



Disciplinary Orders and Regulatory Decisions

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Disciplinary orders

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DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Mr Sunil Bance of

11 Bulmer Gardens, HARROW, MIDDLESEX, HA3 0PA.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 7 June 2017

Type of Member Former Member

Terms of complaint

Between in or around September 2007 and November 2010, originally as accountant to 'A' Ltd and subsequently as an executive director of 'A' Ltd, Mr S Bance dishonestly misrepresented to investors that 'A' Ltd was a successful business and run in a proper corporate way when he knew the majority of the transactions which underpinned 'A' Ltd's operations were bogus as demonstrated by:

- a. 'A' Ltd obtained a lending facility of £1,500,000 from Natwest Bank on 11 January 2008. Its purpose was to provide loans of a short term nature to enable 'A' Ltd to make similar short term loans to its borrowers. Between February 2008 and February 2009 'A' Ltd's draw down notes were provided to Natwest Bank which falsely stated that monies were used to make loans to borrowers when, in fact, there were no such borrowers.
- b. 'A' Ltd fabricated property valuations to facilitate the fraudulent draw down claims from Natwest Bank.
- c. Numerous cross firing payments were made between 'A' Ltd, the directors of 'A' Ltd and companies owned by the directors of 'A' Ltd which were intended to give the impression that it was an active loan business.
- d. 'A' Ltd's loan book was fabricated and monthly management accounts were false.
- e. The directors of 'A' Ltd used investors' money for their personal benefit.
- f. The directors provided misleading material to the company's auditors in relation to the audit of the accounts for the year ended December 2009.
- g. The threat of winding up proceedings against 'A' Ltd was concealed from investors.

Mr Sunil Bance is therefore liable to disciplinary action pursuant to Disciplinary Bye-Law 4.1.a.

Disciplinary Bye-law 4.1 a 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.'

Or in the alternative:

Between in or around September 2007 and November 2010, originally as accountant to 'A' Ltd and subsequently as an executive director of 'A' Ltd, Mr S Bance misrepresented to investors that 'A' Ltd was a successful business and run in a proper corporate way when he should have known that

the majority of transactions which underpinned 'A' Ltd's operations were bogus as demonstrated by:

- a. 'A' Ltd obtained a lending facility of £1,500,000 from Natwest Bank on 11 January 2008. Its purpose was to provide loans of a short term nature to enable 'A' Ltd to make similar short term loans to its borrowers. Between February 2008 and February 2009 'A' Ltd's draw down notes were provided to Natwest Bank which falsely stated that monies were used to make loans to borrowers when, in fact, there were no such borrowers.
- b. 'A' Ltd fabricated property valuations to facilitate the fraudulent draw down claims from Natwest Bank.
- c. Numerous cross firing payments were made between 'A' Ltd, the directors of 'A' Ltd and companies owned by the directors of 'A' Ltd which were intended to give the impression that it was an active loan business.
- d. 'A' Ltd's loan book was fabricated and monthly management accounts were false.
- e. The directors of 'A' Ltd used investors' money for their personal benefit.
- f. The directors provided misleading material to the company's auditors in relation to the audit of the accounts for the year ended December 2009.
- g. The threat of winding up proceedings was concealed from investors.

Mr Sunil Bance is therefore liable to disciplinary action pursuant to Disciplinary Bye-Law 4.1.b.

Disciplinary Bye-law 4.1b 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:

b if he has performed his professional work or the duties of his employment, or conducted his practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, the Institute or the profession of accountancy.'

Hearing date

7 June 2017

Previous hearing date

24 January 2017 – adjourned

Pre-hearing review or final hearing Final Hearing.

Complaint found proved Yes, on admission.

All heads of complaint proven Yes, in the alternative.

Sentencing order No order.

Procedural matters and findings

Parties present Mr Bance was present.

Represented	Mr Bance was not represented. The Investigation Committee (IC) was represented by Miss Abigail Bright of Counsel.
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. The tribunal also considered evidence of Mr Bance's means.
Findings on preliminary matters	Mr Bance ceased to be a member of the ICAEW with effect from 9 May 2014.

The IC's case

1. Disciplinary Bye-law (DBL) 7.4 (b) provides that a finding of fact "*in any civil or criminal proceedings before a court of competent jurisdiction in the United Kingdom shall, for the purpose of these bye-laws be prima facie evidence of the facts found.*"
2. At all material times, the defendant was a practitioner in public practice who provided accounting services to clients through his firm, 'B'.
3. The defendant provided accounting services (non-audit) to a client of his firm called 'A' Ltd, which was in the business of providing short term lending facilities to customers who wished to purchase residential property. The defendant was also, from February 2009 and at all material times, a director of 'A' Ltd with responsibility for regulatory compliance. The defendant worked part time for 'A' Ltd and spent the rest of his time at 'B'.
4. 'A' Ltd went into administration in November 2010. It and its directors (including the defendant) were also sued by three investors in the High Court in England & Wales. One action was settled but the other two were conjoined and went onto trial; that trial resulted in a Judgment of Mr Justice Peter Smith published on 31 July 2013. (By then, 'A' Ltd was in liquidation). The citation of the case is (1) *Stephen Hemsley*; (2) *RBC Trustees (CI) Ltd v (1) Peter Graham (a bankrupt) and others* [2013] EWHC 2232 (Ch).
5. In his judgment, the Judge made a number of findings about the defendant and his conduct, and they comprise the subject matter of this complaint. The Judgment (which has not been challenged) is *prima facie* evidence of the misconduct of which complaint is now made.
6. Because of the findings of the Court, the defendant has breached either DBL 4.1(a) or 4.1(b).

Issues of fact and law

7. Because the defendant admitted the complaint of dishonesty there were no issues of fact or law to be determined.
8. The relevant standard of proof is the balance of probabilities.
9. The tribunal found the complaint proved on the defendant's own admission.

Conclusions and reasons for decision

10. The defendant has admitted misrepresenting to investors of 'A' Ltd that it was a successful business run in a proper way when he knew that most of its transactions which underpinned the operation were bogus. He has also admitted, alternatively, that he ought to have known that they were bogus.
11. The tribunal has noted that the defendant had taken a number of factual issues with the Judgment, but that he also accepted that he could not go behind it, and was unable to rebut it.
12. For these reasons, the tribunal finds the complaint proved on admission. This is a very serious complaint, whose gravity speaks for itself, and its seriousness should be reflected in any penalty that could be made.

Matters relevant to sentencing

13. The defendant is not currently in membership with ICAEW, and has not been so for a few years. This is because he was adjudicated bankrupt after the Judgment was handed down, and although his bankruptcy has been discharged after effluxion of time, the defendant has not renewed it.
14. Had the defendant been in membership, the tribunal would have not hesitated to exclude him from membership, having regard to ICAEW's *Guidance on Sanctions* and having seen no reason to depart from that. However, exclusion is a penalty which is not available and so that penalty has not been made.
15. It would be unduly lenient to impose a severe reprimand on the defendant, and would give the wrong impression of the tribunal's attitude towards this complaint, and so the tribunal does not do that either.
16. As to the possibility of a fine, the tribunal has carefully considered the defendant's means and considers that no real purpose would be served by imposing one; not only that, to do so would be disproportionate since the defendant has (obviously, from the evidence provided) no real prospect of paying it in the reasonably foreseeable future. (Had the defendant been excluded, a fine would not have been imposed in any event).
17. A contribution towards costs is not a penalty, but it is an order which the tribunal is able to make. In these circumstances, it is fair and proportionate to ask the defendant to make a contribution towards the IC's costs.

