



## DISCIPLINARY ORDERS AND REGULATORY DECISIONS

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# DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1 Miss Jocelyn Sarah Jowett ACA of 12 Brendon Street, Marylebone, LONDON, W1H 5HE.

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 16 September 2015**

**Type of Member** Member

## Terms of complaint

1. Between 31 January 2012 and 2 October 2014 Miss J Jowett ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2010 to 31 October 2011 in breach of Principal Bye-law 56.c.
2. Between 31 January 2013 and 2 October 2014 Miss J Jowett ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2010 to 31 October 2012 in breach of Principal Bye-law 56.c.
3. Between 31 January 2014 and 2 October 2014 Miss J Jowett ACA failed to certify compliance with Continuing Professional Development requirements for the period 1 November 2010 to 31 October 2013 in breach of Principal Bye-law 56.c.

Miss Jowett is therefore liable to disciplinary action under Disciplinary Bye-law 4.1.c '...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

16 September 2015

## 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) Reprimand;
- b) Fine of £2,550
- c) Costs of £2,178

## Procedural matters and findings

**Parties present** The Investigation Committee (IC)

**Represented** Ms Dix of ICAEW represented the IC

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

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

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

**Findings on preliminary matters** This matter was listed for 2 June 2015 but the case did not go ahead that day. The papers have been sent to Miss Jowett's registered address in the UK. The IC is aware that she lives in South Africa. A number of emails have however been sent to her there and she has responded. She was served the papers for the hearing by email. The tribunal decided to proceed in her absence.

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

1. New regulations concerning Continuing Professional Development (CPD) were made by council on 8 June 2005 and came into force on 1 July 2005. Principal Bye-law 56(c) requires a member to '*certify annually to ICAEW compliance with these provisions...*'. Also regulation 5 of the Continuing Professional Development Regulations states that '*members shall complete a certificate relating to compliance with Principal Bye-law 56 in the format set out in the Schedule to [the] regulations*'.
2. The first period covered by the regulations was a short period from 1 July 2005 to 31 October 2005. While a number of members failed to declare compliance for this period no action has been taken due to concerns over the integrity of the data.
3. The second and subsequent periods for which a return was required was the period from 1 November to 31 October. The certificates of compliance form part of the Member Profile pack. The Member Profile pack is an annual document which is sent to all members and includes details of their membership and request payment of the following years fees. The certificate of compliance with CPD is due to be submitted by 31 January by each member.
4. The complaint is in relation to Miss Jowett's failure to submit her CPD declarations for 2011, 2012 and 2013. Miss Jowett's initial response to the allegation was to inform ICAEW that she was working abroad and should only be contacted by email. Correspondence was sent by email and when no response was received documents were sent to her registered address.
5. Miss Jowett has stated that she had given an explanation regarding her CPD however there is no record of this explanation. She has been given numerous opportunities to put her explanation in writing but has failed to do so. There is also evidence that on several occasions she has received emails from ICAEW and read them but decided not to respond. She has not been cooperative during the investigation into this matter.
6. The tribunal were told of the following communications with Miss Jowett:
  - 25.03.14 Letter and email sent requesting she provide CPD by 18 April 2014.
  - 25.03.14 Miss Jowett responds asking why this is the first contact from the Institute in 2 years and states she is working abroad and only wants to be contacted by email.

- 03.04.14 Miss Jowett emailed requesting a response to her previous email.
- 18.04.14 Miss Jowett emailed stating she still hadn't received a response.
- Unknown Membership confirmed on 4 June 2014 that they replied to Miss Jowett however there is no record of the email sent.
- 13.06.14 A chaser email was sent requesting that she respond to avoid the matter being referred for investigation. A read receipt was received the same day by the case worker.
- 24.06.14 As there had been no response to previous emails an email and letter to registered address was sent requesting a response by 8 July 2014.
- 11.07.14 A chaser email was sent requesting that she respond by 18 July 2014. A read receipt was received the same day by the case worker.
- 24.07.14 A chaser email was sent requesting that she respond by 7 August 2014.
- 18.08.14 Miss Jowett emailed questioning the value of her subscription. She reiterated that she was working abroad and wanted all correspondence by email. She did not refer to her CPD.
- 20.08.14 An email was sent requesting her response by 27 August 2014 in order to avoid the matter being referred to the Investigation Committee. Reference was made to the sentencing guidelines.
- 02.10.14 A letter and email was sent stating that the matter was going to the Investigation Committee and requesting her representations by 16 October 2014.
- 04.11.14 A copy of the report was sent to Miss Jowett by letter and email.
- 13.01.15 Matter before Investigation Committee and consent order offered.
- 23.01.15 An email was sent notifying her of the decision and offer of consent order.
- 13.02.15 A chaser email and letter was sent regarding the offered consent order.
- 16.03.15 A letter and email was sent informing her as she had not accepted the consent order the matter was being referred to the Disciplinary tribunal.

There followed further correspondence between the IC and Miss Jowett.

7. Miss Jowett failed to certify that she had completed her CPD for the year 2011, 2012 and 2013.

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

8. Miss Jowett has failed to provide a declaration that she has completed her CPD for any year between 2012 to date. ICAEW require all members who undertake the following work to undertake CPD:
- do any accountancy-related work (paid or unpaid);
  - do any other work for reward;

- act as a trustee or corporate director or who perform any role which carried with it similar financial/legal responsibilities;
  - plan to undertake any of the above activities in the future.
9. Miss Jowett has failed to provide her declaration despite being contacted by post and email. She has not provided an explanation as to why this has not been provided. She has been un-cooperative with the Institute in her correspondence.
10. The tribunal found the complaint proven in light of the above matters. Miss Jowett is in breach of Disciplinary Bye-law 4(1)(c).

**Matters relevant to sentencing**

11. Miss Jowett had no prior disciplinary record. There was an aggravating feature that Miss Jowett had still not provided the CPD declarations for the period of complaint.
12. The public expected chartered accountants to complete continuing education in order to maintain standards among the profession. It was an important part of the Institute’s role in monitoring standards that CPD returns are made. It was not open to Miss Jowett simply to opt out of this essential aspect of the requirements placed upon the profession.

**Sentencing Order**

13. The tribunal took into its *Guidance on Sentencing* and imposed the following sanctions:
- d) Reprimand;
  - e) Fine of £2,550
  - f) Costs of £2,178

**Decision on publicity**

14. Publicity with names.

<b>Chairman</b>	Mr Ian Walker FCA	
<b>Accountant Member</b>	Mr Michael Barton FCA	
<b>Non Accountant Member</b>	Mr Graham Humby	
<b>Legal Assessor</b>	Ms Melanie Carter	<b>020711</b>

2 Mr Gary Charles Hawkins of 98 Patricxbourne Avenue, GILLINGHAM, ME8 6TY.

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 13 October 2015**

**Type of Member** Former Member

**Terms of complaint**

1. Mr G C Hawkins ACA between 1 October 2011 and 15 April 2012 stole money to the total value of £15,305.93 belonging to others.
2. Mr G C Hawkins ACA between 1 March 2012 and 17 July 2012 stole money to the total value of £2,433.28.

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

**Hearing date**

13 October 2015

**Previous hearing date(s)**

8 September 2015

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

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order**

- a) Exclusion
- b) Costs of £4,111.50

**Procedural matters and findings**

**Parties present** The Investigation Committee (IC)

**Represented** Ms Dix of the ICAEW represented the IC

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

**Decision on service** In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied as to service. The IC bundle had been served on the registered address and his last known address.

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

## Findings on preliminary matters

The tribunal decided to proceed in the defendant's absence. The IC had employed the services of a tracing agent to find Mr Hawkins' last known address and mobile phone number. The papers had been served both at the registered address and his last known address and his phone had been called a number of times. In the circumstances, and taking into account the criteria put forward in R v Jones, it was decided that in the interests of justice it would be appropriate to proceed in the defendant's absence.

## Issues of fact and law

1. Mr Gary Hawkins was a sole practitioner operating as Hawkins Tilly Ltd in Gillingham. Mr Hawkins ceased to be a member on 17 July 2012 as he had not paid his subscriptions.
2. Mr Hawkins stole money from 10 clients of his accountancy practice. He submitted tax returns on their behalf and then stole the tax refunds. Mr Hawkins was subsequently charged and convicted in 2012 and in 2013 in the Crown Court of 10 offences of theft.

## First head of complaint

3. On 24 August 2012 Mr Hawkins was convicted by Maidstone Crown Court of 5 instances of theft, taking place between 1 October 2011 and 15 April 2012. On 4 October 2012 he was sentenced to 12 months imprisonment. The details of the amounts he stole and the period over which it was stolen are:

	Dates from	to	amount £
A	01/10/2011	30/11/2011	1,562.34
B	01/05/2011	01/11/2011	7,380.04
C	01/09/2011	01/10/2011	2,406.32
D	01/09/2011	01/10/2011	2,406.32
E	01/03/2012	15/04/2012	<u>1,550.91</u>
			<u>15,305.93</u>

4. The judge's sentencing remarks note that Mr Hawkins was in a position of trust and that there was an expectation that he would behave in a proper and right manner towards his clients. The judge noted that Mr Hawkins has had some serious problems in his life but that he had sufficient energy to submit the tax returns which resulted in the tax refunds he had stolen. The judge gave credit for Mr Hawkins' guilty plea and also took into account his illness, which was mentioned in a psychological report. However, the judge concluded that Mr Hawkins had taken part in a persistent fraud at the cost of people that trusted him.

## Theft from A

5. 'A' engaged Mr Hawkins in 2008 as a representative of the 'F' Partnership to provide accountancy services for her pet boarding kennel business. Mr Hawkins left the 'F' Partnership and set up Hawkins Tilly Ltd and contacted 'A' in 2010. 'A' was unhappy with her accountant and moved her business to Mr Hawkins. He completed the year end returns for 2010 and filed them with HMRC. In November 2011 'A' received a letter from HMRC regarding a tax repayment of £1,562.34 stating it had been paid to Hawkins Tilly Ltd. 'A' telephoned Mr Hawkins on two occasions and wrote on two occasions but received no response.

### **Theft from B**

6. 'B' a self-employed builder was also contacted by Mr Hawkins following him leaving the 'F' Partnership. He was offered a better rate to do his accountancy work than 'F' Partnership and therefore engaged Mr Hawkins as his accountant. Mr Hawkins submitted his tax return for the year 2010 and he received a £3,400 tax rebate. He submitted his tax rebate in May 2011 and informed Mr 'B' that he was withholding the new tax return of £3,400 due to complications on the tax return. Mr 'B' attempted to contact Mr Hawkins by telephone to seek clarification but had no success.
7. In December 2011 Mr 'B's father who was also a client of Mr Hawkins attended the Hawkins Tilly Ltd business premises and threatened to not pay his owed fees unless his son's situation was resolved. Mr Hawkins claimed that Mr 'B' had supplied the wrong earning figures and therefore owed HMRC £1,800. Mr Hawkins agreed to pay Mr 'B' his rebate minus the amount owed to HMRC. Mr Hawkins confirmed to Mr 'B's father that he had paid the outstanding amount due to HMRC. Mr 'B' was subsequently informed by HMRC that the £1,800 had not been paid and interest was being accrued.

### **Theft from C and D**

8. Both 'C' and 'D' engaged Mr Hawkins to complete their tax returns. On 15 September 2011 they each received a letter from HMRC stating that a tax rebate for each of them of £2,406.32 was being paid into the bank account of Hawkins Tilly Ltd. 'C' contacted Mr Hawkins by telephone and he denied that they were due tax refunds and denied having the money. HMRC confirmed that the money had been sent to Hawkins Tilly Ltd. Mr Hawkins then admitted receiving the money but stated as HMRC had made an error he had sent the money back to them by cheque. 'C' then attempted to contact Mr Hawkins by telephone and attended his business address which seemed abandoned.
9. 'C' and 'D' confirm that when they signed the tax returns the repayment section was blank. HMRC confirmed that an online request for payment of the tax rebate was made on 13 September 2011 by Hawkins Tilly Ltd. 'C' and 'D' did not authorise this. HMRC confirmed that the self-assessment tax forms had included the bank account details for Hawkins Tilly Ltd. As 'C' received no response from Mr Hawkins she reported the matter to ICAEW and the police.

### **Theft from E**

10. Mr 'E' a self-employed wholesaler engaged Mr Hawkins as his accountant in July 2011. Mr Hawkins completed his tax return for year ended 2011. He informed Mr 'E' that he owed £1,895.70 which he paid. He was then informed that he was due a rebate of £1,550.91 which was paid into the Hawkins Tilly Ltd account. Mr 'E' paid Mr Hawkins a fee of £720 for his services. The bank account for which his rebate was credited to was different to the account Mr 'E' paid the fee into. He has not been able to contact Mr Hawkins as his telephone number is no longer in service. Mr 'E' reported the matter to the police.

### **Second head of complaint**

11. On 1 July 2013 Mr Hawkins was convicted by a Crown Court of 5 further instances of theft, taking place between 1 March 2012 and 30 September 2012. On 12 July 2013 he was sentenced to 15 months imprisonment, suspended for 24 months and 150 hours of community service. The details of the amounts he stole and the period over which it was stolen are:

	Dates from	to	amount £
G	01/03/2012	31/03/2012	1,263.28
H	01/07/2012	31/07/2012	4,211.29
I	01/09/2012	30/09/2012	3,137.00
J	10/03/2012	24/06/2012	1,170.00
K	19/07/2012	18/09/2012	<u>4,946.00</u>
			<u>14,727.57</u>

12. The sentencing remarks for the second conviction state that if the judge had been aware of the second group of thefts when previously sentencing Mr Hawkins then the prison sentence would undoubtedly have been longer. However, he gave Mr Hawkins credit for pleading guilty and his good behaviour whilst in prison. The judge stated that he thought the community service would be good for Mr Hawkins and help him to get back into the work ethic and deal with his depression.
13. However, ICAEW's jurisdiction is restricted to conduct that took place whilst the member was a member of ICAEW and does not relate to conduct prior to 7 October 1999, as provided for in disciplinary bye-law 6A.4. Therefore, the investigation committee referred all instances of theft for which Mr Hawkins was convicted on 24 August 2012, totalling £15,305.93 but only two of the instances of theft for which he was convicted on 1 July 2013, as follows:

	Dates from	to	amount £
G	01/03/2012	31/03/2012	1,263.28
J	10/05/2012	24/06/2012	<u>1,170.00</u>
			<u>2,433.28</u>

14. The thefts from 'I' and 'K' took place after Mr Hawkins' membership had ceased on 17 July 2012. The theft from 'H' took place during July 2012 however there is no evidence to confirm whether this was before his membership was ceased and therefore does it not form part of the complaint.

