items A to I for the following reasons:

Item A – The Respondent is required to explain why he accepted the engagement in February 2016 to prepare the Self- Assessment Tax Returns for the Complainants and then failed to respond to their communications until November 2016

Items B, C, D, E and F – The Respondent is required to explain why he advised the Complainants that he submitted the returns and would supply them with the submission receipts when HMRC has advised that the returns had not been submitted

Items G and H – The Respondent is required to explain why he failed to respond to their concerns regarding the HMRC penalty notices they received due to non-submission of their tax returns to HMRC

Item I – The Respondent is required to explain why he has failed to respond to the request for professional clearance and handover information from the Complainants' new accountant.

## **Conclusions**

8. The tribunal found the complaint proven.
9. The Respondent has failed to respond to a letter dated 17 July 2018 by 3 August 2018, requesting explanations and information with regards the Complainants' allegations against him. This is contrary to Disciplinary Bye-law 13 and consequently Disciplinary Bye-law 4.1c

## **Matters relevant to sentencing**

10. The tribunal was of the view that the Respondent had failed to cooperate with his regulator. The role of the ICAEW included the maintenance of professional standards and the protection of the public. It was not open to the Respondent to simply choose not to engage with the investigation against him. The Tribunal took the further view that the matters under investigation were potentially serious.
11. The Respondent had a previous disciplinary record but as this dated back to 2004, the Tribunal did not take this into account. The Tribunal did however have regard to the fact that the Respondent was also, this same day but in a different case, found to be in breach of Disciplinary Bye-law 4(1)(c), again for failing to respond to another DBL 13 letter. For that breach he had been given a severe reprimand, a fine of £5k, an order to provide the required information and an order to pay costs. That was an aggravating feature. It was also an aggravating feature in this case that the complainants were individuals. Whilst he was facing two fines and costs orders on the same day, as he had not provided any information as to his means and these were unrelated matters, the tribunal did not consider it necessary or proportionate to reduce the amounts imposed.

## **Sentencing Order**

12. The Tribunal took into account its Guidance on Sentencing and imposed the following:
  - (a) Severe Reprimand;
  - (b) £5k fine;
  - (c) Costs of £2,516.17;
  - (d) Order that the Respondent provide the information requested in the 17 July letter by the 31 August 2019.

## **Decision on publicity**

13. Publicity with names.

**Non Accountant Chair**  
**Accountant Member**  
**Non Accountant Member**

Mr Ron Whitfield  
Mr Martin Ward FCA  
Mr Nigel Dodds

**Legal Assessor**

Ms Melanie Carter

**045796**

5. Mr Dafydd Rhys Hopcyn-Kitchener ACA of Swansea, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 9 July 2019

Type of Member Member

Terms of complaints

1. On 3 December 2014, Mr D R Hopcyn-Kitchener ACA, acted contrary to section 150.2(b) of the Code of Ethics, in that he made disparaging references to the work of 'A', in a letter to Mr 'B' and an email to 'C' Limited, by stating the following:

*"A' – have they screwed up your accounts"*

*"In 2013, a HMRC inspector visited 'D' Limited in Blaengwynfi. He found that 'A' so-called 'accountants' had been negligent in preparing 'D's' VAT Returns.*

*They had been wrong for two years and 'D' now owes £25,000 in unpaid VAT."*

*"A' made a mess of 'D's' accounts. What have they done to **yours**?"*

*"Believe me, 'D' is the tip of the iceberg."*

*"Alternatively if you want a **real accountant**, I will be pleased to assist you"*

*"Who do you want working on your accounts? Dafydd Hopcyn-Kitchener ACA CTA or 'E' TWAT?"*

2. On 3 December 2014, Mr D R Hopcyn-Kitchener ACA, acted contrary to section 140.1 of the Code of Ethics, in that he disclosed confidential information regarding a client of 'A' by stating, *"In 2013, a HMRC inspector visited 'D' Limited in Blaengwynfi. He found that 'A' so-called 'accountants' had been negligent in preparing 'D's' VAT Returns. They had been wrong for two years and 'D' now owes £25,000 in unpaid VAT."* This information was disclosed in the following correspondence:

A letter sent to Mr 'B' and

An email sent to 'C' Limited.