Sentencing Order

No order as to penalty.

Contribution to costs of £3,000.

Costs are to be paid by 24 instalments of £125 per month, commencing on 1 August 2017, and payable on the first day of each subsequent month.

Decision on publicity

Publication with name.

Non Accountant Chairman
Accountant Member
Non Accountant Member
Legal Assessor

Mr Ron Whitfield
Mr Martin Ward
Ms Jane Rees
Mr Dominic Spenser Underhill

016504

2 Mr Jonathan Marcus Marshall ACA of
21a Craven Terrace, LONDON, W2 3QH.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 13 June 2017

Type of Member Member

Terms of complaint

In an email dated 9 December 2013 Mr Jonathan Marshall FCA improperly advised one partner in a partnership to act contrary to the interests of the other, when he had previously assured both partners that he was an impartial adviser to the partnership, contrary to Section 220 of the Code of Ethics (Conflict of Interest).

Mr Jonathan Marshall 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

13 June 2017

Previous hearing date(s)

None

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Yes

Sentencing order a) severe reprimand
b) fine of £4,000
c) costs of £16,000

Procedural matters and findings

Parties present Mr Jonathan Marcus Marshall.

Represented Mr Marshall was represented by Mr Spalton of counsel.
The IC was represented by Mr Phipps of counsel.

Hearing in public or private The hearing was in public.

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

Documents considered by the tribunal The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with documents provided by the defendant.

Issues of fact and law

1. Mr Marshall acted as accountant for 'A' LLP, in which Mr 'B' and Mr 'C' were the only partners. Mr Marshall had been responsible for preparing the accounts and tax returns for the partners. Mr Marshall also provided general business advice to the partnership.
2. On 5 November 2013, Mr 'C' informed Mr 'B' that he wanted to sell his interest in the partnership or dissolve it. On 14 November 2013, Mr 'C' sought an assurance from Mr Marshall that he would act for the partners without bias and that all communications would involve all three parties at all times.
3. On the same day, Mr Marshall confirmed to 'C' and Mr 'B' by email that he would act as adviser to the partnership but that he could not advise the individual partners as to their individual status and strategy within the partnership as that would be a conflict. Mr Marshall also confirmed that "he could not accept any communication relating to partnership non-tax matters unless copied to the other partner".
4. On 9 December 2013, Mr 'B' sent an email to Mr Marshall only, from a Gmail address, stating that he needed to 'clear up partnership split asap. All of this income should be carried forward into the New Co frankly'.
5. Mr Marshall replied by email to Mr 'B' only, advising Mr 'B' to do the following:
 - Keep everything via this new Gmail account;
 - Change passwords to remove Mr 'C's access to anything to do with the partnership;
 - Not to discuss new work contracts with Mr 'C';
 - Not to pay any money into 'A' LLP where the work can be attributed to Mr 'B' or be properly allocated to 2014 (it was planned the partnership would cease around 31 December 2013). Mr Marshall offered to open a client bank account in the name of 'A' LLP to deposit money;
 - To maximise possible payments before dissolution; and
 - Think about possible use of the partnership name.
6. Mr 'C' subsequently discovered the email of 9 December 2013 from Mr Marshall to Mr 'B's Gmail address and terminated Mr Marshall's appointment as adviser to 'A' LLP.

Representations from Mr Marshall on the Complaint

7. Mr Marshall engaged solicitors, Edwin Coe LLP, to respond to the Investigation Committee enquiries that made initial assertions that were not pursued by his replacement solicitors, Kennedys.
8. Mr Marshall's new advisers said that Mr Marshall acknowledges that when viewed objectively, the email of 9 December 2013 could be seen to demonstrate a conflict of interest on Mr Marshall's part.

9. Kennedys make a number of further representations on behalf of Mr Marshall. The solicitors have commented that the matter is a one-off breach that happened over two years ago and has not been repeated, and has not caused loss to any party. Kennedys reiterate that Mr Marshall was acting due to a significant discrepancy between drawings taken by the two 'A' LLP partners, and he was trying to protect Mr 'B' against what was said to be further unjust enrichment of Mr 'C'. Kennedys say that Mr Marshall wants to move on and has sought to rescind his membership of ICAEW.

Conclusions and reasons for decision

10. The tribunal found the complaint proven on the defendant's own admission.

11. Section 220.1 of the Code of Ethics (Conflict of Interest) states the following:

"A professional accountant in public practice shall take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may create threats to compliance with the fundamental principles. For example, a threat to objectivity may be created when a professional accountant in public practice competes directly with a client or has a joint venture or similar arrangement with a major competitor of a client. A threat to objectivity or confidentiality may also be created when a professional accountant in public practice performs services for clients whose interests are in conflict or the clients are in dispute with each other in relation to the matter or transaction in question.

Subject to the specific provisions, there is however, nothing improper in a professional accountant in public practice having two clients whose interests are in conflict."

12. Section 220.5 of the Code of Ethics (Conflict of Interest) states the following:

"Where a conflict of interest creates a threat to one or more of the fundamental principles including objectivity, confidentiality, or professional behaviour, that cannot be eliminated or reduced to an acceptable level through the application of safeguards, the professional accountant in public practice shall not accept a specific engagement or shall resign from one or more conflicting arrangements."

13. Mr Marshall had clearly acted in breach of Section 220 of the Code of Ethics and this was likely to bring discredit on himself, the Institute or the profession.

14. Mr Marshall acknowledged that a potential conflict of interest existed in his email to Mr 'C' and Mr 'B' on 14 November 2013. Mr Marshall confirmed the safeguard he would put in place, in that he would not accept correspondence relating to partnership matters unless it was copied to all three parties. Furthermore, Mr Marshall provided an assurance that he could not advise the partners vis-a-vis their individual status and strategy within the partnership, because that would be a conflict.

15. However, Mr Marshall:

- (a) did advise Mr 'B' in respect of his individual status and strategy within the partnership; and
- (b) failed to adhere to the safeguard that he had proposed.

16. In particular, Mr Marshall accepted the email from Mr 'B', from his new Gmail address, and then responded to that email address without copying the reply to Mr 'C', contrary to the assurance he had given by his email dated 14 November 2013. Mr Marshall should not have entered into confidential email correspondence with one partner of 'A' LLP advising him in the way that he did, as this represented an obvious conflict of interest when Mr Marshall was purporting to act on behalf of the partnership.

17. If Mr Marshall did not consider that he could eliminate the threat to his objectivity or professional behaviour, or reduce it to an acceptable level, then he should have resigned as advisor to 'A' LLP immediately.
18. Mr Marshall was in breach of Disciplinary Bye-law 4(1)(a).