### Theft from G

15. Mr 'G' is a self-employed driving instructor. He used Mr Hawkins for his accountancy services whilst at Hawkins Tilly Ltd. Mr Hawkins prepared the tax return for him for 2010/11. Mr 'G' received a letter on 13 March 2012 from HMRC thanking him for his application for repayment and confirming that £1,263.28 would be paid into the bank account of Hawkins Tilly Ltd. Mr 'G' had no knowledge of this application. HMRC informed him that the application had been made on 24 February 2012.
16. Mr 'G' attempted to contact Mr Hawkins by phone and attended his business and home address which appeared to be unoccupied. He received a response to an email from Mr Hawkins on 25 April 2012 stating that he had sent the tax rebate by cheque in the post and would deal with when he had returned to work as he was away. He received no further contact from Mr Hawkins so reported the matter to ICAEW and police.

### Theft from J

17. Mr 'J' is a self-employed construction manager who engaged the services of Mr Hawkins. He accepted that he signed a form confirming that Mr Hawkins be paid any tax refunds believing this to be normal practice. In June 2011 he received a letter from HMRC stating

that he was due a refund of £2,400. He contacted Mr Hawkins who stated it would take 2-10 days to be put in his account and he would then write a cheque. Mr 'J' contacted him by phone and attended his business address but was unable to speak with him. He attended his home address and was given a cheque for the amount outstanding. He used Mr Hawkins for his tax return in April 2012. HMRC confirmed that he was due a repayment of £4170 which would be sent to Hawkins Tilly Ltd. Mr Hawkins provided Mr 'J' with a cheque for £4170 which subsequently bounced. Mr Hawkins informed Mr 'J' that his chequebook had been stolen and £5000 withdrawn from his account he provided £3000 in cash to Mr 'J'. Mr Hawkins failed to pay the remaining £1170. Mr 'J' reported the matter to the police.

18. By virtue of Disciplinary Bye-law 7(1)(a) the fact of the convictions is conclusive evidence of the commission by Mr Hawkins of such an act or default as is mentioned in bye-law 4(1)(a).

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

19. The tribunal found the complaint proven. The tribunal relied upon Disciplinary Bye-law 7(1)(a) in finding that there had been a breach of Disciplinary Bye-law 4(1)(a). It was clear in any event that the convictions would be likely to bring discredit to Mr Hawkins, the profession of chartered accountancy and the Institute. The first conviction was deemed so serious by the Judge that it warranted an immediate custodial sentence of 12 months. The second conviction was also dealt with by way of a custodial sentence, albeit, on that occasion, imprisonment was suspended for 15 months.
20. The aggravating features of this complaint are that Mr Hawkins stole from his clients whilst in a position of trust. In the case of 'C' and 'D' he amended their tax returns after they had approved them. When confronted by his clients he denied receiving the rebates and blamed the HMRC therefore intentionally misleading them.
21. There is no evidence that he has made restitution to the victims.
22. The sentencing remarks of the first conviction refer to an illness detailed in a psychological report however there are no further details regarding this due to Mr Hawkins' failure to respond.
23. His convictions and underlying conduct raise significant concerns regarding Mr Hawkins integrity. Mr Hawkins has breached Disciplinary Bye-law 4.1a.

### **Matters relevant to sentencing**

24. The tribunal took into account its *Guidance on Sentencing* and the fact that he was no longer a member. It was clear that he would have been excluded if he had still been a member given that these had been acts of dishonesty.
25. These matters had been aggravated on account of the number of thefts that had taken place, there had been a significant amount of money involved and that he was acting in his role as accountant and therefore in breach of trust. He had lied to people to try and cover his tracks. In addition to the financial losses, he would have seriously inconvenienced and caused distress to the individuals concerned.
26. In terms of personal mitigation, he had pleaded guilty on both occasions and there were allusions in the papers to mental health issues faced by Mr Hawkins at the time. The tribunal had no details other than the Sentencing remarks of the Judge at the Crown Court. He had no prior disciplinary record. The tribunal was clear that the seriousness of the matters before them and the aggravating features significantly outweighed any personal mitigation.

27. In the circumstances, no lesser penalty than exclusion would have been warranted had he been a member. As such formally the sanction imposed was exclusion from membership.

### **Sentencing Order**

28. The tribunal decided to impose the following sanction:

- a) Exclusion;
- b) Costs of £4,111.50

The tribunal recommended, albeit not part of the formal sanction, that he should not be considered for readmission before a period of at least ten years had passed from the date of this Order. This is a matter for the Institute's Readmission Committee and that Committee would not necessarily approve any application for readmission and would consider all of the merits of the application, including, in particular, what steps the defendant had taken by way of rehabilitation during the period of exclusion.

### **Decision on publicity**

29. Publicity with names.

**Non Accountant Chairman**

Mr Paul Brooks

**Accountant Member**

Mr Philip Coleman FCA

**Accountant Member**

Mr Mike Ranson FCA

**Legal Assessor**

Ms Melanie Carter

**021224**

**3 Mr Stephen Andrew Homyard [FCA]** of 74 Promenade de la Fontaine des Eaux, DINAN, 22100. FRANCE

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 13 October 2015**

**Type of Member** Member

**Terms of complaint**

1(a) Between the following dates Mr S Homyard, as a director of 'A' Ltd, failed to adequately address the threat to his objectivity arising from the receipt of the following loans from clients of 'A' Ltd, in which he was a director:-

Dates	Details of conflict
4 February 2011 and 29 March 2011	A loan of £40,000 to 'B' Ltd (a company in which Mr Homyard is a director) from Mr 'C'
4 March 2011 and 14 October 2011	A loan of £34,000 from Mr 'C'
8 July 2009 and 27 September 2011	A loan of £100,000 from Mrs 'D'
1 March 2010 and 27 September 2011	A loan of £40,000 from Mrs 'D'
1 June 2010 and 27 September 2011	A loan of £40,000 from Mrs 'D'

1(b) Between the following dates Mr S Homyard failed to disclose the following conflicts of interest arising in relation to loans made to him by clients of 'A' Ltd, to the directors of 'A' Ltd, contrary to the requirements of paragraph 2.4 of the Code of Practice for Trust Company Business (issued by the Jersey Financial Services Commission);

Dates	Details of conflict
4 February 2011 and 29 March 2011	A loan of £40,000 to 'B' Ltd (a company in which Mr Homyard is a director) from Mr 'C'
4 March 2011 and 14 October 2011	A loan of £34,000 from Mr 'C'
8 July 2009 and 27 September 2011	A loan of £100,000 from Mrs 'D'
1 March 2010 and 27 September 2011	A loan of £40,000 from Mrs 'D'
1 June 2010 and 27 September 2011	A loan of £40,000 from Mrs 'D'
21 June 2008 and 29 March 2011	A loan of €55,470 (plus bank charges) from Mr 'E'
22 September 2010 and 29 March 2011	A loan of €17,500 (plus bank charges) from Mr 'E'
14 October 2010 and 29 March 2011	A loan of £14,500 (plus bank charges) from Mr 'E'

1(c) On or around 6 July 2011 Mr S Homyard improperly informed the board of directors of 'A' Ltd that he had fully repaid a loan received from a client, Mr 'E', when he had not done so.

2. Between 4 February 2011 and 15 December 2011 Mr S Homyard FCA, as a partner of 'Q', failed to have sufficient regard to Section 280 of the Code of Ethics (effective from 1 January 2011) as he did not adequately address the threat to his objectivity arising from (i) a loan of £40,000 from his firm's client, Mr 'C', to him (through his company 'B' Ltd) and (ii) a further loan from Mr 'C' to him of £34,000.

3. As at 19 May 2013, Mr S Homyard FCA has failed to satisfy the following judgment debts:

<b>Date</b>	<b>Entity</b>	<b>Amount</b>
3 February 2012	Mr 'E'	£3,500 £17,500 €55,515 \$2,880 \$250
30 March 2012	F	£50,175.07
21 March 2012	G	£1,508.81
4 May 2012	H Ltd	£13,138.54
10 August 2012	I Ltd	£19,257.99
30 October 2013	K Ltd	£1,219.66
30 October 2013	L Ltd	£928.62

Mr Homyard is therefore liable to disciplinary action under Disciplinary Bye-law 4.1 a in respect of heads of complaint 1 and 2 because

*"...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"*

and 4.1e in respect of head 3 because

*"...if any of the circumstances set out in paragraph (2) exist with respect to him."*

Paragraph 4.2 provides:

*"Those circumstances are-*

*(a) That he has failed to satisfy a judgment debt..."*

#### **Hearing date**

13 October 2015

#### **Previous hearing date(s)**

None

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

**Complaint found proved** Yes in part

**All heads of complaint proven** Yes in part

#### **Sentencing order**

- a) Exclusion
- b) Fine of £10,000
- c) Costs of £9,561

## **Procedural matters and findings**

<b>Parties present</b>	The Investigation Committee (IC)
<b>Represented</b>	The IC was represented by Ms Joester of ICAEW
<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 to service
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the IC's bundle
<b>Findings on preliminary matters</b>	Mr Homyard had indicated in regulation 13 answers dated 19 August 2015 that he was aware of the date of the hearing and did not intend to attend. The Tribunal decided in the circumstances, including that he had opportunities to put submissions and evidence in writing, that it was appropriate in the interests of justice to proceed in the defendant's absence.

## **Issues of fact and law**

1. Mr Homyard was the founding partner of 'Q', an accountancy practice in Jersey established in 1995. He was also a director of 'A' Ltd.
2. During the period of the complaint the other partner in 'Q' was Mr 'M', also an ICAEW member. During the same period the directors in 'A' Ltd were Mr 'M', Mrs 'N' and 'O' (the latter is not an ICAEW member).
3. On 24 May 2013 the Jersey Financial Services Commission (JFSC) issued a public statement regarding the fitness and propriety of Mr Homyard. JFSC issued Mr Homyard with directions prohibiting him from 'performing any function, engaging in any employment or holding any position of business as a registered person without having first obtained written approval of the Commission.'

## **Head of complaint 1(a)**

4. Head 1(a) relates to loans received by Mr Homyard/'B' Ltd from Mr 'C' and Mrs 'D'. During the period of this head of complaint both Mr 'C' and Mrs 'D' were clients of 'A' Ltd, and Mr Homyard was a director of 'A' Ltd.
5. On 4 February 2011 Mr 'C' made a loan of £40,000 to 'B' Ltd. 'B' Ltd is a publishing company in which Mr Homyard is a director Mr Homyard approached Mr 'C' for the loan, enclosing schedules, a 'company profile', projected profit for the year, 2009 and 2010 accounts and loan schedules. Mr Homyard also personally guaranteed the loan.

6. On 4 March 2011 Mr 'C' made a loan of £34,000 to Mr Homyard personally. Mr Homyard had written to Mr 'C' on 18 February 2011 requesting a loan of £34,000 to fund a property renovation for a proposed new accountancy practice in Dorset. Mr Homyard included a loan agreement, pictures of the property, a draft lease agreement and quotes from a local builder with the letter. Neither of the loans made by Mr 'C' have been repaid.
7. Mrs 'D' made three loans to Mr Homyard. The first was made on 8 July 2009 for £100,000. The second and third loans were made in February and May 2010 and were for £40,000 each. As at 30 September 2013 £228,295.68 of the loans were outstanding (including interest at the agreed rate).

### **Head of complaint 1(b)**

8. Head of complaint 1(b) alleges that Mr Homyard failed to disclose various conflicts of interest which arose from his receipt of various loans from clients of 'A' Ltd.
9. At the time of the complaint Mr Homyard was a director of 'A' Ltd. In Jersey, entities which provide trust company services are required to be authorised by Jersey FSC as a 'registered person'. 'A' Ltd was so authorised during the period of the complaint (and remains so authorised). As he was a director of 'A' Ltd Mr Homyard was also a 'Principal Person' under the Financial Services (Jersey) Law 1998.
10. From January 2008 the Jersey FSC Code of Practice provided:
 

*"A registered person must either: avoid any conflict of interest arising or, where conflicts arise, address such conflicts by: disclosure; applying internal rules of confidentiality; declining to act; or otherwise as appropriate."*
11. Jersey FSC issued a revised 'Code of Practice for Trust Company Business' on 13 October 2010. The Code is stated to apply to '...all persons registered by the Jersey Financial Services Commission...', and thus included 'A' Ltd.
12. The 2010 revised Code of Practice provided:
 

*"2.4 A registered person must either avoid any conflict of interest arising or, where conflicts arise, must address such conflicts by: disclosure; applying internal rules of confidentiality; declining to act; or otherwise as appropriate."*
13. On 22 October 2010 the Director of Trust Company Business at the JFSC wrote to all Chief Executives of trust companies, asking that they undertake 'a review of their internal controls in respect of conflicts'. The letter specified that:
 

*"Such a review should encompass, but not be limited to, ensuring that your policies and procedures are sufficiently robust so as to capture the following type of conflicts:*

*...An employee of the trust company (or, relative of the employee) securing a personal loan, or financing of any description, from a client structure, or, from a client...*

*...An employee of the trust company (or, relative of the employee) co-investing with a client structure, or, with a client;..."*
14. After receipt of the JFSC letter dated 22 October 2010 'A' Ltd conducted a review of their policies and procedures and generated a report on conflicts of interest. This report was considered at a meeting of the company on 30 March 2011, at which Mr Homyard was present.