3. Around June 2015 Mr D R Hopcyn-Kitchener ACA, sent his CV to a recruitment agent when applying for a job at his employers, 'F' which stated that he was a member of ICAEW when this was incorrect contrary to section 110 of the Code of Ethics.

Mr Dafydd Rhys Hopcyn-Kitchener is therefore liable to disciplinary action under Disciplinary Byelaw 4.1a.

'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:

- 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, the Institute or the profession of accountancy.

**Hearing date**

09 July 2019

**Previous hearing date(s)**

None

**Pre-hearing review or final hearing**

Final Hearing

**Complaint found proved**

Yes – on admission

**All heads of complaint proven**

Yes

**Sentencing order**

A severe reprimand in respect of each of the complaints, and an order for costs in the sum of £6,000 to be paid over a period of 24 months at the rate of £250 per month, the first payment to be on 1<sup>st</sup> September 2019.

**Parties present**

Dafydd Hopcyn-Kitchener (hereafter the Respondent) in person

**Represented**

Ms Vicky Morgan represented the Investigation Committee

**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 together with other information supplied by the Respondent.

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

1. The Respondent was admitted to membership of ICAEW on 1 September 2011. His membership ceased on 11 July 2014 due to non-payment of his annual subscription.

2. He applied for readmission to ICAEW membership during May 2016. At its meeting on 16 January 2017 the Fitness Committee approved the Respondent's application for readmission subject to confirmation that he would cooperate with an investigation they were referring to the Professional Conduct Department ('PCD'). The Respondent confirmed on 13 March 2017 that he would cooperate with the investigation. He was readmitted to membership effective 21 March 2017.
3. In summary form, Complaint 1 is about a letter and an email that was sent by the Respondent to two different clients of his former employers which contained disparaging references to their work. Complaint 2 alleges there was confidential information contained in that correspondence which should not have been disclosed. Complaint 3 concerns the Respondent depicting himself as a Chartered Accountant on his CV around June 2015 when he was not.
4. The Respondent started working for 'A' in February 2013. A meeting took place on 26 September 2013 with Mr 'E', purportedly to discuss concerns regarding the Respondent's performance. After this, his employment was terminated, the Respondent considering that he was wrongfully dismissed. He brought a civil claim for outstanding wages owed to him which was concluded by consent, and a judgment debt was obtained against Mr 'E' on 4 November 2014 to enforce payment of £1,664. The debt was settled on 10 June 2015.
5. It is clear that at the time of the Respondent's departure from his employers in September 2013, there was a fractious relationship between the firm and the Respondent. This continued with litigation that remained unresolved until June 2015. It is during this time period that the conduct which is the subject of the Complaints took place.
6. **Complaint 1.** On 3 December 2014 the Respondent sent a letter to Mr 'B' at 'G' Ltd and an email to 'C' Ltd which made disparaging comments about 'A'. It said:

*"In 2013, a HMRC inspector visited 'D' Limited in Blaengwynfi. He found that 'A' so-called 'accountants' had been negligent in preparing 'D's VAT Returns.*

*They had been wrong for two years and 'D' now owes £25,000 in unpaid VAT."*
7. The correspondence also made disparaging comments about 'A' and Mr 'E' in that it included the following statements:

*"A' – have they screwed up your accounts?"*

*"A' made a mess of 'D's accounts. What have they done to yours?"*

*"Believe me, 'D' is the tip of the iceberg."*

*"Alternatively if you want a real accountant, I will be pleased to assist you"*

*"Who do you want working on your accounts? Dafydd Hopcyn-Kitchener ACA CTA or 'E' TWAT?"*
8. Mr 'E' has provided the names of 10 clients, including the two examples above, that he is aware received the same correspondence from the Respondent. In response to PCD enquiries, the Respondent told PCD that he thinks that he sent the email or letter to between 10 and 20 clients of 'A'. However, he did not keep a copy or a record of to whom he sent them. He states he did not obtain any clients as a result of the communications.