Matters relevant to sentencing

19. The tribunal took into account its *Guidance on Sanctions*.
20. The defendant did not have a prior disciplinary record. Mr Marshall's representative at the hearing put forward the following further points in mitigation:
 - a) This had been a one off matter, borne out of a misguided and inappropriate, albeit what he characterised as well intentioned efforts to protect one partner from another who it was alleged had made inappropriate drawings from the firm.
 - b) The conduct had not given rise to any financial loss.
 - c) There was no ongoing risk to the public arising from this complaint.
 - d) He had admitted the complaint as early as 1 March 2016.
 - e) This matter had been hanging over his head for a long time giving rise to significant stress for Mr Marshall.
21. Mr Marshall addressed the tribunal and said that 3 years ago he should have put his hands up and stated then that what he had done was inexcusable. He had taken legal advice from his previous solicitors that he felt had taken him down the wrong track, leading to today's proceedings. This had been a mistake.
22. The tribunal was of the view that this had been a serious matter, putting at risk the confidence with which the public hold the profession. The matter had been aggravated by the fact that he had been in a position of trust and had acted deliberately. He had lost sight of his duties of independence and the critical need to avoid any conflict of interest. It had been a serious error of judgement, which he had not rectified rather; his contract had been terminated by Mr 'C' when the matter came to light.
23. That said, the tribunal took into account his mitigation and accepted that he had become drawn into a situation between two warring partners in which one was his friend (the tribunal making no findings in relation to the underlying dispute between the partners). Mr Marshall had not been motivated by a desire to make personal gain. He had not been assisted by the pugnacious nature of the representations of his previous solicitors. Once away from them however, there had been admissions and expressions of regret that the tribunal received as genuine.

Sentencing Order

24. The tribunal decided to impose the following sanctions:
 - a) Severe reprimand;
 - b) Fine of £4,000;
 - c) Costs of £16,000 (reduced from that claimed taking into account proportionality but acknowledging that much of the IC's costs had been due to his previous solicitors' approach).

Decision on publicity

25. Publicity with names.

Non Accountant Chairman

Mr Ron Whitfield

Accountant Member

Mr Nigel Meredith FCA

Non Accountant Member

Mr Graham L Humby

Legal Assessor

Ms Melanie Carter

020631

3 Mr Darren Eric Ashley ACA
of 17 Caldbeck, Waltham Abbey, EN9 1UR.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 21 June 2017

Type of Member Member

Terms of complaint

Mr Darren Ashley ACA failed to provide by 27 October 2016 the information, explanations and documents requested in a letter dated 11 October 2016 issued under Disciplinary Bye-law 13.

Mr Darren Eric Ashley is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(c)

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

Hearing date

21 June 2017

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 (i) severe reprimand; (ii) fine £4,000; (iii) production order.

Procedural matters and findings

Parties present Mr Ashley was not present.

Represented Mr Ashley was not represented; the Investigation Committee (IC) was represented by Miss Kerenza Davis of Counsel.

Hearing in public or private The hearing was in public.

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

Documents considered by the tribunal The tribunal considered the documents contained in the IC's bundle.

The Investigation Committee's (IC's) case

1. On or about 20 May 2016, the defendant had a telephone conversation with a Complaints Caseworker of ICAEW in which he queried whether he needed a practising certificate and indicated that he was in the process of buying out another accountancy practice. He was told that he would need a practising certificate.
2. This conversation put ICAEW on inquiry because it raised the possibility that the defendant might have engaged in public practice without a practising certificate.
3. ICAEW have tried to contact the defendant about this by requesting trading and other financial details of commercial entities with which he is connected. The first attempt to make contact was on 11 July 2016, then secondly on 1 August 2016 and then again on 31 August 2016. On the last occasion, the defendant was warned that unless he responded a letter issued under DBL 13 would be issued. He did not respond. ICAEW issued a letter under DBL 13 on 11 October 2016 but no response has been received. This is the basis of the current complaint.
4. Because the defendant has failed to respond to a DBL 13 notice he is in breach of DBL 4.1(c).

Issues of fact and law

5. The issues of fact to be determined are: (i) whether a letter issued under DBL 13 dated 11 October 2016 was sent to the defendant and (ii) whether he failed to respond to that letter. If both matters are proved, it will be appropriate to find that there has been a breach of DBL 4.1(c) because of a failure to comply with a requirement of a Bye-law.
6. The tribunal found the complaint proved.

Conclusions and reasons for decision

7. ICAEW issued a notice under DBL 13 dated 11 October 2016. The defendant failed to respond to it on time or at all. He was, the tribunal found, in breach of DBL 4.1(c) as a result.

Matters relevant to sentencing

8. The tribunal considered the *Guidance on Sanctions* and saw no reason to depart from that. The tribunal was satisfied that no lesser sanction than the one imposed was appropriate.
9. The mitigating factor was the defendant's clean disciplinary record.
10. An aggravating factor was the defendant's failure to co-operate in the disciplinary process. A further aggravating factor was the serious nature of the matter which ICAEW is trying to investigate, which is whether or not the defendant should have a practising certificate.

Sentencing Order

1. Severe reprimand.
2. Fine £4,000.
3. Costs of £2,500.

It is further **DIRECTED and ORDERED** that Mr Darren Ashley produce to ICAEW the information, explanations and documents requested in its letter dated 11 October 2016 by 16.00hrs on 20 July 2017.

Decision on publicity

Publication with name.

Chairman

Mr Peter Williamson

Accountant Member

Mr Michael Barton FCA

Non Accountant Member

Mr Graham Humby

Legal Assessor

Mr Dominic Spenser Underhill

036442

4 Mr Roy Crosby FCA of
20 Norgetts Lane, Melbourn, ROYSTON, SG8 6HS.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 21 June 2017.

Type of Member Member

Terms of complaint

1. Between 23 July 2012 and 24 February 2015 Mr Roy Crosby FCA failed to notify all clients, in writing, of the basis on which fees will be rendered as required by paragraph 240.2b of The Code of Ethics.
2. Between 23 July 2012 and 24 February 2015 Mr Roy Crosby FCA failed to ensure that all new clients were informed in writing of the name of the principal to be contacted if they wished to make a complaint and the client's right to complain to ICAEW contrary to Disciplinary Bye-law 11.1.
3. Between 17 June 2015 and 1 September 2015, Mr Roy Crosby FCA failed to provide a response to a letter dated 26 May 2015 from a Practice Assurance case manager as required by Regulation 15 of the Practice Assurance Regulations.

Mr Roy Crosby is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(a) in respect of head 1 and 4.1(c) in respect of heads 2 and 3.

Disciplinary Bye-Law 4.1(a) states: 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.

Disciplinary Bye-Law 4.1 (c) states: If he has committed a breach of the bye-laws or of any regulations or has failed to comply with any order, direction or requirement made, given or imposed under them.

Hearing date

21 June 2017

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 (i) severe reprimand; (ii) fine of £4,000; (iii) immediate withdrawal of practising certificate.

Procedural matters and findings

Parties present Mr Roy Crosby was not present.

Represented	Mr Crosby was not represented. The Investigation Committee (IC) was represented by Miss Kerenza Davis of Counsel.
Hearing in public or private	The hearing was in public.
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service.
Documents considered by the tribunal	The tribunal considered the documents contained in the IC's bundle.

The Investigation Committee's (IC's) case

1. The defendant is a sole practitioner. His firm ("the firm") is called Austral Crosby.
2. On 23 July 2012, the ICAEW's Quality Assurance Department (QAD) visited the firm by way of a so-called "desktop review". The QAD produced a report on 15 February 2013.
3. QAD carried out a second, follow-up, visit on 24 February 2015. A second, undated report was produced as a result.
4. Section 240.2(b) of the Code of Ethics obligates a member to notify clients in writing of the basis on which fees will be rendered. The July 2012 QAD visit, and the 2015 follow up visit revealed that the defendant had breached this section because he failed to notify all of his clients.
5. Disciplinary Bye-law 11.1 stipulates that every firm shall ensure that new clients are informed in writing (i) of the name of the principal to be contacted in the event of a complaint about services and (ii) of their right to complain to ICAEW. The 2012 and 2015 QAD visits revealed that the defendant has breached this DBL because he failed to ensure that new clients were given this information.
6. Practice Assurance Regulation 15 provides that after a QAD visit and the production of a report of that visit, a member must respond to that report within 15 business days. After the QAD visit of May 2015 occurred, and the report of that visit was sent to the defendant, he failed to respond to it within 15 business days or at all. The defendant breached Practice Assurance Regulation 15 as a result.
7. For these reasons, the defendant has breached DBL 4.1(a) in the case of head 1, and DBL 4.1(c) in the case of heads 2 and 3.