15. The minutes of the meeting record that:

*“Procedures Manual changes*

*The draft Report to the Board on Conflicts of Interest was discussed in detail. The directors each confirmed that they had no conflicts of interest other than those mentioned in the draft report except for Stephen Homyard who reported the following to the meeting:*

- a) the loan due from him to ‘E’ has been fully repaid.*
- b) He has recently accepted a loan from Mr ‘C’, the beneficial owner of a ‘A’ Ltd client, ‘P’ Ltd, of £40,000 in order to refinance ‘B’ Ltd. The position was noted and also the fact that ‘A’ Ltd do not control any funds for ‘P’ Ltd, merely acting as Company Secretary. This will be entered on the new Conflicts Register.*
- c) It was resolved to adopt the Conflicts report with amendments as agreed at the meeting, relating to the above and a few minor alterations/additions. The procedures manual changes will be circulated to all staff in due course.”*

16. The minutes also record:

*“SAH and long standing arrangements with ‘E’*

*The Board is already aware that SAH has a long standing friendship with ‘E’ (settlor and beneficiary of the Trust and also related to various other client entities). SAH and ‘E’ have a financial relationship in that ‘E’ lent SAH some funds some years ago which are still held by SAH. No further action is required in this respect other than noting the conflict in the new register. Any potential further conflict is mitigated by the requirement to have a second signatory for all transactions.”*

17. ‘A’ Ltd’s auditors have confirmed that Mr Homyard did not make any conflict of interest declarations for the years ending 30 June 2009 and 30 June 2010.

18. The Conflicts of Interest Register records that on 30 March 2011 Mr Homyard disclosed a loan of £40,000 from Mr ‘C’, which he said had been used to ‘refinance ‘B’ Ltd. The Register recorded that no further action was required.

19. The Register also records that:

*“...SAH has a long standing friendship with ‘E’ (settlor and beneficiary of the \*\*\*\*\*Trust and also related to various other client entities). SAH and ‘E’ have a financial relationship in that ‘E’ lent SAH some funds some years ago which are still held by SAH”.*

20. The report is dated 30 March 2011. There is a further note dated 6 July 2011 that:

*“These funds have now been repaid in their entirety” (reported by SAH).*

21. On 14 September 2011 Mr Homyard signed a Conflicts of Interest declaration, confirming that:

*“1) I have no outside business interests which have not been declared to the company...*

*4) I have not entered into any transactions with ‘A’ Ltd’s clients during the last 12 months...*

*5) I have declared to the Compliance Officer and the Board any existing transactions with ‘A’ Ltd’s clients...”*

22. At the time of signing the declaration Mr Homyard had accepted the loans set out in head 1(b) from Mrs 'D' and Mr 'C'. In addition, he had various loans from Mr 'E', being €55,470 loaned on 21 June 2008, €17,500 loaned on 22 September 2010 and €14,500 loaned on 14 October 2010. However, the loan arrangement with Mr 'E' had been disclosed to the 'A' Ltd Board.
23. Mr Homyard ceased involvement with 'A' Ltd on 30 September 2011.
24. The tribunal noted whilst there had been a second partner review on the relevant clients, this would not have been specifically aimed at any identified threat as to objectivity. Therefore the partner doing the review would not have been looking for any difficulties arising from this risk.

### **Head of complaint 1(c)**

25. 'A' Ltd's Conflict Of Interest Register records that on 30 March 2011 Mr Homyard made a declaration that '...'E' lent SAH some funds some years ago which are still held by SAH.'
26. The Register further records that:

*"These funds have now been reported in their entirety. (reported by SAH)."*
27. The record is shown to have been reported in the Board Minutes on 6 July 2011.
28. Mr Homyard subsequently confirmed, at a meeting with Mr 'M' and Mrs 'N' on 27 September 2011 that the loan(s) from Mr 'E' were at least partially outstanding. The notes of that meeting record:

*"SAH was also asked whether there were any other conflict situations which should be disclosed. He stated that, despite his report to the Board on 30 March 2011, he did still owe 'E' some money c£50k but was not sure exactly how much in £ (some of the loan is denominated in €)."*

### **Second head of complaint**

29. The second head of complaint relates to the aforementioned loans which were made to Mr Homyard by Mr 'C'. In addition to being a client of 'A' Ltd, Mr 'C' was also a client of Baker Homyard, as was his company, 'P' Ltd. As 'Q' is an accountancy firm Mr Homyard was subject to further guidance and restrictions in respect of loans from clients of 'Q'.
30. Prior to 31 December 2010 it was prohibited for a principal in an accountancy practice to receive a loan from a client. With effect from 1 January 2011 section 280 of the Code of Ethics was revised. Loans from clients are no longer prohibited, but section 280.4 requires an accountant to evaluate the threat to his independence if he receives a loan, and to apply safeguards to eliminate/reduce the threat to an acceptable level.
31. Mr 'M' prepared the accounts for 'P' Ltd for the year ended 31 December 2010. The accounts were reviewed by Mr Homyard, and it was Mr Homyard who met with Mr 'C' to discuss the accounts. The accounts were approved by Mr 'C' on 26 July 2011 and signed by Mr Homyard, on behalf of 'Q', on 31 January 2011.
32. Mr Homyard wrote to Mr 'C' on 23 January 2011 asking him to make a loan to Innovate Limited in the amount of £40,000. The loan was made on 2 February 2011. Mr 'C' made a further loan, this time to Mr Homyard personally, for £34,000 on 4 March 2011.

33. On 30 March 2011 Mr Homyard disclosed to the Board of 'A' Ltd (which were common to the partners of 'Q') that Mr 'C' had made a loan of £40,000 to Mr Homyard to refinance Innovate Limited (no mention was made of the personal loan made to Mr Homyard). However, there is no record of any consideration being given as to whether this would impact on Mr Homyard continuing to act for Mr 'C' and 'P' Ltd through 'Q'.
34. Between February 2011 and December 2011 (when Mr Homyard left 'Q') 'P' Ltd was invoiced £2,200 by 'Q'. Mrs 'N' has confirmed that around 50% of this invoice was for personal tax services for Mr 'C' that had been provided by Mr 'M', and that the remainder was for accountancy services provided by Mr Homyard.
35. In his letter dated 11 November 2014 Mr Homyard states that the accounts and files for 'P' Ltd were always handed to Mr 'M' or Mrs 'R' for review, and that the 2010 accounts were given to Mr 'M' for a second review. Mr 'M' disagreed with this in his letter dated 20 November 2014, stating that he prepared the accounts, and Mr Homyard acted as the engagement partner and reviewed them.

### Third head of complaint

36. Mr Homyard has the following judgment debts recorded against him in Jersey Petty Debts Court and Jersey Royal Court. As at 19 May the following judgement debts were unsatisfied:

Date	Details
3 February 2012	Mr 'E' for the following amounts: 1. £3,500 2. £17,500 3. €55,515 4. US\$2,880 5. US\$250
21 March 2012	'G' for £1,508.81
30 March 2012	'F' Ltd for £50,175.07
4 May 2012	'H' Ltd for £13,138.54
10 August 2012	'I' Ltd for £19,257.99
30 October 2013	'K' Ltd for £1,219.66
30 October 2013	'L' Ltd for £928.62

The latter two judgement debts post-dated the relevant date for the purposes of this head of complaint, therefore the IC offered no evidence in relation to these particulars.

### Conclusions and reasons for decision

37. The tribunal found the complaint proven other than with regard to the two particulars set out in the paragraph above.

38. ICAEW members are expected to act in accordance with the ICAEW Code of Ethics. The Code details the principle of objectivity and provides:

*“120.1 The principle of objectivity imposes an obligation on all professional accountants not to compromise undue influence of others.*

*Objectivity is the state of mind which has regard to all considerations relevant to the task in hand but no other.’*

*The Code of Ethics contains specific provisions about Conflicts of Interest for professional accountants in business. Section 300.7 provides:-*

***‘Threats and Safeguards***

*300.7 Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances. Many threats fall into the following categories:*

- (a) Self-interest;*
- (b) Self-review;*
- (c) Advocacy;*
- (d) familiarity; and*
- (e) Intimidation.*

*These threats are discussed further in Part A of this Code.*

*300.8 Examples of circumstances that may create self-interest threats for a professional accountant in business include, but are not limited to:*

*Financial interests, loans or guarantees...”*

39. Also relevant to the complaint was that Jersey FSC had also identified the receipt by an employee of a trust company of a loan from a client of that trust company as a potential conflict of interest. In their letter of 22 October 2010 to trust companies they reminded recipients that their policies and procedures should be:

*“sufficiently robust so as to capture the following types of conflict:*

*...An employee of the trust company (or, relative of the employee) securing a personal loan, or financing of any description, from a client structure, or, from a client;...”*

40. It was clear from Mr Homyard’s letter of 24 February 2014 to the Institute, that he had accepted that the loans had been made. Mr Homyard should have identified the fact that receiving loans from clients of the ‘A’ Ltd created a self-interest threat to his objectivity, and put appropriate safeguards in place to guard against that threat. However, he has failed to demonstrate that he either identified the threat or applied any safeguards against it.

41. ‘A’ Ltd and Mr Homyard were both regulated by Jersey FSC. They were therefore obliged to comply with the JFSC Code of Practice in place at the time. Mr Homyard breached the Code of Practice that was in place at the time of each of the loans because he failed to disclose to the directors of ‘A’ Ltd by ensuring that they were noted in the company’s Conflicts of Interest Register. This failure breached both the Code of Practice of Jersey

FSC. Mr Homyard would have been aware of the Policy and Procedures of 'A' Ltd which would have guided him as to the required steps internally for disclosure to be made.

42. 'A' Ltd's Conflicts of Interest Register records that Mr Homyard advised that he had repaid the loan that he had received from Mr 'E'. The tribunal treated this evidence as reliable, such that on the balance of probabilities the evidence shows that Mr Homyard wrongly advised the company that the loan was repaid.
43. Mr Homyard admits that the loans were made by Mr 'C' to him/'B' Ltd. In these circumstances Mr Homyard should have addressed the threat to his objectivity that arose as a result of the loans, and applied safeguards against the threat. Mr Homyard had resigned in October 2014 from 'A' Ltd. He remained active within 'Q' until 15 December 2014, hence the end date of this head of complaint. He should have made formal disclosure within 'Q'; the disclosure to Mr 'M' made via 'A' Ltd was not full disclosure and had Mr 'M' been made aware of full disclosure this would have put different complexion on the matter - ie: this was a personal loan to Mr Homyard, not just a loan to Innovate underwritten by Mr Homyard. Any review of work undertaken by Mr Homyard, would likely to have been carried out on a different basis if he had been aware of the full indebtedness.
44. Finally, other than with regard to the two debts mentioned above, Mr Homyard has failed to satisfy the judgment debts listed in the complaint.
45. Taking into account the impact on his clients as a consequence of the loans and failures to put safeguards in place, this conduct fell significantly below the standards expected of chartered accountants, the tribunal concluded that Mr Homyard was in breach of Disciplinary Bye-law 4(1)(a). His conduct would be likely to bring discredit to himself, the profession and the Institute.

### **Matters relevant to sentencing**

46. The tribunal took into account its *Guidance on Sentencing*.
47. Mr Homyard had a prior disciplinary record by way of a consent order dated 29 August 2014 in which he received a sanction for not having professional indemnity insurance in place. He was severely reprimanded and fined £5,750.
48. The tribunal were of the view that these were very serious matters indeed. Cumulatively, Mr Homyard's actions had been likely to bring a considerable degree of discredit to himself, the profession and the Institute. In the tribunal's view Mr Homyard had abused his position of trust in seeking out the loans from his clients and then failing to put in place any safeguards to protect his objectivity and threats to independence. This led to a concern as to the protection of the public. The aggravating features were that there were very large amounts of money involved, the breaches had occurred on a significant number of occasions and over a significant number of years. He had not repaid his clients and debtors. He appeared to have no insight into what he had done and that this was contrary to professional requirements. He had not expressed any remorse.
49. Mr Homyard had not put forward any mitigation.
50. In all the circumstances the tribunal were of the view that no lesser penalty than exclusion was warranted.
51. The tribunal took into account his evidence as to his means.

## **Sentencing Order**

52. The tribunal decided to impose the following sentence:

- d) Exclusion from membership;
- e) Fine of £10,000;
- f) Costs of £9,561.

## **Decision on publicity**

53. Publicity with names.

**Non Accountant Chairman**

Mr Paul Brooks

**Accountant Member**

Mr Philip Coleman FCA

**Accountant Member**

Mr Mike Ranson FCA

**Legal Assessor**

Ms Melanie Carter

**015321**

**4 Mr Syed Masroor Mehdi Rizvi** of 1A Arcade House, Temple Fortune, LONDON, NW11 7TL.

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 14 October 2015**

**Type of Member** Member

**Terms of complaint**

1. Between 24 September 2014 and 8 December 2014 Mr Syed Rizvi FCA failed to satisfy a judgement debt of £24,673.22 obtained by 'A' Ltd on 23 September 2014.
2. Mr Syed Rizvi FCA failed to comply with regulation 21 of the Clients' Money Regulations because he caused or permitted funds to be withdrawn from his firm's client account which were greater than the credit balance held for that client. Full particulars are set out in a letter sent to Mr Rizvi on 8 December 2014.
3. Between 28 April 2010 and 25 March 2013 Mr Syed Rizvi FCA failed to comply with regulation 20 of the Clients' Money Regulations as he made 64 payments on behalf of clients when such payments were not made on the clients' written authority or in conformity with any written contract between the firm and the client. Full particulars are set out in a letter sent to Mr Rizvi on 8 December 2014.
4. Mr Syed Rizvi incorrectly completed the following ICAEW annual returns on behalf of his firm, Rizvi & Co, in that he stated that the firm did not handle clients' money during the period under review when he knew this was not correct:
  - Annual return as at 31 October 2010
  - Annual return as at 31 October 2011
  - Annual return as at 31 October 2012
  - Annual return as at 31 October 2013
5. Mr Syed Rizvi FCA failed to comply with regulation 13 of the Clients' Money Regulations because he did not pay the amount of £20,510.30 received from 'A' Ltd into a designated client account within 30 days of receipt of the monies from the client.
6. From 1 October 2008 to 3 June 2013 Mr Syed Rizvi FCA paid funds totalling £379,450.23 into the client bank account contrary to Regulation 11 of the Clients' Money Regulations as the funds represented personal funds of Mr Rizvi. Full particulars are set out in a letter sent to Mr Rizvi on 20 January 2015.