9. The names and addresses of the clients to whom he sent the letters were obtained by the Respondent sending a client list to his personal email account about 25 September 2013 while working for 'A'. The Respondent accepts that he took this client list. On 'A' discovering this, they wrote to the Respondent and asked him to destroy this information. Subsequently, his actions were reported to the ICO by Mr 'E' and also to the police, for which he received a police caution. The Respondent's actions in having emailed this information are not the subject of a separate complaint before the Disciplinary Tribunal. However, it is relevant as to how the Respondent was able to send letters and emails 15 months after his departure from his employer.
10. **Complaint 2** It is contended that the letter and email disclosed confidential information about a third client of 'A'. The information in the letter and email concerning the fact of the HMRC inspector visit to 'D' Limited and the findings was confidential and something that the Respondent would only have known by virtue of his employment.
11. The Respondent explained that he considered the information regarding 'D' Limited to be in the public domain as their accounts were downloadable from the Mutuels Public Register for a £12 fee and they showed that the taxation and social security due had shot up from £3,682 to £28,155. However, it is the IC's case that while the accounts show there has been an increase in the creditor balance for taxation and social security there is no detail about what this increase related to or the reason for it. The Respondent could only have known the explanation through his employment.
12. **Complaint 3** The Respondent's ICAEW membership ceased on 11 July 2014 due to non-payment of his annual subscription. ICAEW became aware that the Respondent was using the description ACA in communications, and the mis-descriptions team contacted him by letter to his registered address on 8 December 2014, 17 February and 8 April 2015. A copy of the original letter was sent again by email on 29 April 2015. He responded on the same day to say he had not been using the description and requesting a copy of the email in question. On 5 May 2015 ICAEW provided him with a redacted copy of the email.
13. On 5 August 2016 the Respondent confirmed that he had ceased to use the description following ICAEW's email on 5 May 2015 and explained that he had used the description carelessly. However, within the CV he provided with his application for readmission on 3 May 2016 he was also incorrectly describing himself as an ICAEW Chartered Accountant. The Respondent confirmed he sent this CV to perhaps 5 to 10 potential employers and recruitment agencies.
14. In a telephone conversation with PCD concerning his application for re-admission, the Respondent said that his then current employers, 'F', were not aware that he was not currently an ICAEW member and he may lose his job if they found out. The Respondent agreed to discuss this with his employer. Once he had told 'F' he provided ICAEW with their contact details. He confirmed he had explained the matter to his current employer on 25 July 2016.
15. Mrs 'H' ACA, on behalf of his employer 'F', provided a reference on 9 September 2016. Mrs 'H' said she was not aware that the Respondent's ICAEW membership had ceased. Mrs 'H' clarified that the Respondent had not told them he was a member of ICAEW but the CV from the recruitment agency stated he was ICAEW. As the role within their organisation was in the tax department his membership of CTA was important to them. The Respondent had not advised them that his ICAEW membership had lapsed; they became aware of this when they received the request for a reference and subsequently had conversations with him.

16. The Respondent has also admitted that he did not inform a previous employer, an accountancy and tax consultancy business called 'I', where he was employed between July 2014 to March 2015 as a senior accountant, that his ICAEW membership had lapsed. He explained they never had discussions about his membership status.
17. The Respondent explained that whilst out of membership he had checked the process for readmission and obtained a copy of the readmission form which in the referees section says;
- "You need not complete this section if your membership lapsed due to non payment of the annual subscription or you resigned your membership AND this occurred within the last four years."*
- He explained he misread this and thought it meant you did not have to disclose a lapsed membership. He thought this was to save the embarrassment of members such as himself whose membership lapsed for financial reasons.
18. It is the IC's case that the Respondent's behaviour as encapsulated in the complaints, shows ill-judgment and unprofessional behaviour, such that it brings discredit on himself, the Institute and the profession of accountancy pursuant to Disciplinary Bye-law 4.1a.