Issues of fact and law

8. Because the defendant was absent, the IC was put to proof of the facts of which complaint was made. The standard of proof is the balance of probabilities.
9. If the facts were proved, the matters to be determined were whether Section 240.2b of the Code of Ethics, DBL 11.1 and Regulation 15 of the Practice Assurance Regulations have been breached.
10. If those breaches were found to have occurred, the tribunal had to determine whether DBL 4.1(a) and 4.1(c) have been breached, as alleged.
11. The tribunal found the complaint proved.

Conclusions and reasons for decision

12. The tribunal has found that the defendant failed to issue appropriate and compliant client care letters and failed to respond to a report of QAD. Failure to issue proper client care letters is conduct which is likely to bring discredit on the defendant, ICAEW and the profession of accountancy. Failure to respond to a QAD report (which is not an option) is self-evidently a failure to comply with an order, direction or requirement of ICAEW's regulations. For this reason it is a breach of DBL 4.1(c).

Matters relevant to sentencing

1. The tribunal considered the *Guidance on Sanctions* and saw no reason to depart from that. It was also satisfied that no lesser penalty than the one imposed was appropriate.
2. There were no mitigating factors. There were some aggravating factors. The most significant was the defendant's previous disciplinary record. On 12 May 2015, the defendant was reprimanded and fined for failing to do what he promised ICAEW's Quality Assurance Department he would do in or about 2005 which was to issue new client care letters and carry out an overall review of limited company accounts. He also failed to arrange for a practice assurance review when required to do so.
3. This previous record of 2015 is in the relatively recent past and has some close similarities to the current matter. It is not stale. It is suggestive of a member who does not co-operate with his regulator and who does not do as he promises. Of particular significance is that in or about the end of 2005 the defendant promised to issue new client retainer letters but did not. In 2012 he promised again, when the shortcomings of the remedial steps promised in 2005 came to light. However, he did not do as he promised as the 2015 visit showed. The defendant's unsatisfactory conduct in respect of client care letters has now been in issue for some 12 years. This is unacceptable.
4. This previous record is also significant because, like the current complaint, it concerns non-compliance with regulatory procedure.
5. When the earlier disciplinary matter (which concerned matters arising from 2005) and the current one are considered in the round, a picture emerges of a member who has repeatedly ignored ICAEW's requests since 2005 and repeatedly failed to remedy regulatory shortcomings in his firm. This is not acceptable because it shows both a serious and chronic lack of both professional responsibility and understanding of good regulatory compliance.

Sentencing Order

1. Severe reprimand
2. Fine of £4,000
3. Costs of £5,000

It is further **ORDERED** that Mr Roy Crosby's Practising Certificate is immediately withdrawn until such time as he remedies the matters of which complaint has been made to the satisfaction of the Practice Assurance Committee. **UNLESS** the Defendant has taken such remedial steps to the satisfaction of the Practice Assurance Committee by 30 September 2017, his practising certificate shall be deemed to have been withdrawn indefinitely.

Decision on publicity

Publication with name.

Non Accountant Chairman

Mr Peter Williamson

Accountant Member

Mr Michael Barton FCA

Non Accountant Member

Mr Graham Humby

Legal Assessor

Mr Dominic Spenser Underhill

030075

5 Mr Lovelace Prempeh FCA of
PO Box AN 5401, ACCRA. GHANA.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 21 June 2017.

Type of Member Member

Terms of complaint

1. Between 31 January 2013 and 8 February 2016 Mr L Prempeh FCA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2011 to 31 October 2012 in breach of Principal Bye-law 56c.
2. Between 31 January 2014 and 8 February 2016 Mr L Prempeh FCA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2012 to 31 October 2013 in breach of Principal Bye-law 56c.
3. Between 31 January 2015 and 8 February 2016 Mr L Prempeh FCA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2013 to 31 October 2014 in breach of Principal Bye-law 56c.
4. Between 31 January 2016 and 8 February 2016 Mr L Prempeh FCA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2014 to 31 October 2015 in breach of Principal Bye-law 56c.

Mr Lovelace Prempeh is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(c).

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

Hearing date

21 June 2017

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 (i) Reprimand; (ii) fine of £3,400.

Procedural matters and findings

Parties present Mr Lovelace Prempeh was not present.

Represented Mr Prempeh was not represented in person but he was represented in writing by solicitors in Ghana. The Investigation Committee (IC) was represented by Miss Kerenza Davis of Counsel.

Hearing in public or private	The hearing was in public. See also below under “Preliminary matters”.
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service.
Documents considered by the tribunal	The tribunal considered the documents contained in the IC’s bundle together with a letter from Mr Prempeh’s solicitors dated 8 June 2017 written in response to it.
Preliminary matters	By a further letter dated 8 June 2017, Mr Prempeh’s solicitors made an application for a private hearing which was dismissed by the Chairman of the tribunal in writing on 13 th June 2017.

The Investigation Committee’s (IC’s) case

1. The defendant has an obligation to confirm his compliance with his Continuing Professional Development (CPD) obligations. He failed to do so for the period 1 November 2011 to 31 October 2012 by the deadline of 31 January 2013, for the period 1 November 2012 to 31 October 2013 by the deadline of 31 January 2014, for the period 1 November 2013 to 31 October 2014 by the deadline of 31 January 2015 and for the period 1 November 2014 to 31 October 2015 by the deadline of 31 January 2016.
2. The defendant admits that he has not confirmed compliance. On 15 September 2015, the defendant told ICAEW on the telephone that he did not think he had to certify compliance because he was 71 years old and retired. He was told that this was incorrect that he had to certify compliance. He was warned that unless he certified compliance the matter would proceed to disciplinary proceedings. The defendant confirmed that he understood this and said he could send the certification required. However, he did not.
3. A second telephone conversation took place between the defendant and ICAEW on 27 October 2015. The defendant said he did not understand why he should have to certify CPD when he was 71 years old and retired. However, the defendant promised to send his certificate by 6 November 2015. He did not. Thereafter, no substantive communication was received from the defendant until these disciplinary proceedings.
4. By a letter dated 8 June 2017, the defendant’s solicitors denied the complaint. The fundamental reason is that the defendant *“lacked the tools or the skills to enable him to submit the declarations in the manner requested.”* This is a reference to electronic communication, which ICAEW allegedly insisted the defendant use. This basic point is developed during the course of the letter, including the fact that the defendant is in his 70s and lacks the skills required to use electronic devices. This is, it is argued, direct discrimination by ICAEW on the grounds of age.
5. The IC’s response to this is that it is correct that on 27 October 2015 ICAEW asked the defendant to send the declarations by email. However, the defendant has overstated the case on electronic communication. He could have used hard copy – paper - rather than electronic devices. On 16 November 2015, ICAEW also wrote to the defendant by paper letter (also sent by email), enclosing the declaration documentation and asking him to make his declarations by 30 November 2015. The defendant did not do so.
6. The IC submits that the conduct complained of is a breach of Disciplinary Bye-law 4.1(c).