Mr Syed Rizvi FCA is therefore liable to disciplinary action under

- Disciplinary Bye-law 4.1e in respect of head 1;
- Disciplinary Bye-law 4.1c in respect of heads 2, 3, 5 and 6; and
- Disciplinary Bye-law 4.1a in respect of head 4.

**Disciplinary Bye-law 4.1e:**

- 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

e. if any of the circumstances set out in paragraph 2 exist with respect to him.

4.2 Those circumstances are

a. that he has failed to satisfy a judgement debt.

**Disciplinary Bye-law 4.1c:**

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

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.

**Disciplinary Bye-Law 4.1a:**

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**

14 October 2015

**Previous hearing dates**

None

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

**Complaint found proved** Yes

**All heads of complaint proven** Yes, but head of complaint 2 only to the extent of the Defendant's admissions.

**Sentencing order** (i) severe reprimand; (ii) withdrawal of Practising Certificate forthwith for a period expiring on 30 November 2017.

**Procedural matters and findings**

**Parties present** Mr Rizvi was present.

**Represented** Mr Rizvi was represented by Mr Christopher Cope; the Investigation Committee (IC) was represented by Theresa Thorpe.

<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 together with a bundle submitted by Mr Rizvi.
<b>Findings on preliminary matters</b>	Paragraph 4 of the complaint was amended by consent so that "31 October 2013" was replaced by "30 November 2013".

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

### **Head of complaint 1**

1. The Defendant is a sole practitioner whose firm, Rizvi & Co had a client called 'A' Ltd. 'A' Ltd sued the firm and obtained judgment in the sum of £24,673.22. On 23 September 2013, that judgment was amended to make the defendant personally liable for the debt. The defendant has not satisfied the judgment debt in full and it remains substantially outstanding. This failure to pay a judgment debt is a breach of Disciplinary bye-law 4.1 (e).

### **Head of Complaint 2**

2. Regulation 21 of the Client Money Regulations requires a firm to ensure that (i) the credit balances held for all clients is at least equal to the total balance held in its client bank accounts and (ii) no amount may be withdrawn from the bank account for any client which is greater than the credit balance held for that client.
3. From 15 September 2008 to 13 March 2013, the defendant on a large number of occasions caused or permitted funds to be withdrawn from his Firm's client account which exceeded the credit balance held for that particular client. (Details of those withdrawals were set out in a letter from the ICAEW to the defendant dated 8 December 2014.)
4. The defendant denied this head of complaint insofar as he denied the number of occasions in which it was alleged he made such withdrawals. However, he admitted making five withdrawals in breach of Regulation 21: on 12 May 2010 (£2,000), on 2 July 2010 (£5,000), on 31 August 2010 (£13,403.80), on 9 September 2010 (£5,000) and on 21 September 2010 (£2,000). In his defence, he submitted that the final two payments would not have been an issue if he had not made the withdrawal of £13,403.80 (which was not a payment to himself but to a third party in respect of another client), as without that payment, they would not have resulted in balances in the client account being in deficit.

### **Head of Complaint 3**

5. Regulation 20(h) of the Client Money Regulations states that a Firm may withdraw from a Client Bank Account with a client's written authority or in conformity with a written contract between the Firm and the client.
6. Between 28 April 2010 and 25 March 2013, the defendant made 64 payments on behalf of clients from his Client Bank Account without the client's written authority or in conformity with a written contract between the Firm and the client. These were breaches of Regulation 20(h).

#### **Head of Complaint 4**

7. The defendant submitted four annual returns on behalf of his Firm for the years ended 31 October 2010, 31 October 2011, 31 October 2012 and 30 November 2013. In each one, he stated that the Firm did not handle client money. In fact, it did handle client money and the annual returns were thus inaccurate.

#### **Head of Complaint 5**

8. Regulation 13 of the Client Money Regulations requires a Firm to pay into a separate, designated Client Bank Account any amount of money of any one client in excess of £10,000 which is either held by the Firm or is expected to be held by the Firm for more than 30 days.
9. On 24 August 2010, the Defendant's firm received £20,510.30 from a client, 'A' Ltd. The defendant failed to pay that sum into a separate designated client account within 30 days. This was a breach of Client Money Regulation 13.

#### **Head of Complaint 6**

10. Regulation 11 of the Client Money Regulations stipulates that a Firm must only pay money into a Client Bank Account if either (a) the Regulations require it or (b) the money belongs to the Firm *and* (i) the money is required for the purpose of opening and maintaining the account (and is the minimum necessary to do this) or (ii) it is paid in order to restore in whole or in part any money paid out of the account in breach of the Regulations.
11. From 1 October 2008 to 3 June 2013, the defendant paid personal funds totalling £379,450.23 into his Firm's Client Bank Account. Those payments were not permitted under Regulation 11 and so the defendant has breached (or caused his Firm to breach) Regulation 11.

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

12. Because the defendant admitted heads 1,3,4,5 and 6, no issues of fact or law arose from those heads. As far as head of complaint 2 was concerned, since this was admitted in part, the matters of fact which fell to be determined were whether the defendant had committed numerous other incidences of improper withdrawals set out in the Appendix to the ICAEW's letter of 8 December 2014. There were no matters of law to determine in respect of that head.
13. The tribunal found heads 1,3,4,5 and 6, proved on the defendant's own admission and found head of complaint 2 proved to the extent admitted by the defendant. The tribunal found the complaint proved.

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

14. The defendant has admitted to multiple breaches of the Client Money Regulations which he had committed over a period of several years. While it is important to note that no allegation of dishonesty has been made against the defendant (and no finding has been made about that), the tribunal finds that the Defendant has, over the period in which he has been breaching the Regulations, been doing so in such a fashion which demonstrates an unacceptable ignorance of, or unwillingness to apply, the Regulations in matters which affect his clients' interests.
15. The entry of a Judgment against him was a matter which, had the defendant properly managed his and his client's affairs, would not have happened.
16. No satisfactory explanation has been given by the Defendant for his repeated failure to tell ICAEW that he handled client money when self-evidently he did so.

### **Matters relevant to sentencing**

17. Mitigating factors are the defendant's (i) clean disciplinary record; (ii) his regret at what has happened and (iii) his attempts to repay the Judgment debt obtained against him.
18. Aggravating factors are: (i) the multiple occurrences of the breaches both of the Client Money Regulations and the Disciplinary Bye-laws complained of and (ii) the extended period of time over which they occurred.
19. The tribunal has taken into consideration the defendant's financial means, and notes that he has entered into a Voluntary Arrangement with his creditors in which (on the current scheme) they expect to receive 4 pence in the pound. The Defendant's financial situation is weak but it is under some external supervision and control.
20. Had the defendant's financial situation not been as it is, the tribunal would have imposed a substantial fine and awarded the IC its costs.

### **Sentencing Order**

21. The tribunal imposed the following sanctions:
  - a) Severe reprimand.
  - c) An order withdrawing the defendant's practising certificate forthwith for a period expiring on 30 November 2017.

### **Decision on publicity**

22. Publication with name.

**Non Accountant Chairman**

Mr Peter Williamson

**Accountant Member**

Mrs Jane Titley

**Accountant Member**

Mr Michael Ranson

**Legal Assessor**

Mr Dominic Spenser Underhill

**016122**

**5 Mr Saurabh Choudhary** of Flat C, 7 Charleville Circus, LONDON, SE26 6NR.

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 21 October 2015**

**Type of Member** Provisional Member

**Terms of complaint**

On 4 August 2015, ICAEW's Investigation Committee referred a formal complaint to the Disciplinary Committee against Mr Saurabh Choudhary (the defendant). Mr Saurabh Choudhary is an ICAEW provisional member.

1. On 26 July 2014 Mr Saurabh Choudhary stole items from a partners office in the More London office of 'A', his employer.
2. On 9 August 2014 Mr Saurabh Choudhary stole items belonging to others from the offices of his employer, 'A' in the London office.

Saurabh Choudhary is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a.

'...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**

21 October 2015

**Previous hearing date(s)**

None

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

**Complaint found proved** Yes

**All heads of complaint proven** No, Head 1 proven and Head 2 not proven

**Sentencing order**  
a) Severe reprimand  
b) costs of £1,200

**Procedural matters and findings**

**Parties present** Mr Choudhary  
The Investigation Committee

**Represented** Ms Dix of ICAEW represented the IC

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

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

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

### Issues of fact and law

1. Mr Choudhary was employed at 'A' as a Senior Associate in Insurance. Mr Choudhary has been a provisional member since 5 September 2011 and began his training contract with 'A' in January 2012.
2. 'A' security were notified of a series of thefts on site at the London offices in July and August 2014, most notably items going missing from partners offices on level 9 and level 2 of the office.
3. On Wednesday 30 July 2014 'A' security were informed of missing items from a partner's office on the 9<sup>th</sup> floor of the London offices. Items reported missing were:
  - a) Pictures of Hong Kong given to the partner (approximate value of £60 each)
  - b) 2 Japanese prints (approximate value £100 each)
  - c) A Chinese vase (approximate value £20)

The items were last seen by the partner on 24 July 2014 at 16:00.

4. At this time Mr Choudhary had already resigned from 'A' and was working his notice period. 'A' security carried out an investigation into the thefts. Their analysis of the access control data identified Mr Choudhary as an individual whose behaviour warranted further investigation.
5. The evidence highlighted that Mr Choudhary had accessed the relevant floors during the dates and times in question. Further the CCTV footage identified Mr Choudhary leaving each floor with additional bags that he was not in possession of when entering.
6. In the Investigation meeting on 20 August 2014, Mr Choudhary was shown CCTV stills taken on 9 August 2014 which showed Mr Choudhary entering the building, going straight to level 2 with a rucksack, and later leaving the building with an additional rucksack and a large full carrier bag. Mr Choudhary said that he had taken additional stationery, paper, pads and printer paper. Mr Choudhary was also shown CCTV stills of him entering and exiting the mezzanine in the basement of the London offices where the male changing rooms were located. Mr Choudhary said he would quite often have a shower when he was on site at the weekend, and that he had been down to the changing rooms to retrieve his cycling shoes.
7. He was asked why his rucksack had looked a lot fuller than when he entered the building and what was in the additional rucksack and carrier bag. Mr Choudhary said that the carrier bag contained his food that had been in the fridge, and both rucksacks contained stationery.
8. The minutes of this meeting state at paragraph 29 "*SC advised that he had taken some prints and the vase from the partner's office on level 9 and he had taken some wine*". It was alleged that some wine had been taken during the second theft. Mr Choudhary does not accept that he took some wine or that he stated that in the meeting. He states that he was misunderstood by the person drafting the minutes.
9. Mr Choudhary stated he had taken items on 26 July 2013 because he felt cross about the way he had been treated after resigning and wanted to show off to his girlfriend. He told them the pictures were on his wall at home. Mr Choudhary denied the second theft stating

that he had taken stationery for his studies and collected food (that belonged to him) from the fridge.

10. Mr Choudhary attended a disciplinary meeting on 28 August 2014 which was held by telephone at Mr Choudhary's request. In the meeting Mr Choudhary confirmed that he had taken the items on 26 July 2014, but said that he had not taken the items that it was alleged he stole on 9 August 2014. He claimed his conduct on 26 July 2014 was a "*moment of madness*". Mr Choudhary said that he used to cycle to and from work and he had left his shoes and shorts in the basement. Mr Choudhary said that it was his last week in the office before he went on leave for the remainder of his notice period, and he did not want to leave things lying around.
11. Mr Choudhary apologised in relation to the items he stole on 26 January 2014, and asked if he could have a final written warning rather than be dismissed for gross misconduct, so he kept his career in the city. The chairperson of the disciplinary meeting concluded that Mr Choudhary's actions on 26 July 2014 constituted gross misconduct and Mr Choudhary was summarily dismissed. The chairperson said that he did not need to reach a conclusion on the allegations of thefts on 9 August 2014, as the conduct on 26 July 2014 was sufficient for Mr Choudhary to be dismissed.

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

12. The tribunal found the complaint proven in part. Mr Choudhary had admitted the first head of complaint. The tribunal found the first head proven and the second head not proven, as the IC had not provided sufficient direct evidence against Mr Choudhary in respect of the second head.
13. Section 110.1 of the Code of Ethics states  
  
*"The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness*  
  
*It follows that a professional accountant's advice and work must be uncorrupted by self-interest and not be influenced by the interests of other parties."*
14. Mr Choudhary has admitted stealing items that did not belong to him from a partner's office in the London offices of 'A' on 26 July 2014. The items stolen on 26 July 2014 were recovered.
15. Mr Choudhary continuously denied the theft on 9 August 2014. The tribunal found Mr Choudhary to be a credible witness and accepted his account that he had collected bicycling kit and food and drink on that day and had not carried out the alleged theft. The tribunal was of the view that his admitting to having taken wine on that day was equally likely to have been his saying that he had collected his own drink.
16. He had informed his employers that his motive for the theft on 26 July was that he was unhappy with the way he had been treated since handing in his notice and the fact that he had not received a bonus in 3 years. He then stated after the disciplinary process that he was under pressure to obtain money to pay for an operation for his mother.
17. Theft in the workplace is a serious matter and a breach of his former employers' trust. His conduct as a provisional member brings into question his integrity and honesty which are fundamental principles of a chartered accountant. The tribunal concluded that Mr Choudhary's conduct brings discredit on himself, the Institute and the accountancy profession. He is in breach therefore of Disciplinary Bye-law 4(1)(a).

### **Matters relevant to sentencing**

18. Mr Choudhary did not have a prior disciplinary record.
19. The tribunal took into account its *Guidance on Sentencing*
20. The tribunal was of the view that whilst these were very serious matters, Mr Choudhary had shown real remorse and had persuaded them that he would not behave this way in the future. In these circumstances whilst making it clear that any further transgression would be likely to lead to his being declared unfit to become a member, it accepted that a severe reprimand was warranted.