## **The Defence**

19. The Respondent has made admissions. He accepts he made a huge and inexcusable mistake and is ashamed of his actions. He puts forward that he had sent the emails as he was struggling with debt and was desperate. He was being hounded by debt collectors and was struggling to make ends meet, and had to bring proceedings to recover unpaid wages. Because of his dismissal, he was unemployed at first, and then could only find short-term temporary low paid jobs. Only in approximately April 2014 did he secure an accountancy based temporary job. The Respondent says he did not gain any clients from the correspondence he sent.
20. The Respondent maintains that the content of the email and letter were truthful and that the accounts filed for 'D' at the Financial Services Authority mutual public register support his view that the information provided about the client in the emails was in the public domain as they show an increase in the taxation and social security of approximately £25,000. He explained he thought this was strong evidence to back up his claim. He does accept that terms in which he put his email were offensive. He explained that Mr 'E' drove him to his *'wit's end'* and he was *'not in [his] right mind'* when he sent the communications.
21. In respect of the period during which his membership had lapsed, he intended to apply for readmission as soon as he won any work. The Respondent has explained in relation to Complaint 3 that he was very embarrassed that he could not afford the ICAEW membership fee and regrets not discussing this with his employers at the time. Difficult family circumstances also impacted on the Respondent. [Private]. Furthermore, due to his financial situation, he moved back home and became increasingly responsible for his Mother.

## **Issues of fact and law**

22. Having regard to the evidence and to the admissions made by the Respondent, both in writing and at the hearing, the Tribunal has to consider whether or not each of the complaints has been proved to the requisite standard.

## Conclusions and reasons for decision

23. Having reviewed the evidence, and having heard submissions from the IC and from the Respondent, the Tribunal is satisfied that each of the complaints has indeed been proved on the Respondent's admission.

## Matters relevant to sentencing

24. The Respondent has not been the subject of disciplinary proceedings prior to these complaints being made. The Tribunal considered the Guidance on Sanctions, and came to its conclusions on each complaint separately, although reviewed for totality. An overarching factor has been the amount of time, some two years, for the complaints to be investigated and presented at Tribunal. Complaint 1. This series of communications, while unpleasant and offensive, were not at the top end of the scale. While they were written in a professional capacity, there was no repetition, and no clients were obtained. The context for the sending of the communications was the bitter falling out between the Respondent and his employer, leading to the pursuit of a claim for unpaid wages. The Respondent was suffering from very unhappy domestic circumstances, and had severe financial difficulties.

He has made a full admission, and expressed remorse and shame. In those circumstances, we consider a severe reprimand with no financial penalty to be a fair and proportionate sanction. Complaint 2. While the confidential information was passed to third parties, in our view it is far from being the most serious breach of confidentiality, and in our judgment comes under the "Less Serious" category. In terms of aggravating and mitigating factors, those remain the same as those under Complaint 1. Again, full admissions were made, and remorse was expressed. In those circumstances, we consider a severe reprimand with no financial penalty to be a fair and proportionate sanction. Complaint 3. The Respondent acted wrongly, as he frankly admits, by sending his CV stating that he was an ICAEW Chartered Accountant. This followed a period of unemployment and financial embarrassment. In the circumstances, we consider that the complaint falls into the category of "Less Serious". While his employers were misled, no public protection issues in our view arise. In large measure, the same mitigating features arise. We consider a severe reprimand with no financial penalty to be a fair and proportionate sanction.

25. The IC sought a costs order in the sum of £8,412. The Respondent provided details of his financial circumstances, which are very limited. The Tribunal reviewed the costs schedule provided, and noted a number of staff changes and what appeared to be repetition of work done. Overall, taking into account the Respondent's means and in view of the above, the fair and proportionate award of costs was considered to be £6,000 taking all factors into account. This is to be paid over a period of 24 months at the rate of £250 per month, the first payment to be on 1<sup>st</sup> September 2019.

## Sentencing Order

26. A severe reprimand in respect of each of the complaints, and an order for costs in the sum of £6,000 to be paid over a period of 24 months at the rate of £250 per month, the first payment to be on 1<sup>st</sup> September 2019.