Issues of fact and law

7. There is no issue that the defendant failed to certify compliance with his CPD obligations in the periods of which complaint is made.
8. The issues are whether (i) the defendant was obliged to do so even though he was retired and 71 years old and (ii) whether or not his apparent inability to use electronic communications meant that he was not obliged to do so, or was unfairly prevented from doing so.
9. The tribunal found the complaint proved.

Conclusions and reasons for decision

10. The facts that the defendant was both retired and 71 years old in 2015 are not reasons to remove his obligations to certify CPD compliance. As a member of ICAEW (which the defendant had been since he was readmitted on 2 February 2010), the Defendant ought to certify CPD compliance but he did not. The defendant's age is immaterial. This is not discrimination on the grounds of age, contrary to what the defendant alleged since members of all ages have the same obligations. For this reason Article 14 of the European Convention on Human Rights has not been infringed.
11. Whether or not the defendant can use electronic devices is also irrelevant. He could reasonably have certified his CPD compliance on paper and was given the opportunity to do so. He did not take up that opportunity. Even if, which is not accepted and not asserted, the defendant did not receive paper versions of the relevant documents, the tribunal considers that the defendant's stated inability to use electronic communications was not a plausible reason why certification could not be provided. For example, the defendant could simply, and credibly, have asked someone else to help him to do so online, including someone in a business with which he is somehow associated ('A' Limited) and most recently his solicitors in Accra. He did not do that, it seems.
12. Furthermore, the tribunal is not prepared to accept at face value the assertion that the defendant is so computer illiterate that he cannot complete a very simple online task of certifying compliance (which is to access a webpage and to tick a box). First, the defendant is a member of ICAEW; he is intelligent, with a high social standing and he is educated; he is a sophisticated person and has access to others with computers (such as solicitors), even if he does not own one himself; secondly, the tribunal notes that defendant has a personal Hotmail email address which presupposes both an ability and a willingness to communicate electronically and reasonably suggests that he owns a computer or has access to one.
13. Failure to certify compliance with CPD obligations is to fail to comply with requirements of ICAEW's regulations and is thus a breach of DBL 4.1(c).

Matters relevant to sentencing

14. The tribunal considered the *Guidance on Sanctions* and saw no reason to depart from that. It also was satisfied that no lesser penalty than the one imposed was appropriate.
15. A mitigating factor is that the defendant had no previous disciplinary record. The defendant submitted that there were other mitigating factors in his solicitors' letter dated 8 June 2017, but the tribunal does not accept these to be mitigating.
16. Aggravating factors are: (i) it appears to the tribunal that the defendant has made this very straightforward matter unnecessarily protracted and complicated; he promised to send in his declarations in September 2015, but did not do so and his refusal to carry out a very simple task has been drawn out and has put the ICAEW to considerable work, time and

expense; (ii) the defendant has still failed to certify compliance, even though the solicitors instructed to defend these proceedings self-evidently have internet access.

Sentencing Order

Reprimand
Fine of £3,400
Costs of £3,300

The fine and costs are levied in pounds sterling.

It is further **DIRECTED and ORDERED** that Mr Lovelace Prempeh produce to ICAEW by 16.00hrs on 31 October 2017 certificates of compliance with his Continuing Professional Development requirements for the following periods: (i) 1 November 2011 to 31 October 2012; (ii) 1 November 2012 to 31 October 2013; (iii) 1 November 2013 to 31 October 2014; (iv) 1 November 2014 to 31 October 2015. For the avoidance of doubt, these certificates can be produced in hard copy or electronic formats.

Decision on publicity

Publication with name.

Non Accountant Chairman	Mr Peter Williamson	
Accountant Member	Mr Michael Barton FCA	
Non Accountant Member	Mr Graham Humby	
Legal Assessor	Mr Dominic Spenser Underhill	026276

6 Mr Daron Martin Locke ACA of
The Hawthorns, Church St, Naseby, NORTHAMPTON, NN6 6DA.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 11 July 2017

Type of Member Member

Terms of complaint

1. Between December 2012 and February 2013, Mr Daron Locke ACA copied onto a USB memory stick confidential information belonging to his employer, 'A' Ltd and forwarded it to his personal email address without his employer's authority.
2. Mr Daron Locke ACA, through his solicitors, dishonestly confirmed that he had not retained in any format any confidential information as defined in his employment contract with 'A' Ltd when he knew this was incorrect.

Mr Daron Martin Locke is therefore liable to disciplinary action in respect of head one and two under Disciplinary Bye-law 4.1.a.

Disciplinary Bye-law 4.1 states:

"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."

Hearing date

11 July 2017

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, on admission.

Sentencing order Severe reprimand.

Procedural matters and findings

Parties present Mr Locke was present.

Represented Mr Locke was not represented. The Investigation Committee (IC) was represented by Miss Kerenza Davis of Counsel.

Hearing in public or private

The hearing was in public.

Decision on service

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

Documents considered by the tribunal

The tribunal considered the documents contained in the IC's bundle together with the written representations contained in Mr Locke's letters dated 19 June and the 29th June 2017 together with the bundle of correspondence attached, a letter from Mr Locke's doctor dated 9 June 2017 and evidence of Mr Locke's means.

The IC's case

1. The defendant was employed by 'A' Ltd as the Head of Professional Development. In December 2012, the defendant gave notice terminating his employment. In February 2013, the defendant disclosed to his employer that he had received an offer of employment from one of 'A' Ltd's major competitors. The defendant was put on gardening leave.
2. As part of his departure from 'A' Ltd, the defendant returned the computer equipment that he had used in the course of his employment. However, he copied onto a USB memory stick a quantity of confidential information belonging to 'A' Ltd but did not return this to 'A' Ltd. This information included details of customers, recent presentations and some correspondence concerning his contract of employment. This was improper.
3. In February 2013, the defendant, through his solicitors, stated that he had returned all the property belonging to 'A' Ltd and that he had not retained any of its confidential information. This was not true and the defendant knew it was not true.
4. This untruth told through the defendant's solicitors was conduct that was dishonest by the ordinary standards of reasonable and honest people and the defendant realised that his conduct described above was dishonest by those standards.
5. The conduct described above and in the complaint is conduct which is likely to bring discredit on himself, the ICAEW or the profession of accountancy and the Defendant is in breach of DBL 4.1(a).

Issues of fact and law

6. There are no issues of fact or law to determine because the complaint was admitted.
7. The relevant standard of proof is the balance of probabilities.
8. The tribunal found the complaint proved on the defendant's own admission.

Conclusions and reasons for decision

9. The defendant has admitted to taking confidential information which did not belong to him from his employer and, when he was asked whether he possessed it, instructed his solicitors to say that he did not, when he knew this was untrue.
10. This complaint is not about a private dispute between the defendant and his former employer. It is a complaint about the way in which the defendant conducted himself when leaving his employment and when responding to his employer's enquiries about the whereabouts of its own property.

11. This conduct is obviously such that would bring discredit on himself, the ICAEW or the profession of accountancy.

Matters relevant to sentencing

12. The tribunal considered the *Guidance on Sanctions* and saw no reason to depart from that.

13. There are a number of persuasive mitigating factors: (i) the defendant's sincere regret, sense of shame, embarrassment and remorse; (ii) the defendant had clear insight into his misconduct; (iii) the defendant's clean disciplinary record for about 30 years; (iv) there is no serious risk to the public; (v) this wrongdoing comprises a single episode that has no precedent (vi) the information which the defendant took was not misused; (vii) the defendant has adduced character references which are positive about him.