### **Sentencing Order**

21. The tribunal imposed the following sanctions:

- a) A severe reprimand
- b) A costs order of £1,200

The tribunal ordered that he pay the costs over a year, in 12 equal monthly instalments, the first payment to be made by 1 December 2015.

### **Decision on publicity**

23. Publicity with names.

**Chairman** Mr Richard Farrant

**Accountant Member** Mr David Kaye

**Non Accountant Member** Mr Martin Ward

**Legal Assessor** Ms Melanie Carter

**024790**

**6 Mr Gurjinder Singh [ACA]** of 24 Barnehurst Avenue, ERITH, KENT, DA8 3NF.

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 3 November 2015**

**Type of Member** Member

**Terms of complaint**

1. Mr G Singh ACA signed the audit report for 'A' plc for the period ended 30 June 2012 without obtaining and submitting an external hot file review contrary to an assurance he gave to the Audit Registration Committee on 25 June 2013 to obtain and submit an external hot file review of his firm's first audit assignment within one month of completion.
2. On 16 July 2013 Mr G Singh ACA issued an audit report in the name of his firm, GSK Accountancy Limited, on the financial statements of 'A' plc for the period ended 30 June 2012 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland), including:
  - a) International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner.
  - b) International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the auditor failed to prepare, on a timely basis, audit documentation that provides:
    - i) a sufficient and appropriate record of the basis for the auditor's report; and
    - ii) evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements.
  - c) International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.
  - d) International Standard on Auditing (UK and Ireland) 600 'Special Considerations – Audits of Group Financial Statements (including the Work of Component Auditors)' in that the auditor failed to communicate with component auditors about the scope and timing of their work on the financial information.
3. On 23 December 2013 Mr G Singh ACA issued an audit report in the name of his firm, GSK Accountancy Limited, on the financial statements of 'A' plc for the year ended 30 June 2013 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland), including:
  - a) International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that the engagement could be performed in an effective manner.
  - b) International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the auditor failed to prepare, on a timely basis, audit documentation that provides:
    - i) a sufficient and appropriate record of the basis for the auditor's report; and

- ii) evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements.
  - c) International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.
  - d) International Standard on Auditing (UK and Ireland) 600 'Special Considerations – Audits of Group Financial Statements (including the Work of Component Auditors)' in that the auditor failed to communicate with component auditors about the scope and timing of their work on the financial information.
4. Mr G Singh ACA, on behalf of GSK Accountancy Limited, accepted re-appointment as auditor of 'A' plc for the year ended 30 June 2013, contrary to ISA 210 (UK and Ireland) 'Agreeing the terms of audit engagements', as the appointment should not have been accepted when the auditor should have been aware, before accepting the audit engagement, that those who appointed the auditor would impose a limitation of scope on the audit work likely to result in the need to issue a disclaimer of opinion on the financial statements.
5. On 28 October 2013 Mr G Singh ACA improperly completed the 2013 annual return for his firm, GSK Accountancy Ltd, in that he stated that the firm did not have any audit clients nor had received any audit fees, when this was not the case as his firm had signed the audit report for 'A' plc on 16 July 2013.

Mr Gurjinder Singh is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a in respect of heads 1 and 5, because:-

'...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'

and Disciplinary Bye-law 4.1b in respect of heads 2, 3 and 4 because 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**

03 November 2015

**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) Exclusion from membership;
- b) Costs of £7,524.00

## Procedural matters and findings

<b>Parties present</b>	Mr Singh Investigation Committee (IC)
<b>Represented</b>	Ms Joester a solicitor from ICAEW 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 and the documents contained in the Defendant's bundle.

## Issues of fact and law

1. Mr Singh is the sole director of GSK Accountancy Ltd (GSK). GSK was granted audit registration on 25 June 2013. Mr Singh was also granted RI status. Registration was granted on the basis that Mr Singh arranged and submitted the results of an external hot file review of his first audit assignment. Mr Singh confirmed by letter on 25 June 2013 that he would obtain and submit an external hot file review of his first audit assignment within one month of its completion.
2. On 10 March 2014 Mr Singh emailed the audit case manager and stated that he had 'not performed any audit work since my registration and am still looking for an audit client.'
3. In June 2014 ICAEW's Quality Assurance Department (QAD) identified that GSK had signed a qualified audit report for 'A' plc for the year ended 30 June 2013. The report had been signed on 23 December 2013. Further investigation revealed that Mr Singh had also signed an audit report for the year ended 30 June 2012, this report having been signed on 16 July 2013.
4. 'A' plc is a public limited company that was incorporated in 2011 in the United Kingdom. Its principal activity is the acquisition and planned future development of a range of mining projects. It is the parent company of a large group, with numerous subsidiaries incorporated around the world, predominantly in Australia.
5. Mr Singh was asked to confirm whether a hot file review had been carried out on the audit, and why he had said in his email of 10 March 2014 that he had not carried out any audit work.
6. Mr Singh confirmed that a hot file review had not been completed. He gave a number of reasons for this failure, primary amongst them being that he understood the requirement only to apply to work where an unqualified opinion had been given. He admitted that he had misinterpreted the hot file review requirement.
7. Given the size of the 'A' group and the fact that no hot file review had been obtained further details of the audit work were requested from Mr Singh.

8. Mr Singh responded to the request for further details, but was unable to provide key audit documentation. Accordingly, the matter was referred to ICAEW's Audit Registration Committee, who decided to withdraw Mr Singh's RI status and to refer the matter for further investigation of the issues surrounding the assignment.

### **First head of complaint**

9. The first head of complaint relates to Mr Singh's failure to obtain and submit a hot file review of the first audit report he completed on 'A' plc.
10. Mr Singh has confirmed to ICAEW that he was initially approached by 'A' to complete the audit report in May 2013 and that he was officially instructed to act in June 2013.
11. The tribunal noted the very short space of time between Mr Singh's registration being approved and his acceptance of 'A's instructions. The assurance that he had given ICAEW regarding obtaining a hot file review should have been utmost in Mr Singh's mind when accepting the audit assignment, mere days after giving the assurance. Mr Singh had confirmed that he did not obtain an external hot file review of the report, claiming that he believed that the requirement did not apply to a qualified audit report.

### **Second and third heads of complaint**

12. The second and third heads of complaint relate to Mr Singh's failure to conduct the audit report for 'A' plc in accordance with International Standards on Auditing (UK and Ireland). The complaint is made in the same terms for both heads, first in relation to the report for year ending 30 June 2012 (head two) and secondly for year ending 30 June 2013 (head three).
13. In respect of head two the audit report was signed on 16 July 2013, only 21 days after Mr Singh's firm had become audit registered. Mr Singh states that he was only instructed by 'A' in June 2013. There was therefore an extremely short period between Mr Singh's appointment and his audit report.
14. At the time he was approached to act as auditor for 'A' the accounts were already overdue for submission at Companies House (they should have been submitted by 30 December 2012 - 6 months after the accounting period end on 30 June 2012). In addition, 'A' plc had previously appointed 'B' as auditors. However, 'B' had resigned on 17 May 2013, and had filed a letter at Companies House on 6 June 2013. This letter was publically available and referred to:  
  
*'a loss of confidence in information and explanations provided by the executive directors in connection with audit work undertaken prior to our resignation in relation to the period ending 30 June 2012.'*
15. The tribunal was of the view that both the fact that the accounts for the company were overdue at the time that he was instructed and the fact that the previous auditor had resigned should have put Mr Singh on notice that there may have been threats to his compliance with the fundamental principles of objectivity and due care, and that he should have contacted 'B' so that he could take their reasons for resignation into account when he decided whether to accept appointment and in his audit.
16. Mr Singh issued qualified audit reports for both financial periods.
17. 'A' plc is a group which is involved in mining projects. The accounts disclose that it has subsidiary companies in Australia (36 companies); Hong Kong (3 companies); Singapore (2 companies); India (3 companies); Hungary (2 companies); Cambodia (1 company); Nigeria (2 companies); Philippines (1 company) and the USA (1 company).

18. Of the subsidiary companies, six were material to the group.
19. Mr Singh set out the audit procedures he had undertaken in his letter to the case manager of 4 August 2014. He stated that he had considered the overall group engagement plan and strategy, but that 'this was not formally documented.' He added that he had obtained audit certificates for the components (subsidiary companies), but added that 'however there was no formal documentation completed for the same.' He commented that he did not communicate with the auditors for the subsidiary companies contrary to ISA 600, paragraph 40.
20. The case manager asked Mr Singh to provide the audit files for both the audits that he completed. Mr Singh replied, referring to his previous correspondence in which he had stated that he had failed to formally document the audits for both years. He commented that he had reviewed various documentation provided by the client and offered to send this.
21. Mr Singh provided all the documentation he had reviewed to produce the audit report to the case manager after she requested copies of all documentation used. The documents consisted of; certificates of registration; purchase agreements; board resolutions; company extracts and profiles; minutes of 'X' dated June 2011; Minutes of 'X' dated March 2012; share registers; 'Y' accounting software back-ups; consolidation schedules at 30 June 2012 and 30 June 2013; trademark certificates; asset register; report on valuation of intangible assets at December 2012; bank account listing at 30 June 2012; and directors impairment review statement dated 8 June 2011. These were merely documents provided by the client, and contained no evidence of audit work by Mr Singh.
22. Mr Singh provided some further documentation which, whilst not audit schedules or work, did provide evidence that some relevant documents had been prepared and provided by the client. These were a group entity summary for the period ending 30 June 2012, bank reconciliations for the period ending 30 June 2012 and signed annual reports for subsidiaries as at 30 June 2013.
23. The bank reconciliations provided by the client consist of 108 pages, and are the year end bank statements for 30 June 2012 for the bank accounts held by the group entities. It is not clear whether these are complete and cover every bank account held by the group entities, because Mr Singh has not provided (has not got) an account listing, or reconciliation to the financial statements. Each bank statement has the year end balance clearly shown on the statement. In some cases, presumably where the year end balance did not agree directly to the ledger, a client prepared bank reconciliation has been provided with the bank statement, detailing the reconciling items at the year end. There is no evidence of any audit work on the bank statements or client prepared bank reconciliations.
24. The signed annual reports for the subsidiaries as at 30 June 2013 consist of special purpose financial statements, which have been prepared for the purpose of consolidation. These include the primary financial statements, a directors' declaration, and a compilation report signed off by a local accountant. The reports provided by the local accountants are not audit reports; they are accounts compilation reports, which state that they have not undertaken any verification procedures when compiling the accounts. There were 35 annual reports provided in total, therefore they did not cover each subsidiary company.
25. Mr Singh did not have an audit file and the documents are not 'audit working papers' as that expression is usually understood.

26. International Standard on Auditing (UK & Ireland) 300 'Planning an audit' states in:
- a) paragraph 2 *'Adequate planning benefits the audit of financial statements in several ways including, helping the auditor properly organise and manage the audit engagement so that it is performed in an effective and efficient manner.'*
  - b) paragraph 7 *'The auditor shall establish an overall audit strategy that sets the scope, timing and director of the audit, and that guides the development of the audit plan.'*
27. Mr Singh has failed to document any planning work associated with carrying out either the 2012 or the 2013 audit and in the submission of the IC has therefore failed to comply with ISA300. This was a high risk audit with many overseas subsidiaries. As part of the audit planning Mr Singh should have documented the risks associated with the audit of this type of entity and how he expected to obtain sufficient, appropriate audit evidence from the component (subsidiary) auditors. The parent company had little or no trading expenses and the only balance sheet items were group related. Therefore the material trading transactions and the material balance sheet assets and liabilities were all held by subsidiary companies that were not located in the UK. From a planning point of view, this would mean it would have been very difficult to obtain sufficient appropriate audit evidence in the time between appointment as auditor and the signing of the audit report, and the tribunal was of the view that this should have been considered and documented by Mr Singh at the planning stage.
28. International Standard on Auditing (UK & Ireland) 230 'Audit Documentation' states in paragraph 2:
- 'Audit documentation that meets the requirements of this ISA (UK and Ireland) and the specific documentation requirements of other relevant ISAs (UK and Ireland) provides:*
- a) *Evidence of the auditor's basis for a conclusion about the achievement of the overall objectives of the auditor; and*
  - b) *Evidence that the audit was planned and performed in accordance with ISAs (UK & Ireland) and applicable legal and regulatory requirements.'*
29. International Standard on Auditing (UK & Ireland) 500 'Audit evidence' states in paragraph 4:
- 'The objective of the auditor is to design and perform audit procedures in such a way as to enable the auditor to obtain sufficient appropriate evidence to be able to draw reasonable conclusions on which to base the auditor's opinion.'*
30. Mr Singh has failed to document any audit work and is unable to demonstrate that he has obtained sufficient audit evidence. It is submitted that he has therefore failed to comply with ISA230 and ISA500.
31. The financial statements for 'A' plc in both years show no income, as the assets owned by the group were not yet income generating. The main asset of the group is an intangible fixed asset of 14 million euros. It is not clear from the balance sheet exactly what the intangible fixed assets are and it was crucial for Mr Singh to determine what the intangible assets were and whether their future income generating ability supported the acquisition value. Mr Singh should also have obtained an understanding of when income would start to be generated and whether the group had sufficient cash resources to continue to support the development activities until this time. These were the main audit issues that should have been addressed by Mr Singh.

32. International Standard on Auditing (UK & Ireland) 600 'Special considerations – audits of group financial statements (including the work of component auditors) states in:
- a) paragraph 8: *'If acting as the auditor of the group financial statements, the objectives of the auditor are to communicate clearly with component auditors about the scope and timing of their work on financial information related to components and their findings; and to obtain sufficient appropriate audit evidence regarding the financial information of the components and the consolidation process to express an opinion on whether the group financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework.'*
  - b) paragraph 16 *'The group engagement team shall establish an overall group audit strategy and shall develop a group audit plan.'*
33. Mr Singh has failed to communicate with any of the group auditors and the only work he has performed was to obtain a copy of the accounts for each of the subsidiary companies. It is submitted that this is insufficient work to show compliance with ISA600.
34. Mr Singh should have assessed the competence of the component auditors and come to a reasoned and documented conclusion as to whether he could rely on the work that they were performing. If he was unable to rely on the work of the component auditors, Mr Singh should have performed his own audit procedures on the subsidiary companies. This may have included visiting the main sites where development was taking place and obtaining expert valuations on the resources expected to be extracted in the future. If Mr Singh had concluded that he could rely on the component auditors, then it is submitted that he should have issued questionnaires to the component auditors and reviewed any key audit working papers and evidence.
35. The financial statements show that audit fees were €100,000 for the 2013 accounts; the 2012 accounts disclose an audit fee of nil. However, Mr Singh has stated that this represents fees charged by group auditors and his fees were only £15,000.