## Decision on publicity

27. Publication with name.

**Non Accountant Chair**  
**Accountant Member**  
**Non Accountant Member**

Mr Richard Jones QC  
Mr Michael Barton FCA  
Mrs Jane Rees

**038389**

## CESSATION OF MEMBERSHIP

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

**Mr Alistair Bambridge of London**  
**Mr Kent Ning Leung of Hong Kong**  
**Mr Mark Lomax of Bolton**

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

## INVESTIGATION COMMITTEE CONSENT ORDERS

### 7. Peacheys CA Limited

Consent order made on 20 August 2019

With the agreement of Peacheys CA Limited (trading as UHY Hacker Young) of Newport, United Kingdom, the Investigation Committee made an order that the firm be reprimanded, fined £4,200 and pay costs of £4,413 with respect to a complaint that:

On 20 May 2016, Peacheys CA Limited issued an unmodified audit report in the trading name of UHY Hacker Young on the financial statements of 'X' plc for the year ended 31 December 2015 which stated that the financial statements had been properly prepared in accordance with International Financial Reporting Standards as adopted by the European Union, when those financial statements did not comply with International Accounting Standard 28 'Investments in Associates and Joint Ventures' in respect of the accounting treatment of an investment in an associate company.

**041784**

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### 8. Mrs Heather Tweddle FCA

Consent order made on 20 August 2019

With the agreement of Mrs Heather Tweddle FCA of Newcastle, United Kingdom, the Investigation Committee made an order that she be reprimanded, fined £1,050 and pay costs of £818 with respect to a complaint that:

Mrs Heather Tweddle FCA, signed the following audit reports on behalf of her firm, 'X' Limited, when she was ineligible to act as a senior statutory auditor because she did not hold an appropriate qualification contrary to section 1212 of the Companies Act 2006:

- a. 'Y' Limited; year ended 31 December 2017; audit opinion signed 6 June 2018; and/or
- b. 'Z' Limited; year ended 31 December 2017, audit opinion signed 15 June 2018.

**045672**

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## **9. P.B. Syddall & Co**

Consent order made on 20 August 2019

With the agreement of P.B. Syddall & Co of Bolton, United Kingdom, the Investigation Committee made an order that the firm be reprimanded, fined £1,000 and pay costs of £1,418 with respect to a complaint that:

- 1B. Between 16 February 2016 and 16 August 2016 P B Syddall & Co failed to advise the beneficiaries of the estate of 'X' deceased that they would not be undertaking the estate administration and / or probate work of the estate.

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**035901**

## **10. Grant Thornton UK LLP**

Consent order made on 20 August 2019

With the agreement of Grant Thornton UK LLP of London, United Kingdom, the Investigation Committee made an order that the firm be reprimanded, fined £24,850 and pay costs of £2,430 with respect to a complaint that:

On 23 March 2017, Grant Thornton UK LLP issued an unqualified audit report in respect of the financial statements of 'X' Limited which stated that the auditor's responsibility is to audit and express an opinion on the group financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland), when the auditor had failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions regarding the recoverability of other debtors, in breach of International Standard on Auditing (UK and Ireland) 500 'Audit Evidence'.

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**041998**

## **11. KPMG Audit LLC**

Consent order made on 20 August 2019

With the agreement of KPMG Audit LLC of Isle of Man, United Kingdom, the Investigation Committee made an order that the firm be severely reprimanded, fined £126,000 and pay costs of £11,818 with respect to complaints that:

- 1 On 17 December 2007, KPMG Audit LLC issued an audit report on the financial statements of 'X' for the period ended 31 December 2006 when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:
  - a) the existence of loan balances owed to it at the period-end; and/or
  - b) the recoverability of loan balances owed to it at the period-end to be able to draw reasonable conclusions on which to base the audit opinion.
- 2 On 17 December 2007, KPMG Audit LLC issued an additional non-statutory audit report on the financial statements of 'X' for the period ended 30 September 2007, when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:

- a) the existence of loan balances owed to it at the period-end; and/or
- b) the recoverability of loan balances owed to it at the period-end to be able to draw reasonable conclusions on which to base the audit opinion.