14. On whether to impose a fine, the tribunal has considered the defendant's means, personal circumstances, and has noted that the defendant has been put under considerable financial pressure by the litigation which ensued after the factual matters which comprise this complaint. There is no fair or proportionate purpose in imposing a fine.

Sentencing Order

Severe reprimand.

Costs in the sum of £2,500.

Costs are payable in 24 monthly instalments of £104 commencing on 1 September 2017, with subsequent payments to be made on the first day of each month.

Decision on publicity

Publication with name.

Non Accountant Chair

Ms Mary Kelly

Accountant Member

Mr Jon Newell FCA

Non Accountant Member

Miss Jane Rees

Legal Assessor

Mr Dominic Spenser Underhill

033809

7 Mr Omar Sharif of
24 Southolme Drive, Rawcliffe, York, YO30 5RL.

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 12 July 2017

Type of Member Provisional Member

Terms of complaint

1. Mr O Sharif breached the fundamental principle of integrity when he signed training contracts with 'A' and 'B' on the 10 and 11 September 2015 when he was in a training contract with 'C'.
2. Mr O Sharif breached the fundamental principle of integrity when he commenced five days of training with 'C' on the 14 September 2015 having signed training contracts with 'A' and 'B' on the 10 and 11 September 2015.
3. Mr O Sharif breached the fundamental principle of integrity when he attended a 'B' training course on the 27 October 2015 after he had tendered his resignation to 'B'.
4. Between 2 October 2015 and 5 April 2016 Mr O Sharif improperly retained
 - a. A laptop, mobile phone, bag and accessories belonging to a firm ('B')
 - b. A loan of £1,916.81 from a firm ('B')
5. Mr O Sharif received a payment from 'B' on the 29 November 2015 when he knew he was not entitled to all or part of the payment and failed to return it until the 6 April 2016.

Mr Omar Sharif is therefore liable to disciplinary action in respect of heads 1 to 5 under Disciplinary Bye-law 4.1.a

Hearing date

12 July 2017

Previous hearing date(s)

N/A

Pre-hearing review or final hearing Final Hearing

Complaint found proved Yes

All heads of complaint proven Heads 1, 2, 4 and 5 proven. Head 3 not proven on the facts found but would have been proven on the Defendant's own case.

Sentencing order

Procedural matters and findings

Parties present Mr Omar Sharif was not present.

Represented	Mr Sharif was not represented. The Investigation Committee (IC) was represented by Miss Kerenza Davis of Counsel.
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.
Preliminary matters	The Legal Assessor disclosed that although he had a professional relationship with a provincial office of 'C' LLP he had no knowledge of Mr Sharif or of the individuals involved in this matter at 'C' LLP. No objection to this was raised by the IC.

The IC's case

The Relevant Facts

1. On 3 August 2015, 'C' LLP offered employment by a training contract to the defendant. The defendant signed the contract on 7 August 2015.
2. On 4 September 2015, 'A' LLP offered employment by a training contract to the defendant. The defendant signed the contract on 10 September 2015.
3. On 10 September 2015, 'B' LLP offered employment by a training contract to the defendant. The defendant accepted the offer on 11 September 2015.
4. By 11 September 2015, therefore, the defendant had accepted offers of employment from three different firms without each firm knowing of the employment by the other.
5. On 14 September 2015, the defendant began his employment at 'C' LLP and attended five training days the last of which was 18 September 2015.
6. Between 21 September 2015 and 2 October 2015, the defendant was absent from work at 'C' LLP without permission.
7. On 21 September 2015, the defendant started working at 'B'. He attended an induction course there between 21 and 24 September and a training course on 25 September. He was provided with a laptop computer, a mobile phone and a bag with accessories. These items did not belong to him, but to 'B'.
8. On 29 September 2015, 'B' paid the defendant his salary of £651.84 for September 2015. The defendant accepted it. From 29 September to 1 October 2015, the defendant attended a 'B' training course.
9. On 30 September 2015, 'C' LLP paid the defendant's salary of £1,090.64 for September 2015. The defendant accepted it.
10. On 2 October 2015, the defendant was absent from work at 'B' without permission. On the same day, the defendant began work at 'A'.

11. From 7 October 2015 until 10 December 2015 (when his training contract was terminated), the defendant was absent without permission from 'B's employment with the exception of a 30-minute attendance at college on 27 October 2015.
12. On 8 October 2015, 'C' LLP requested that the defendant attend a disciplinary hearing on 12 October 2015. On 12 October 2015, the defendant failed to appear at the disciplinary hearing. The hearing was adjourned to 14 October 2015 and the defendant was warned that unless he attended in person the hearing would proceed in his absence.
13. Also on 12 October 2015, 'B' wrote to the defendant about his unauthorised absence from their employment.
14. On 14 October 2015, 'C' LLP proceeded with the adjourned disciplinary hearing in the defendant's absence and terminated the defendant's contract of employment. The defendant was notified of this on 15 October and allowed five days to appeal the decision.
15. On 27 October 2015, the defendant attended college as part of his employment obligations with 'B' but only for 30 minutes.
16. At the end of October neither 'C' LLP nor 'B' paid the defendant his salary for October because of his unauthorised absence. 'B' had stopped his salary. 'A' paid him his October salary.
17. On 29 November 2015, 'B' in error paid to the defendant an amount purportedly in respect of his November salary in the sum of £1,545.59.
18. On 10 December 2015, 'B' terminated the defendant's training contract; it notified the defendant of this on 17 December 2015.
19. Therefore, by 10 December 2015, the defendant's employment with 'C' LLP and 'B' had been terminated, leaving his employment with 'A' in place.
20. On 26 January 2016, 'B' requested the return (by 1 February 2016) of its laptop computer, mobile phone, bag and accessories. It also requested reimbursement of a loan it gave to him of £1,916.81, and the November salary (paid to him in error) of £1,545.59 less accrued holiday pay of £402.01. The defendant did not comply with this request, although he eventually returned the property and reimbursed the money after ICAEW became involved, in April 2016.
21. On 14 March 2016, in response to a complaint from 'C' LLP, ICAEW wrote to the defendant. By this time, ICAEW had been in contact with both 'B' and 'A'.
22. On 6 April 2016, the defendant returned to 'B' its laptop computer, mobile phone, bag and ancillary equipment. He also repaid to 'B' £3,060.39.
23. On 7 April 2016, the defendant responded to ICAEW to explain his conduct. This was the only communication from the defendant with ICAEW until 4 January 2017.
24. On 15 April 2016, 'A' terminated the defendant's employment and training contract because of the defendant's failure to comply with ICAEW's Code of Ethics and Professional Standards.
25. By 4 January 2017, ICAEW's case manager intended to send a report to the IC as a precursor to disciplinary proceedings. The defendant was asked to respond to the report. On 4 January 2017, the defendant asked for an extension of time to provide his comments but nothing further was heard from him at that time.