#### **Fourth head of complaint**

36. This head alleges that Mr Singh should not have accepted re-appointment as auditor for 'A' for the year ended 30 June 2013.
37. As set out above Mr Singh signed the 'A' audit reports for the periods ending 30 June 2012 (the first report) and 30 June 2013 (the second report). The first report was signed on 16 July 2013, and the second five months later, on 23 December 2013.
38. In the first report Mr Singh gave a qualified opinion on the consolidated financial statements, due to a limitation of scope being imposed stating that:
- 'During the year the company acquired 100% shares in 'C' Ltd through a roll up involving 1 for 1 exchange of shares, effective 8<sup>th</sup> September 2011, thereby acquiring varying percentages of controlling interest in over 47 entities spread across the world. The controlled entities have a complex ownership structure whereby we have been unable to obtain sufficient appropriate audit evidence regarding the accuracy of the parent's interest in them.'*
39. Mr Singh then went on to sign the next audit report for 'A' for the year ended 30 June 2013. Again, the audit report gave a disclaimer of opinion, and again this was due to a limitation of scope being imposed. The audit report states that this was because:

*'The company owns varying percentages of controlling interest in over 47 entities spread across the world. The controlled entities have a complex ownership structure whereby we*

*have been unable to obtain sufficient appropriate audit evidence regarding the accuracy of the parent's interest or valuation of shareholding in them.'*

40. The International Standards on Auditing (UK and Ireland) 210 'Agreeing the terms of audit engagements' states at paragraph 7 that:

*'If management or those charged with governance impose a limitation on the scope of the auditor's work in the terms of a proposed audit engagement such that the auditor believes the limitation will result in the auditor disclaiming an opinion on the financial statements, the auditor shall not accept a limited engagement as an audit engagement, unless required by law or regulation to do so.'*

41. The case manager asked Mr Singh to provide evidence that the scope of limitation was discussed with those charged with management of 'A'. He was unable to provide minutes of meetings, stating that all discussions had taken place over the phone. He says that limitation of scope was discussed with the directors, but has no telephone notes of the discussions.
42. Mr Singh should have been aware that a limitation of scope would be imposed by the management of 'A' for the audit for year ending 30 June 2013 because of the previously imposed limitation. Mr Singh is unable to provide any documentation demonstrating that he discussed the issue with the management of the company before accepting the second audit assignment. The limitation of scope is the same in the two reports, with the same wording used for the imposition of the limitation.
43. ISA 210 is clear that an audit engagement should not be reaccepted if the auditor is aware that a limitation of scope will be imposed by management, and that that scope is likely to result in a disclaimer of opinion on the financial statements.
44. Mr Singh must have been aware prior to his appointment for the second year that it was likely that a limitation would be imposed. Therefore he should either have refused the audit engagement or sought assurances that such a limitation would not be imposed in the subsequent year. Mr Singh is unable to document any such assurance, and the limitation is in the same terms as the previous year. Even if Mr Singh had been given assurances, and had accepted the audit assignment on that basis, then he should have resigned as soon as he became aware that the limitation would be imposed for a second time.

#### **Fifth head of complaint**

45. The fifth head of complaint is that Mr Singh completed the annual return for his firm on 28 October 2013 stating that the firm had no audit clients and had received no audit fees during the year ending 30 September 2013. He declared a total annual practice income of £12,186. He therefore failed to declare the existence of an audit client or the receipt of fees relating to that client.
46. During the annual return year to 30 September 2013 Mr Singh had completed the audit for 'A'. He also prepared the next audit report for the company, which he signed in December 2013.

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

47. The tribunal found the complaint proven on all heads of complaint on Mr Singh's own admission.

48. In relation to head 1, the tribunal was of the view that Mr Singh's failure to adhere to the assurance he gave to ICAEW in relation to the hot file review is a matter that is likely to bring discredit to him, ICAEW and/or the profession of accountancy. In addition, and in relation to head 5, Mr Singh's failure to accurately complete the annual return was an act or default likely to bring discredit upon himself, ICAEW and/or the profession of accountancy. Mr Singh had a responsibility to complete his annual return correctly. The tribunal was of the view that he must have been aware, at the time of completing the form, that he had signed the audit report for 'A' plc only 2 ½ months before, and that he was instructed to complete the next audit, and therefore had an ongoing audit client.
49. Taking these two matters together, he was therefore in breach of Disciplinary Bye-law 4(1)(a). Both matters went to the transparency and integrity of his actions and indicated that he had turned a blind eye to the minimum professional standards required of him. He had behaved recklessly and with complete disregard to the core requirements placed upon a chartered accountant.
50. With regard to the remaining heads of complaint, the tribunal was of the further view that Mr Singh failed to conduct the audits for 'A' plc for the periods ending 30 June 2012 and 30 June 2013 in accordance with the International Standards on Auditing (UK and Ireland) and that he performed his professional work inefficiently and incompetently to such an extent that he brought discredit upon himself, ICAEW and the profession of accountancy.
51. Finally, in accepting appointment as auditor for 'A' for the second year in the above circumstances Mr Singh performed his professional work incompetently to such an extent that he brought discredit upon himself, the ICAEW or the profession of accountancy.
52. Taking the matters in paragraphs 50 and 51 above together, the tribunal was of the view that Mr Singh was in breach of Disciplinary Bye-law 4(1)(b).

### **Matters relevant to sentencing**

53. Mr Singh had no prior disciplinary record. He addressed the tribunal in mitigation and made the following points:
- a) Mr Singh had cooperated with the IC investigation including bringing to the Committee's attention the fact of the 2012 accounts. He had no intention to mislead or hide anything, and apologised to the tribunal for his misplaced judgement.
  - b) There had, in his view, been just one mistake (namely, not thinking that the work he had done for 'A' required a hot file review on the basis that the opinion had been qualified) and that there had been multiple ramifications following on from that one mistake.
  - c) He had genuinely believed that the client did not require a fully comprehensive audit report, the company having been dormant and not trading in the UK. The mistake was down to his inexperience as an auditor.
54. Mr Singh had produced evidence as to his limited means.
55. The tribunal did not consider Mr Singh's points above were mitigation as such: cooperation was simply what was required of chartered accountants and second, it was not in anyway appropriate to view this as just one mistake, given the period of time over which the audit failures had occurred and the deficient standard of audit work undertaken. It was contradictory to claim that he had not carried out a full audit but had nevertheless known enough to qualify the opinion.

56. The complaint was aggravated on the basis that these had been audits of a plc involving multiple accounts. It had been a complex group of companies in relation to which he had done almost no audit work at all. 'A' was a substantial company with a very large number of shareholders. They would have been expected to have made their decisions based on the auditor's report such that Mr Singh's actions and deficiencies as an auditor had had a real impact.
57. Mr Singh should have understood the background and context of the client before taking it on, who the brokers were, the number of shareholders, the previous auditors, what the company did and where its activities were. He would then have been in a position to plan the necessary audit work. He should have communicated with the previous auditors and the subsidiary auditors, should have documented his work, and been able to justify whatever opinion he gave. Almost none of this work had happened.
58. The tribunal took into account its *Guidance on Sentencing* and noted that the starting point for seriously deficient audit work was exclusion from membership and a fine. The tribunal took the view that given the protection of the public interest and the need to maintain the confidence of the public in the standards of the profession, no lesser sanction than exclusion from membership was warranted. The tribunal took into account Mr Singh's means and did not impose a fine.

### **Sentencing Order**

59. The tribunal imposed the following sanction:
- a) Exclusion from membership;
  - b) Costs of £7,524.00

### **Decision on publicity**

60. Publicity with names.

<b>Non-Accountant Chairman</b>	Mr Peter Williamson	
<b>Accountant Member</b>	Mr Martin Ward	
<b>Accountant Member</b>	Mr Michael Barton	
<b>Legal Assessor</b>	Ms Melanie Carter	<b>024545</b>

**7 Mr Peter Greensmith ACA** of 35 Pinecrest Drive, Thornhill, CARDIFF, CF14 9DS.

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 10 November 2015**

**Type of Member** Member

**Terms of complaint**

1. Mr P Greensmith ACA, following a QAD visit on 20 February 2007, confirmed on behalf of his firm that:
  - a) 'All client files are now being reviewed and where a Letter of Engagement is not on file, a new Letter will be sent, with a copy attached to the front of a file for when the client next visits in person so that a signed copy will be filed for all files'; and
  - b) 'A letter of engagement in specific terms according to the Council for Licensed Conveyancers will be sent to the [relevant] client as part of the exercise...above'

but at a subsequent QAD visit on 11 September 2013 it was found that engagement letters had not been obtained for all clients.

2. Mr P Greensmith ACA, following a QAD visit on 20 February 2007, confirmed on behalf of his firm, in respect of compliance with the Money Laundering Regulations, that 'All clients are being reviewed so that those commencing a new business relationship on or after 1 March 2004 will have the requisite proofs of identity held on file', but at a subsequent QAD visit on 11 September 2013 it was found that evidence of identity had not been obtained for all clients.

3. Mr P Greensmith ACA, following a QAD visit on 20 February 2007, confirmed on behalf of his firm that:
  - a) He had 'agreed with the alternate accountant that he is agreeable to being the joint signatory on the Clients account'... and that 'written confirmation for this [would] be put into effect in the next few days'; and
  - b) 'An Annual Compliance Review [would] be carried out shortly' to review the firm's compliance with the Clients' Money Regulations

but at a subsequent QAD visit on 11 September 2013 it was found that the appropriate documentation for the appointment of an alternate had not been effected until August 2013 and no annual compliance review had been carried out.

4. Mr P Greensmith ACA, following a QAD visit on 20 February 2007, confirmed on behalf of his firm that he intended to 'register under the Data Protection Act as a protective registration', but at a subsequent QAD visit on 11 September 2013 it was found that registration was not obtained until 6 August 2013.

If proven, the member may be liable to disciplinary action under Disciplinary Bye-law 4.1a.

Disciplinary Bye-law 4.1a states the following:

- 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**

10 November 2015

**Previous hearing date(s)**

None

**Pre-hearing review or final hearing**

Final Hearing

**Complaint found proved**

Yes on the defendant's admission

**All heads of complaint proven**

Yes

**Sentencing order**

- a) Severe reprimand;
- b) Fine of £6,000;
- c) Costs of £3,687.

**Procedural matters and findings****Parties present**

Mr Peter Greensmith  
The Investigation Committee

**Represented**

Mr Christopher Cope, Solicitor for Mr Greensmith  
Ms Tracey Thorpe of ICAEW for the IC

**Hearing in public or private**

The hearing was in public

**Decision on service**

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

**Documents considered by the tribunal**

The tribunal considered the documents contained in the Investigation Committee's bundle together with documents from the defendant.

**Findings on preliminary matters**

By agreement the parties sought to amend the complaint at head 3. The new wording had been suggested by Mr Greensmith, as there had been an alternate in place albeit not in relation to the mandate. It was confirmed that Mr Greensmith was not disadvantaged by this amendment and the tribunal accepted the proposed change to head 3 of the complaint.

**Issues of fact and law**

1. Mr Greensmith is a sole practitioner trading as P Greensmith & Co based in Cardiff. The firm had gross income of £54,000 for the year ended 30 September 2013.

2. On 20 February 2007 the Quality Assurance Department (QAD) conducted a Practice Assurance visit to P Greensmith & Co. The reviewer found the following breaches:
  - Engagement letters could not be found on all client files and therefore not all clients had been notified in writing of the basis on which fees were charged or their right to complain to ICAEW should they be unable to resolve matters with the practitioner directly.
  - A specific engagement letter including terms according to the Council for Licenced Conveyancers was not in place for a licensed conveyancer client.
  - Copies of documentation necessary to comply with Money Laundering Regulations had not been obtained for clients taken on since 1 March 2004.
  - No alternate had been appointed for the client money bank account.
  - No annual client money reviews had been carried out.
  - The practice was not registered with the Information Commissioner as required by the Data Protection Act.
3. In his response to the closing meeting notes on 11 March 2007 Mr Greensmith gave the following assurances:
  - That he would review all client files and issue new engagement letters where one is not already on file. A copy was to be attached to the front on the file for physical signature at the next client meeting.
  - That he would issue a specific letter of engagement according to the Council for Licensed Conveyancers to be issued to this client in line with the engagement letters procedure above.
  - That he would review all client files and obtain proof of identification for all new business relationships commencing on or after 1 March 2004.
  - That he had appointed an alternate as joint signatory on the client bank account and was awaiting confirmation from the bank.
  - That he would carry out an annual Clients' Money Regulation compliance review shortly.
  - He intended to register under the Data Protection Act as a "protective measure".
4. QAD conducted a further cyclical visit on 11 September 2013 and the reviewer found that the firm had not fully addressed the above matters. At that visit it was found that:
  - a) engagement letters had not been obtained for all clients.
  - b) evidence of identity had not been obtained for all clients.
  - c) the appropriate documentation for the appointment of an alternate had not been effected until August 2013 and no annual compliance review had been carried out.
  - d) registration with the Information Commissioner's Office was not obtained until 6 August 2013.

5. On 28 October 2014 Mr Greensmith provided ICAEW with a copy of the SWAT UK Practice Assurance Compliance Review Report carried out on 3 September 2014 along with a follow up letter dated 21 October 2014. The report confirmed the progress made in relation to letters of engagement and AML checks amongst other points.
6. The SWAT report also confirmed that the alternate had been appointed and a compliance review was completed on 18 September 2013. The SWAT report noted that another review was due. The follow up letter confirmed Mr Greensmith's comments that another annual compliance review was completed on 24 September 2014. The report also confirmed that a new certificate of registration with the Information Commissioner's Office was in place.