**3** On 6 June 2008, KPMG Audit LLC issued an audit report on the financial statements of 'X' for the year ended 31 December 2007, when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:

- a) the existence of loan balances owed to it at the year-end; and/or
- b) the recoverability of loan balances owed to it at the year-end to be able to draw reasonable conclusions on which to base the audit opinion.

**4** On 12 May 2009, KPMG Audit LLC issued an unqualified audit report on the financial statements of 'X' for the year ended 31 December 2008, when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:

- a) the existence of loan balances owed to it at the year-end; and/or
- b) the recoverability of loan balances owed to it at the year-end to be able to draw reasonable conclusions on which to base the audit opinion.

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**025952**

## **12. Menzies LLP**

Consent order made on 20 August 2019

With the agreement of Menzies LLP of Egham, United Kingdom, the Investigation Committee made an order that the firm be reprimanded, fined £4,900 and pay costs of £2,180 with respect to a complaint that:

1. On 20 December 2010 Menzies LLP issued an unqualified audit report on the financial statements of 'A' Limited for the year ended 30 June 2010 which stated that the audit had been conducted in accordance with International Standards On Auditing (UK and Ireland), when the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the firm failed to obtain sufficient appropriate audit evidence in respect of:

- a) Amounts owed to group undertakings; and/or
- b) VAT

2. On 20 December 2010 Menzies LLP issued an unqualified audit report on the financial statements of 'B' Limited for the year ended 30 June 2010 which stated that the financial statements gave a true and fair view and had been prepared in accordance with United Kingdom Generally Accepted Accounting Practice Applicable to Smaller Entities when:

- a) Amounts owed to group undertakings were overstated by £130,218; and/or
- b) Expenditure was overstated by £130,218

3. On 20 December 2010 Menzies LLP issued an unqualified audit report on the financial statements of 'C' Limited for the year ended 30 June 2010 which stated that the financial statements gave a true and fair view and had been prepared in accordance with United Kingdom Generally Accepted Accounting Practice Applicable to Smaller Entities when:
- a) Amounts owed to group undertakings were overstated by £205,085; and/or
  - b) Expenditure was overstated by £205,085.

**041528**

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**13. Mr Kassamali RehemtullaKassam Suleman Verjee FCA**

Consent order made on 20 August 2019

With the agreement of Mr Kassamali RehemtullaKassam Suleman Verjee FCA of Camberley, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £5,000 and pay costs of £3,055 with respect to a complaint that:

1. On or around 8 April 2016, Mr Kassamali Suleman Verjee FCA issued an accountants report on behalf of his firm, on the accounts of 'X' for the year ended 31 August 2015 when those accounts had not been properly compiled, in that:
  - a) creditors due after more than one year were overstated by £68,405; and/or
  - b) income was overstated by £39,828; and/or
  - c) cash at bank was overstated by £39,828; and/or
  - d) accrued expenses were understated by £4,226.
2. On or around 8 April 2016, Mr Kassamali Suleman Verjee FCA issued an accountants report on behalf of his firm, on the accounts of 'X' for the year ended 31 August 2015 when those accounts had not been properly prepared in accordance with the applicable accounting framework in that the accounts should have been prepared in accordance with the methods and principles of the Statement of Recommended Practice: Accounting and Reporting by Charities.
3. On or around 8 April 2016 Mr Kassamali Suleman Verjee FCA issued an accountants report on behalf of his firm, on the accounts of 'X' for the year ended 31 August 2015 when those accounts did not comply with Section 43 (3) of the Charities Act 1993 in that the accounts should have been examined and reported upon by an independent examiner.