Submissions

26. ICAEW's fundamental principle of integrity (Code of Ethics 100.5) is "*to be straightforward and honest in all professional and business relationships.*"
27. Integrity, for ICAEW, implies "*fair dealing and truthfulness*" (Code of Ethics 110.1.)
28. The facts described above clearly prove a breach of the fundamental principle of integrity for the following reasons set out below.
29. In respect of heads of complaint 1, 2, and 3, the defendant's conduct was neither straightforward nor fair towards 'C' LLP and 'B'.
30. In respect of head of complaint 4, the retention of 'B's property by the defendant for 6 months was improper because he was given that property on the basis that he would work for 'B' but was, unknown to 'B', employed by and working at 'A' at the time. No allegation of dishonesty is made; it is alleged that the retention of 'B's property in these circumstances proved a breach of the fundamental principle of integrity.
31. In respect of head of complaint 5, there has been a breach of the principle of integrity because the defendant must have known that he was not entitled to payment of November's salary by 'B' but nevertheless did not return it. He must have known because (i) on the defendant's own case (see below and which is not accepted), he had resigned from 'B' on or around 1 October 2015; (ii) the defendant had not received a salary in October because of his non-attendance at work and, since he had not returned to work in November, he must have known he was not entitled to be paid in that month; (iii) when the defendant was eventually requested to return the funds he did so without trying to justify that he was entitled to them.
32. For all these reasons, the defendant is liable to disciplinary action because he has breached DBL 4.1(a).

The Defence

33. The defendant has not submitted any formal defence to this complaint pursuant to the Disciplinary Committee Regulations, and he did not attend the hearing.
34. The only explanation from him about his conduct is contained in his correspondence with ICAEW when it was investigating the complaint which includes a statement made on 7 April 2016. This is treated as his defence to the complaint.
35. The defendant admits starting with 'C' LLP on 14 September 2015 having also previously applied for positions at 'B' and 'A'.
36. The defendant asserts that after he had been offered a position with 'B', he posted a letter dated 16 September 2015 to the human resources department of 'C' LLP tendering his resignation on 21 September 2015 and offering to compensate them for financial loss, since his notice of termination was too short and not in compliance with his contract of employment. The letter was sent, it is alleged, by "*first class recorded post*" but the defendant no longer has the receipt or the tracking number because of the amount of time that has now passed.
37. As far as the defendant was concerned, he had resigned from 'C' LLP before he commenced employment at 'B' and did not behave improperly towards them.

38. The defendant believed that his time at 'B' was not a success. He believed that he had failed to integrate and did poorly in the mock accounting and assurance exams. He was not happy there and had difficulty keeping up with the fast pace. Accordingly, the defendant decided to quit his employment there and start afresh at 'A'.
39. The defendant alleges that he "*E-mailed a woman called 'D' who was the only person who I had met in person at 'B', and that I knew the name of. I explained to her that I could no longer stay at 'B', and that I would be leaving from the next day.*" The defendant also claims that he asked for details of the person to whom he could leave 'B's laptop computer and so on, and offered to courier it to 'B's office.
40. The defendant says that he did not receive any response to this email and he does not have a copy of it.
41. The defendant states that he did not return 'B's equipment to it because (i) he did not receive a response to his email to 'D' referred to above; (ii) he was distracted while at 'A' and (iii) time slipped by quickly without him noticing it. However, once ICAEW contacted him, the defendant responded promptly.

IC's Reply to the Defence

42. There is no evidence in 'C' LLP's possession of any letter from the defendant dated 21 September 2015 terminating his employment.
43. There is no evidence in 'B's possession of any email from the defendant to 'D', saying he will quit (which appears to be a reference to a person of that name who was a resource management advisor at 'B').

Issues of fact and law

44. The relevant standard of proof is the balance of probabilities.
45. The IC is put to proof of the complaint.
46. The issues of fact to determine are the facts alleged in the complaint and in particular whether the defendant sent a termination letter to 'C' LLP on 21 September 2015 and whether he sent an email to 'D' quitting his employment at 'B'.
47. Moreover, the tribunal must determine whether the facts alleged, if proved, constitute a breach of DBL 4.1(a).
48. The tribunal found as a matter of fact that the defendant did not resign from 'B' on or about 1 October 2015, as he alleges he did. To that extent, it does not find head of complaint 3 proved. However, the tribunal found head of complaint 3 proved on the basis that it was the defendant's own case that he resigned from 'B' on or about 1 October 2015. If that were so, then he ought not to have attended a training course when, according to him, he was no longer entitled to do so.
49. The tribunal found heads 1, 2, 4, and 5 of complaint proved; it found the complaint proved. The tribunal would have found the complaint proved notwithstanding the anomaly in head of complaint 3 described above.

Conclusions and reasons for decision

50. The defendant has been found to have signed training contracts with 'B' and 'A' while he was still employed by 'C' LLP.

51. He has also been found to have commenced five days of training with 'C' LLP after he had signed training contracts with 'B' and 'A'.
52. The defendant attended a training course of 'B' after he alleges that he had tendered his resignation from 'B'. He should not have done so, even on his own case, as it was obvious he had no entitlement to any training.
53. The defendant has been found wrongly to have retained valuable property and money belonging to 'B' after he no longer had the right to possess it. Furthermore, the defendant has been found to have improperly retained the sum of £3,060.39 when he knew he was not entitled to do so.
54. The tribunal rejects the defendant's explanation that he tendered his resignation from 'C' LLP and so had not breached his duty of integrity towards them. There is no evidence that he did so and the tribunal finds this explanation to be implausible.
55. The tribunal also rejects the defendant's explanation that he gave notice to quit to 'D' in an email and so had not breached his duty of integrity towards 'B' by taking up employment with 'A'. There is no evidence whatsoever that he did so and the tribunal finds this explanation to be implausible as well.
56. The defendant lacked integrity when he accepted employment from three firms of accountants and without telling each of them that he had done so. This was grossly misleading of him. It was also wrong to have undergone a period of training by 'C' LLP, who no doubt believed that they were training one of their employees, when the defendant must have known that he was also employed by two other firms who would also be training him.
57. If (which the tribunal does not accept) the defendant resigned from his employment by 'B' on or about 1 October 2015, he had no right to be trained by them on 27 October 2015. By his own account, therefore, the defendant lacked integrity by obtaining the privilege of training which is given to employees when he was no longer an employee.
58. The retention of 'B's property and loan money was improper because the defendant had no right to possess it and either knew or ought to have known that. It was wrong of the defendant not to have returned what was not his at the time he should have done. The explanation he has given, which was that he did not do so because 'B' did not contact him after his alleged resignation is poor and unjustifiable. As a matter of professional common sense, even if (which the tribunal does not accept) the defendant had given his notice to terminate his employment of one day, he should have given back to his employer its property and money at once. The notion that he would have to be asked to do so, which is the consequence of the defendant's case, is wrong. It is also a matter of common sense that he should return it to the office from which it was provided in the first place.
59. The erroneous payment of 'B's November salary is also something which the defendant had a duty to correct, whether he was employed by 'B' or not. He was in receipt of money which he had not earned and he ought not to have kept it until, months later, ICAEW made contact with him. He ought to have returned it immediately upon realising the error.

Matters relevant to sentencing

60. The tribunal considered the range of sanctions available to it in Disciplinary bye-law 22.7, and it also considered the *Guidance on Sanctions*. It was satisfied that no lesser penalty than the one imposed was appropriate.

61. This is a very serious matter. While no allegation of dishonesty is made, and no finding of dishonesty is made, it is obvious that the defendant's lack of integrity was serious, prolonged and had the effect of misleading three firms of accountants who trusted the defendant to be honest and to deal fairly with them. Those firms had been put to considerable inconvenience because of the defendant's actions, including plying energy, attention and resources into his training in vain.

62. The tribunal does not accept that the defendant misunderstood what he was doing, or was ignorant of the effect of his actions. His actions were deliberate and self-centred.