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

7. The tribunal found the complaint proven on Mr Greensmith's own admission. Mr Greensmith failed to comply with a number of assurances given following a QAD visit in 2007. These issues remained unresolved until August 2013; albeit he had taken some steps to resolve matters these were insufficient given the time that had elapsed and the importance of the underlying relevant regulatory requirements.
8. Mr Greensmith's failure to comply with the assurances he gave to the QAD in 2007 constitute a breach of s100.5 Code of Ethics (Fundamental Principles) and in the tribunal's view this was likely to give rise to discredit to himself, the profession or the ICAEW. Fundamental Principle 100.5 (c) provides that:

*“Professional Competence and Due Care – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.”*

9. The tribunal found that Mr Greensmith was in breach of Disciplinary Bye-Law 4(1)(a).

### **Matters relevant to sentencing**

10. The defendant had no prior disciplinary record.
11. Mr Greensmith's representative put forward the following mitigation at the hearing:
  - a) All matters had now been put right as confirmed by the SWAT report. He continues to receive advice from the organisation.
  - b) No clients had ever made any complaints about his work and there had been no claims against his professional indemnity. There had been no loss to clients.
  - c) He had not wilfully failed to address the matters.
  - d) Mr Greenfield had had problems with his property portfolio and was distracted in his business affairs for the 3 year period following the 2007 QAD visit. At the end of this period, the matters had largely slipped his mind. In addition, Mr Greensmith's friend and colleague had contracted cancer and Mr Greensmith had been considerably involved. Also around 2010 he had been having relationship difficulties.
  - e) Mr Greensmith had cooperated throughout the investigation by the ICAEW.

12. The tribunal was of the view that the distraction by his other business, the property portfolio, was not mitigation as such. Indeed it might have been said that he had given greater attention to his property business than his accountancy practice. The tribunal also did not accept his other mitigation, that is the illness of his friend and relationship problems. By the time these difficulties had arisen, he should already have put right the points raised by the QAD visit.
13. The tribunal noted the SWAT report and that the PAC had closed the 2013 visit. It accepted that many, but not all, of the failings had now been addressed.
14. The aggravating factors are that Mr Greensmith's failings spanned a long period of time. Moreover, almost 8 years on, he still has not completely addressed all of the necessary professional requirements highlighted in the complaint (letters of engagement/ID). There had been multiple heads of complaint (failings) and he had left the important matters outstanding unaddressed for a number of years.
15. The tribunal noted that the essence of this complaint was failing over a long period to comply with assurances given to the defendant's regulator. It appears that Mr Greensmith had only sought to comply with the requirements when forced to do so by the ICAEW. This was a highly inappropriate approach to the professional requirements placed upon him, which were imposed in order to maintain necessary standards both as to quality of work and protection of the public. It appeared that Mr Greensmith did not pay sufficient regard to the importance of the regulatory requirements, calling into question his commitment to the maintenance of professional standards.

### **Sentencing Order**

16. The tribunal took into account its *Guidance on Sentencing* and imposed the following sanctions:
  - a) Severe reprimand;
  - b) Fine of £6,000;
  - c) Costs of £3,687.

### **Decision on publicity**

17. Publicity with names.

**Non Accountant Chairman**

Mr Paul Brooks

**Accountant Member**

Mr Michael Barton FCA

**Accountant Member**

Mr Philip Coleman FCA

**Legal Assessor**

Ms Melanie Carter

**021821**

**8 Mr Deeban Cavendra** of 76 Humes Avenue, LONDON, W7 2LP

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 18 November 2015**

**Type of Member** Member

**Terms of complaint**

1. As part of the disciplinary investigation process into a colleague, Mr D Cavendra attempted to obstruct the investigation and mislead his employer by:
  - a. Deleting emails from his work account to conceal his involvement in the email chain which was being investigated;
  - b. Suggesting to his colleague Mr 'A' that he make a false representation that a junior had sent the relevant email or that his computer had been hacked;
  - c. Making a false representation that he had entered the Baker Street office on 27 April 2013 and retrieved his colleague's laptop.
2. Mr D Cavendra failed to comply with section 150 of the Code of Ethics, Professional Behaviour, by using inappropriate and offensive language on his employer's IT system including the following:
  - a. Referring to a colleague as a "f@t ugly b1tch"
  - b. Stating that the firm 'shud all die, Ima blow up bdo twin tower style"
  - c. Asking a colleague 'Oi my willie itches, cn u scratch if for me pls'

If proven, the provisional member may be liable to disciplinary action under Disciplinary Bye-law 4.1a.

**Hearing date**

18 November 2015

**Previous hearing date**

None

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

**Complaint found proved** Yes, on admission.

**All heads of complaint proven** Yes, save 1(c) which was withdrawn.

**Sentencing order** No order

**Procedural matters and findings**

**Parties present** Mr Deeban Cavendra

<b>Represented</b>	Mr Cavendra was represented by his solicitor, Mr Abhiner Mohindru. The Investigation Committee (IC) was represented by Julia-Anne Dix.
<b>Hearing in public or private</b>	The hearing was in public.  An application was made in a letter dated 6 October 2015 for the hearing to be in private. This was refused and was not renewed at the hearing.
<b>Decision on service</b>	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service.
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the IC's bundle together with a bundle of documents supplied by Mr Cavendra, which included (amongst other things) some character references, some medical evidence and a confidential statement of his financial circumstances.

#### **Findings on preliminary and procedural matters**

- A. By consent, head of complaint 1(c) was withdrawn before the Complaint was read into the record and so no evidence was lead on it.
- B. After the tribunal had made its finding, and when it was passed evidence of the defendant's means before considering sentence, it became apparent to one tribunal member that the defendant was currently employed in an office of the firm in which that tribunal member was a partner. The tribunal member did not know the defendant and vice versa (partly because they worked in different offices in different parts of the country). This was a very unusual inadvertency which was not foreseeable either by the tribunal member or the defendant. The tribunal immediately adjourned to take legal advice. The Legal Assessor, having considered the relevant Disciplinary Bye-laws, advised that it was inappropriate for that tribunal member to continue to sit, that that person must recuse themselves, and this fact was promptly drawn to the attention of the defendant and his solicitor. The Legal Assessor also advised that a fresh hearing was the defendant's as of right, unless he elected to continue with the remaining two members of the current tribunal. The Legal Assessor, with the Chairman's permission, told the defendant's solicitor that his client had the right either to a fresh hearing with a completely different tribunal or he may (having taken legal advice) elect to proceed with the current hearing with two members of the tribunal remaining, the third having recused themselves. The defendant elected to proceed with two members of the tribunal comprising the tribunal. No objection to this course of action was made by the IC. The Legal Assessor gave a full explanation of his advice and reasoning to the parties in the presence of the tribunal at the reconvened hearing, which is on the record.

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

1. The defendant was completing his training with a firm of Chartered Accountants, based in its Reading office. He was at all material times a provisional member of the ICAEW. He had struck up a friendship with his work colleague called Mr 'A'. The events described below occurred within a month or so of his 24<sup>th</sup> birthday.

2. On 26 April 2013, Mr 'A' sent an email to his manager which was also sent to the defendant ("the 'A' email"). He then circulated the manager's response internally; at about midnight that day, Mr 'A' apologised to the manager for his email to her. However, such was the nature of the 'A' email that the firm began a disciplinary investigation which involved an investigation into the email chain of which the 'A' email was part.
3. The investigation revealed that during the course of 26 April, the defendant had engaged in email correspondence with Mr 'A' about that person's email. The defendant had also deleted over 10,000 emails on or around that date, including some emails sent by the defendant which contained profanities. He did this, it was submitted, to minimise his involvement in the 'A' email investigation and thus to obstruct that investigation.
4. Also on 26 April, the defendant sent an email to Mr 'A' and another member of staff about the problems created for Mr 'A' about his email, stating "*Jus ignore it. Pretend someone hacked into ur PC. Blame junior.*"
5. The investigation into the 'A' email further revealed that the defendant had sent an email to Mr 'A' on 4 March 2013, which is quoted at head of complaint 2(a). It further revealed that (i) he had sent an email to a female colleague (copied to Mr 'A') which is quoted at head of complaint 2(c); furthermore, he had engaged in a "lync" conversation with Mr 'A' on 26 April from which the words at head of complaint 2(b) are quoted.
6. The IC does not submit that that the words quoted in head of complaint 2(b) contained any threat. However, the words quoted in the second head of complaint were highly inappropriate and should never have been used in a professional working environment. The words were disrespectful and unprofessional.
7. As to the defendant's conduct described in both heads of complaint, it was unacceptable, unprofessional and not befitting of a member of ICAEW. The conduct breaches Disciplinary Bye-law (DBL) 4.1(a).

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

8. The defendant admitted the complaint and no issues of fact or law fell to be determined.
9. The tribunal found the complaint proved on the defendant's own admission.

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

10. The defendant has admitted to sending three electronic communications to colleagues, while at work, which are thoroughly inappropriate for the reasons given by the IC and also because they are self-evidently so.
11. He has also admitted to deleting a large amount of data which did not belong to him, with the intention of obstructing his employer in its investigations of the 'A' email. The tribunal finds that his motive was in the large part an attempt to show misplaced loyalty to his friend at work, but also, secondarily, to conceal from his employer his culpability in sending the complaints described in the second head of complaint.
12. Moreover, the defendant has admitted to sending an email which purports to advise Mr 'a' to lie to his employer and to blame an unspecified junior colleague for his own misconduct. The tribunal, however, accepts the defendant's explanation that his email, inappropriate though it was, was never intended by him to be taken seriously (and it was not taken seriously). It was, in common with the deletion of the emails, part of a course of conduct in which the defendant sought to show misplaced loyalty to his friend.

13. This behaviour would be thoroughly unacceptable to any professional person; the first head of complaint describes conduct which is both disrespectful and misleading to an employer. The second head of complaint reflects an attitude to colleagues and an employer which is juvenile, rude and disrespectful to other people.
14. The starting point for behaviour of this kind, set out in the *Guidance in Sentencing*, is a declaration that the Defendant is unfit to be a member of ICAEW.

### **Matters relevant to sentencing**

15. The tribunal was greatly assisted by the conduct of the defendant's solicitor, Mr Mohindru, who, it transpired, was only recently instructed. It appears that as a result of Mr Mohindru's advice what had until recently been a lengthy contested hearing became an uncontested one. Furthermore, Mr Mohindru made a full plea in mitigation; in so doing, he rightly re-focused this matter where it ought to have been, namely on the reasons why the defendant behaved the way he had.
16. The defendant also spoke to the tribunal in mitigation.
17. Mitigating factors which were accepted by the tribunal were: (i) the unusual and difficult circumstances of the defendant's private and family life over many years and continuing to the present (these were explained in detail); (ii) the defendant's unusual emotional and social immaturity and impressionability; (iii) the clear and unconditional apology and expression of remorse from the defendant; (iv) clear evidence of insight into the defendant's wrongdoing; (v) a solemn promise to the tribunal not to repeat this behaviour; (vi) the defendant's clean disciplinary record; (vii) the defendant's financial means and obligations to others; (viii) the defendant's very positive character references; (ix) some medical evidence.
18. The defendant's age was not a mitigating factor on its own. A young, professional person of 24 is expected not to behave in the way the defendant had. However, his age was taken into account with the other mitigating factors.
19. The tribunal also took into account that the defendant's employment at his firm came to an end as a result of this conduct (the defendant resigned), and that he reported the matter to ICAEW.
20. Had the mitigation not been as strong (and as unusual) as it was, the tribunal would have considered making an order of unfitness to be a member.

### **Sentencing Order**

21. The plea in mitigation persuaded the tribunal that no order is the fair and proportionate decision on penalty. However, the tribunal made it clear to the defendant that any repetition of such misconduct, particularly in the light of his promise not to do so, would be met with much less leniency.
22. Costs in the sum of £1,200.
23. Costs are to be paid in 12 equal monthly instalments of £100. The first payment should be made on or about the first day of each month, commencing 1 January 2016.

### **Decision on publicity**

24. Publication with name.

**Non Accountant Chairman**

Mr Paul Brooks

**Accountant Member**

Mrs Jane Titley FCA

**Legal Assessor**

Mr Dominic Spenser Underhill

**020247**

**9**      **Mr Laurie John Powell FCA** of Hampshire House, 204 Holly Road, Aldershot,  
HAMPSHIRE, GU12 4SE

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 18 November 2015**

**Type of Member**                      Member

**Terms of complaint**

The complaint is that Mr LJ Powell FCA 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’

Because:

Mr LJ Powell FCA failed to provide by 18 March 2015 the information, explanations and documents requested in a letter dated 14 January 2015 issued under Disciplinary Bye-Law 13.

Disciplinary Bye-Law 13 provides:

- (1) The investigation Committee shall have the power by notice served on any member...to call for any such information, such explanations and such books, records and documents as the Committee considers necessary to enable it or the head of staff to perform its or his functions under these bye-laws.
- (2) It shall be the duty of any person or body on whom a notice is served under paragraph (1) to comply with it within a period of 14 days beginning with the date of service or such longer period as the Investigation Committee may allow.

**Hearing date**

18 November 2015

**Previous hearing date**

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) order to produce information and documents by 16.00 on 4 January 2016.

## **Procedural matters and findings**

<b>Parties present</b>	Laurie John Powell was present.
<b>Represented</b>	Mr Powell was not represented. The Investigation Committee (IC) was represented by Theresa Thorpe.
<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 to service.
<b>Documents considered by the tribunal</b>	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with a confidential statement of financial means supplied by Mr Powell.