**039281**

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## INVESTIGATION COMMITTEE FIXED PENALTY ORDERS

### 14. Miss Kayley Smith

Penalty order made on 14 June 2019

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 Miss Kayley Smith, the Investigation Committee ordered that Miss Kayley Smith, of Coventry, 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 25 January 2016 and 4 September 2018 Miss Kayley Smith has been engaging in public practice without a practising certificate contrary to Principal Bye-law 51a

**045687**

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### 15. Mrs Pamela Carey ACA

Penalty order made on 17 June 2019

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 Mrs Pamela Carey ACA, the Investigation Committee ordered that Mrs Pamela ACA, of Cheshire, United Kingdom, be reprimanded, and a fixed penalty of £1,400 representing a financial penalty of £1,000 for each complaint to which a discount of 30% has been applied with respect to a complaint that:

Between 1 January 2015 and 26 June 2017 Mrs P M Carey ACA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51a

Between 1 January 2015 and 26 June 2017 Mrs P M Carey ACA engaged in public practice without Professional Indemnity Insurance (PII), Contrary to the 3.1 of the Professional Indemnity Insurance (PII) Regulations

**047614**

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### 16. Futurelink Accountancy Services Ltd

Penalty order made on 2 July 2019

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 Futurelink Accountancy Services Ltd, the Investigation Committee ordered that Futurelink Accountancy Services Ltd of Kings House Business Centre, Station Road, Kings Langley, Hertfordshire, WD4 8LZ, be reprimanded, and a fixed penalty of £725 representing a financial penalty of £1,037 to which a discount of 30% has been applied with respect to a complaint that:

Futurelink Accountancy Services Ltd used the description 'Chartered Accountants' when it was not entitled to as a director of the company did not hold affiliate status in breach of the following:

- a. Regulations 6 of the Regulations governing the use of description Chartered Accountants and ICAEW general affiliates between 4 January 2017 and 18 June 2017; and
- b. Regulations 12 of the Regulations governing the use of description Chartered Accountants and ICAEW general affiliates between 19 June 2017 and 20 March 2018.

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**043448**

## **17. Mr Justin Sebastian Anthony Ray FCA**

Penalty order made on 3 July 2019

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 Justin Sebastian Anthony Ray FCA, the Investigation Committee ordered that Mr Justin Sebastian Anthony Ray FCA, of Cumbria, 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 18 November 2016 and 7 May 2019, Mr Justin Sebastian Anthony Ray FCA engaged in public practice, without holding a practising certificate contrary to Principal Bye-law 51a.

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**049291**

## **18. Miss Kelly Evans ACA**

Penalty order made on 19 July 2019

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 Miss Kelly Evans ACA, the Investigation Committee ordered that Miss Kelly Evans, of Clwyd, 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 January 2018 and 14 March 2019 Miss Kelly Evans ACA engaged in public practice, without holding a practising certificate contrary to Principal Bye-law 51a

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**047821**

## 19. Mr Barry Caldwell FCA

Penalty order made on 19 July 2019

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 Barry Caldwell FCA, the Investigation Committee ordered that Mr Barry Caldwell, of Wicklow, 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:

1. Mr Barry Caldwell FCA, following a QAD visit to his firm, Barry Caldwell & Co, on 3 August 2010, confirmed that:
  - a. In respect of notifying clients of the complaints procedure and the basis of charging fees:

*“A paragraph detailing fee calculation and complaints procedure will be incorporated into initial correspondence”*

but at a subsequent QAD visit on 12 October 2018, it was found that the assurance had not been complied with.

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049101

## 20. Mr Stephen John Dunbar FCA

Penalty order made on 19 July 2019

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 Stephen John Dunbar FCA, the Investigation Committee ordered that Mr Stephen John Dunbar FCA, of Bolton, 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 February 2018 and 21 March 2019, Mr Stephen John Dunbar FCA engaged in public practice, without holding a practising certificate contrary to Principal Bye-law 51a

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047155

## **21. Mr Nimish Patel ACA**

Penalty order made on 1 August 2019

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 Nimish Patel ACA, the Investigation Committee ordered that Mr Nimish Patel ACA, of London, 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 4 September 2015 and 31 May 2019 Mr Nimish Patel ACA engaged in public practice without an ICAEW practising certificate, contrary to Principal Bye-law 51a

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**049478**

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