63. A further aggravating factor is the defendant's total lack of co-operation in these disciplinary proceedings, which shows a lack of respect to ICAEW which is not dissimilar to the lack of respect the defendant showed to his three employers.

64. There are no mitigating factors. The tribunal does not consider the return of 'B's property and money to be a mitigating factor. That was done months after it should have been and only after ICAEW was investigating the complaint against the defendant.

Sentencing Order

Severe reprimand.

An order that (i) the Defendant cease to be a provisional member of ICAEW and (ii) be ineligible for re-registration for a period of two years from 12 July 2017.

Costs of £4,000.

Decision on publicity

Publication with name.

Chairman

Mr Ron Whitfield

Accountant Member

Mr Philip Coleman

Non Accountant Member

Miss Jane Rees

Legal Assessor

Mr Dominic Spenser Underhill

032010

APPEAL COMMITTEE PANEL ORDERS

8 Mr Andrew Paul Dunkley FCA of

Caistead, 40a Benwick Road, Doddington, MARCH, CAMBRIDGESHIRE, PE15 0TG.

A panel of the Appeal Committee made the decision recorded below having heard an appeal on 6 June 2017

Type of Member	Member
Date of Disciplinary Tribunal Hearing	20 April 2016
Date of Appeal Panel Hearing	6 June 2017

Terms of complaint found proven before the Disciplinary Tribunal (DCT)

The complaint is that Mr Dunkley is liable to disciplinary action under Disciplinary Bye-law 4.1c in that he

‘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’, in that

1. Between 31 January 2013 and 20 February 2015 Mr Dunkley FCA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2011 to 31 October 2012 in breach of Principle Bye-law 56.c.
2. Between 31 January 2014 and 20 February 2015 Mr Dunkley FCA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2012 to 31 October 2013 in breach of Principal Bye-law 56.c.
3. Between 31 January 2015 and 20 February 2015 Mr Dunkley FCA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2013 to 31 October 2014 in breach of Principle Bye-Law 56.c.

Sentencing Order of DCT

The tribunal found the complaint proved. Severely reprimanded, fined £5,000.00 and ordered to pay costs of £1,419.00.

Appeal against finding?	No
Appeal against Sentencing order?	Yes
Appeal against Costs	Yes

Decision of Appeal Panel

The appeal is allowed. The Sentencing Order shall be varied so that Mr Dunkley shall be subject to a Reprimand and shall pay a fine of £1,000 and a contribution towards costs of £1,400, payable at a rate of £100 per month with the first payment to be made in 28 days.

Procedural matters and findings

- 1 The Appellant represented himself. Miss Jessica Sutherland-Mack appeared on behalf of the Investigation Committee.
- 2 The hearing was in public.
- 3 There were no preliminary applications.

Grounds of appeal

- 4 That the Disciplinary Committee sentence was unreasonably harsh because it was imposed on the basis that the Appellant had a practising certificate and was a principal in a registered audit firm, neither of which was correct.
- 5 The Appellant is semi-retired and does not have the funds to meet the financial penalty imposed by the Disciplinary Committee.

Decision

6. There is no dispute that the Appellant failed to certify his compliance with Continuing Professional Development requirements for three years between 2011 and 2014.
7. The Appellant did not attend the hearing before the Disciplinary Committee on 20 April 2016. Its sentencing order was that the Appellant should be subject to a severe reprimand and that he should pay a fine of £5,000 and costs of £1,419. In reaching its decision, the Disciplinary Committee was under the impression that the Appellant had a practising certificate and was a registered auditor. The latter point in particular was regarded by the Disciplinary Committee as a serious aggravating factor for the purposes of considering the appropriate sanction.
8. Before the Appeal Committee, it was common ground that, whilst he was subject to annual CPD requirements, the Appellant was not and never had been a registered auditor and he did not have a practising certificate. The Disciplinary Committee had therefore proceeded on an erroneous basis and its sentencing decision could not stand.
9. The Appeal Committee considered the *Guidance on Sanctions* which suggests that the starting point for a failure to declare CPD should be a Reprimand and a financial penalty of £850 for each year (up to a maximum of 4 years).
10. Having considered the Appellant's explanation for his default, his personal circumstances and his financial means, the Appeal Committee determined that the proportionate and appropriate sentencing order was a Reprimand, a fine of £1,000 and a contribution towards costs of £1,400, payable at a rate of £100 per month. The appeal was therefore allowed on this basis.

Non Accountant Chairman

Mr Angus Withington

Non Accountant Member

Mrs Jane Valentine

Accountant Member

Mr Lee Manning FCA

Accountant Member

Mr Andrew Strickland FCA

Non Accountant Member

Mr Geoff Baines

023956

INVESTIGATION COMMITTEE CONSENT ORDERS

9 Rawlinsons

Consent order made on 11 August 2017

With the agreement of Rawlinsons of Ruthlyn House, 90 Lincoln Road, PETERBOROUGH, PE1 2SP, the Investigation Committee made an order that the firm be reprimanded, fined £2,450 and pay costs of £4,792 following the finding of a prima facie case that:

1. On 27 July 2012, Rawlinsons issued an audit report on the financial statements of 'X' and its subsidiary undertaking for the year ended 31 March 2012 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland) 250A 'Consideration of Laws and Regulations', in breach of audit regulation 3.10, in that the firm failed to form a proper understanding of the charity's VAT arrangements.
2. On 26 July 2013, Rawlinsons issued an audit report on the financial statements of 'X' and its subsidiary undertaking for the year ended 31 March 2013 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland) 250A 'Consideration of Laws and Regulations' in breach of audit regulation 3.10, in that the firm failed to form a proper understanding of the charity's VAT arrangements.
3. On 31 July 2014, Rawlinsons issued an audit report on the financial statements of 'X' and its subsidiary undertaking for the year ended 31 March 2014 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland) 250A 'Consideration of Laws and Regulations' in breach of audit regulation 3.10, in that the firm failed to form a proper understanding of the charity's VAT arrangements.

031175

AUDIT REGISTRATION COMMITTEE

ORDER – 19 JULY 2017

10 Publicity Statement

Place Flight, Montrose House, 22 Christopher Road, East Grinstead, West Sussex, RH19 3BT, has agreed to pay a regulatory penalty of £2,000, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulations 3.20 and 6.06 for failing to carry out cold file reviews as part of its annual audit compliance reviews and for incorrect statements made on the firm's 2015 and 2016 annual returns.

038972

ORDER – 19 JULY 2017

11 Publicity Statement

The registration as company auditor of Hayward Wright Ltd, 4 The Oaks, Clews Road, Redditch, Worcestershire, B98 7ST, was withdrawn on 16 August 2017 under audit regulations 7.03g and 7.03h of the Audit Regulations and Guidance for failing to comply with a restriction imposed by the Audit Registration Committee and for failure to comply with the requirements of the audit regulations. The responsible individual status of Mr A G Hayward-Wright FCA was also withdrawn under audit regulation 4.08e.

038973

INVESTMENT BUSINESS COMMITTEE

ORDER – 29 JUNE 2017

12 Publicity Statement

In view of the firm's admitted breach of DPB Regulation 4.15, The Chartwell Practice of Chartwell House, 4 St Pauls Square, Burton-on-Trent, Staffordshire, DE14 2EF, has agreed to pay a regulatory charge (determined by the Investment Business Committee) of £1,150 for not disclosing and accounting for commission of £3,824 to clients.

039416

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