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

1. On 11 June 2014, the Disciplinary Committee of ICAEW heard a complaint that the defendant had failed to provide information and documents which had been requested in a letter dated 21 November 2013 which had been issued under Disciplinary Bye-law 13. During that hearing, the defendant told the tribunal that he would provide that material by the end of July 2014. He did not.
2. After repeated requests for this material which were not complied with, a letter dated 14 January 2015 was sent by ICAEW pursuant to DBL 13, which is the subject of this complaint. A response was requested by 28 January 2015. On 29 January 2015, the defendant notified ICAEW of a change of address. On the following day, ICAEW wrote to the defendant and allowed him until 16 February 2015 to reply to the letter dated 14 January 2015. He was also reminded that he had originally promised the material requested by the end of July 2014.
3. No reply was received by 16 February. A response was further requested by 4 March. On 4 March, the defendant telephoned ICAEW to explain that although he had received the letter of 16 February, that his mother had died and he needed more time. He said he could respond by 18 March. By a subsequent email dated 20 March 2015, the defendant said *"Realistically I think it will take until the end of April to fit in enough time to resolve the queries and locate the missing paperwork."*
4. No response was received by the end of April, or at any time thereafter.
5. The letter of 14 January 2015 has not been properly responded to even by the time requested by the defendant. DBL 4.1 (c) has been breached.

## **Issues of fact and law**

6. The defendant denied the complaint. The IC was put to proof that (i) the letter of 14 January 2015 had been sent and (ii) that it had not been complied with.
7. The defendant admitted during the hearing receiving the letter and admitted that it had not been complied with.
8. The tribunal found the complaint proved.

## Conclusions and reasons for decision

9. The IC sent a letter dated 14 January 2015 to the defendant pursuant to DBL13. The defendant received it; he explained to ICAEW that he would be unable to respond before 20 March and then by the end of April. In fact, he has not responded at all.
10. The history of this matter goes back to June 2014 when the defendant told the disciplinary tribunal at the time that he would provide material by a certain date. Since then, he has, in spite of many requests not done so. The material sought by ICAEW has been outstanding for a year and a half, counting from the June 2014 hearing. Due credit has been given for some of the reasons for this delay, but even allowing for that, this is not acceptable conduct from a member of ICAEW.

## Matters relevant to sentencing

11. The tribunal followed the *Guidance on Sentencing* and saw no reason to depart from that. It was satisfied that no lesser penalty than has been ordered was appropriate.
12. The defendant has a previous disciplinary record. On 11 June 2014, he received a severe reprimand and a fine of £3,250 for breaching DBL 13.
13. There are no mitigating factors. The tribunal has noted reasons for previous delays but has discounted them as adequate reasons for any delay since the end of April 2015.
14. Aggravating factors are (i) the defendant's previous disciplinary record, the proceedings of which are the backdrop to the current complaint; (ii) the fact that this is the second time in two years that the defendant has failed to comply with a DBL 13 request; (iii) the underlying seriousness of the material which has been requested; (iv) the amount of time that has already passed, and the amount of time allowed to the defendant already.
15. The defendant has repeatedly failed to provide the material requested by ICAEW for a considerable period of time, and taking into account his representations during the hearing as to when he might be able to provide it, the tribunal made an order that the information required must be provided no later than 16.00hrs on 4 January 2016. The tribunal also made it very clear to the defendant that if he failed to comply with its order it would (absent a substantial defence) in effect be his third breach of an obligation to provide material in less than five years; in such circumstances, were there to be a third finding against him from the Disciplinary Committee for failing to provide material, the *Guidance on Sentencing* suggest that the appropriate sentencing starting point is exclusion from membership.

## Sentencing Order

16. The tribunal imposed the following sanctions:
  - a) Severe reprimand.
  - b) An Order that Laurie John Powell FCA produce to ICAEW all the information and documents specified in paragraphs A-D of the ICAEW's letter to him dated 14 January 2015, by 16.00 on 4 January 2016 (which letter is the subject of this complaint).
  - c) Costs of £1,250.

## Decision on publicity

17. Publication with name.

**Non Accountant Chairman**

Mr Paul Brooks

**Accountant Member**

Mrs Jane Titley FCA

**Accountant Member**

Mr Nigel Meredith FCA

**Legal Assessor**

Mr Dominic Spenser Underhill

**027475**

**10 Mr Namit Kad** of 14 Iver Lane, IVER, BUCKINGHAMSHIRE, SL0 9LH

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 25 November 2015**

**Type of Member** Provisional Member

**Terms of complaint**

On 4 August 2015, ICAEW's Investigation Committee referred a formal complaint to the Disciplinary Committee against Mr Namit Kad (the defendant). Mr Kad is an ICAEW provisional member.

In or around June 2013, when employed by 'A' as a trainee accountant he altered 2 internal review forms to enhance the assessments given to him by appraisers, without their knowledge or consent:-

1. On the review of the work he completed on 'B' Ltd he amended scores in the appraiser assessment of competency in section 3 and deleted a paragraph in the appraiser comments; and
2. On the review of work he completed on 'C' he amended the score for application of technical knowledge from 3 to 4.

Mr Namit Kad is therefore liable to disciplinary action under Disciplinary Bye-law 4.1a. '...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 November 2015

**Previous hearing date**

None

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

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** No order

**Procedural matters and findings**

**Parties present** Namit Kad

**Represented** Mr Kad was represented by Christopher Cope. The Investigation Committee (IC) was represented by Annabel Joester.

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

**Decision on service**

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

**Documents considered by the tribunal**

The tribunal considered the documents contained in the IC's bundle together with a witness statement of Mr Kad.

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

1. At all relevant times, the defendant was a trainee at 'A'. His employment began there on 1 August 2011 and he left the firm in August 2013. Trainees were assessed on their work on assignments which lasted three days or more by the completion of Job Review Forms. Those forms fell into two broad parts: the part to be completed by the appraiser and the part by the trainee. There was no formal written procedure for how those forms should be filled in, although there was a conventional process, and the defendant was familiar with that.
2. One of the matters which the defendant worked on was for a client called 'D'. He completed his Job Review Form for that job and on 22 March 2013, sent it to his supervisor. On 13 June 2013, his supervisor completed his section of the Form and returned it to the defendant, blind copying the defendant's line manager, which was not usual practice.
3. The defendant handed his supervisor the hard copy of the form a few days later, which the supervisor signed without checking.
4. Later, the supervisor compared the form he had blind copied to the line manager with the one he had actually signed. He noticed that the competency ratings had been increased from 3 and 2, to 4. Also, a paragraph written by him about the defendant had been deleted.
5. The second of the matters concerned a job for 'C'. The supervisor completed her section of the form on 21 June 2013 and emailed it to the defendant who appeared a few minutes later with a hard copy in his hand. She signed it without checking, assuming she was signing the hard copy of the form she had just sent to the defendant. In fact, the competency score had been improved by him from a 3 to a 4.
6. Four days later, the defendant called the appraiser and told her what he had done. He was told that he should not have done that – appraisers' scores cannot be altered without agreement. The defendant then tried to persuade the appraiser not to raise the issue, and he mentioned the trouble he had got into changing the 'D' form.
7. Disciplinary proceedings were commenced by 'A'; that concluded on 16 August and the defendant's employment terminated under the terms of a Settlement Agreement.
8. It is not part of the IC's case that the defendant acted dishonestly. The IC submits that amending the forms without the appraisers' knowledge and consent, when the defendant knew he was not allowed to do so, is a breach of Disciplinary Bye-law (DBL) 4.1(a).
9. The defendant admits amending the forms. He did so, he explains, in the mistaken belief held at the time that he was allowed to do so because he had thought it was a permitted practice. He also thought that he was allowed to amend the forms without drawing the amendment to the appraiser's attention, but accepts that was incorrect.

## Issues of fact and law

10. There were no matters of fact and law to determine since the complaint was admitted.
11. The tribunal found the complaint proved on the defendant's own admission.

## Conclusions and reasons for decision

12. The defendant has admitted to changing appraisal forms so that his scores would appear better than those given by the appraisers. It is no part of this case that this was done dishonestly. It is part of the case that the defendant had acted unprofessionally by amending the forms (when he knew or ought to have known he was not permitted to do so) and not telling his appraiser that he had done so.
13. In order for trainees of ICAEW to be properly and fairly assessed by their employers, there must be trust in the trainee by the employer. In the case of 'A', the firm is entitled to expect the trainee to adhere to the conventions of appraisal and, if the trainee alters documents, he or she must tell the person whose writing was altered. Apart from being a common courtesy, it is also professionally responsible. That is fair both on the appraiser and the trainee, and it is also fair on the other trainees in the firm. As it was, the defendant had no business changing his appraisers' scores and not telling them that he had done so. The appraisers and 'A' were entitled to be cross about that.

## Matters relevant to sentencing

14. The tribunal considered the *Guidance on Sentencing* and saw no reason to depart from that.
15. Mitigating factors which have been taken into account are: (i) the defendant's clean disciplinary record; (ii) his repeated apologies; (iii) the fact that he confessed to the second occasion of form alteration without being asked (although it is noted he tried to persuade the second appraiser not to take matters further); (iv) medical evidence of the stress he was under at work at the time; (v) the testimonials as to his character; (vi) his financial means and (vii) because he lost his job at 'A', he has already lost some 2½ years training as a result.
16. For all these reasons, and allowing for the defendant's age and stage in his career a lenient sentence is proportionate and fair.

## Sentencing Order

17. No order  
Costs of £5,000

## Decision on publicity

18. Publication with name.

### Chairman

Mr Ian Walker FCA

### Accountant Member

Mr Mike Ranson FCA

### Non Accountant Member

Mr Paul Brooks

### Legal Assessor

Mr Dominic Spenser Underhill

016677

**11 Mr Stephen Michael Smith ACA** of 26 Highgate Grove, Queensbury, Bradford, West Yorkshire, BD13 2RU

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 1 December 2015**

**Type of Member** Member

**Terms of complaint**

1. Between 31 January 2013 and 22 December 2014 Mr S M Smith ACA 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 56.c.
2. Between 31 January 2014 and 22 December 2014 Mr S M Smith ACA 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.

Mr Smith is therefore liable to disciplinary action under Disciplinary Bye-law 4.1(c), because 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**

01 December 2015

**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) fine of £1,500  
b) costs of £1,200

**Procedural matters and findings**

**Parties present** The Investigation Committee (IC)

**Represented** Ms Joester represented the IC

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

**Decision on service**

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

**Documents considered by the tribunal**

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

**Findings on preliminary matters**

The tribunal decided to hear three complaints (this complaint with those numbered 021170 and 019019) together. It was satisfied that there was no disadvantage to the defendant in so doing.

All three bundles had been served on the defendant's registered address. The registered address had also been identified as a change of address at Companies House.

The tribunal considered the factors highlighted in *R v Jones* (those it was accepted should be considered in professional regulatory proceedings in considering whether to proceed in the absence of a defendant). The tribunal decided to proceed in Mr Smith's absence.

There had been no substantive response in writing to the bundles although he did telephone on 10 November 2015 confirming he had received the papers following which Ms Waller sent information in relation to the member support service.

Mr Smith had had communication in June 2015 with the Committee Secretary in which he indicated that he had been unwell. He had not responded further until November 2015. He had not provided any medical evidence to support his earlier assertion of ill health. There had been no communication from the defendant indicating that he wished to attend or for there to be an adjournment.

The tribunal was of the view, in all the circumstances, that it was in the public interest and indeed the interests of justice for this matter to proceed in the defendant's absence.

**Issues of fact and law**

1. New regulations concerning Continuing Professional Development (CPD) were made by council on 8 June 2005 and came into force on 1 July 2005. Principal Bye-law 56 requires a member to:

*'(a) keep under review his needs for training and development having regard to the professional and other work he undertakes;*

*(b) where such a review identifies a specific need for training or development act promptly to meet such need; and*

*(c) certify annually to the Institute compliance with these provisions and, if requested by the Institute, provide such evidence of compliance as may be required'.*

2. In addition to the above Regulation 5 of the Continuing Professional Development Regulations states:

*'Members shall complete a certificate relating to compliance with Principal Bye-law 56 (whether included in the Annual Members' Profile or as otherwise directed by the Committee)'*

3. Mr Smith has failed to complete his CPD declaration for the periods 1 November 2011 to 31 October 2012 and 1 November 2012 to 31 October 2013.
4. The case manager wrote to Mr Smith on 15 October 2014, 12 November and 26 November. No reply was received.
5. As no reply was received the case manager wrote to Mr Smith advising him that he would be reporting his failure to comply with the CPD requirements to ICAEW's Investigation Committee.

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

6. The tribunal found the complaint proven.
7. Mr Smith failed to complete his annual return and to certify his compliance with the CPD requirements. He has therefore breached Principal Bye-law 56(c), and is accordingly in breach of Disciplinary Bye-law 4 (1)(c).

#### **Matters relevant to sentencing**

8. Mr Smith had no previous disciplinary record. There did not appear to be any other mitigation. It was an aggravating feature that the neglect of Mr Smith's client affairs and regulatory requirements had extended for a long period of time as reflected in the particulars in the three complaints. Mr Smith's conduct had fallen well below the professional standards required of a chartered accountant. Compliance with CPD requirements was an essential element of maintaining the standards in the profession and securing the confidence of the public in those standards.
9. The tribunal took into account its Guidance on Sentencing and noted that the starting point for this complaint would be a reprimand and a fine. Given that Mr Smith had been severely reprimanded in relation to complaint number 021170, the tribunal did not impose a reprimand for this complaint, but noted that had it been the only complaint before it, Mr Smith would have received, in addition, a reprimand for this matter.
10. The tribunal was of the view that the appropriate fine for this complaint would, were it not for the other two complaints, be £1,700. In light of the three complaints being heard together, acting proportionally, the tribunal reduced the fine for this complaint to £1,500.
11. The tribunal noted that the three complaints could have been put before it as one complaint and broadly related to the same set of facts. As such, it was careful to ensure that it had acted proportionately overall in relation to all three complaints both with regard to sanction and costs.

### **Sentencing Order**

12. The tribunal imposed a fine of £1,500 and ordered that Mr Smith pay costs of £1,200.

### **Decision on publicity**

13. Publicity with names.

**Chairman**

Mr David Wilton FCA

**Accountant Member**

Mr Mike Ranson FCA

**Non Accountant Member**

Ms Mary Kelly

**Legal Assessor**

Ms Melanie Carter

**023360**

**12 Mr Stephen Michael Smith ACA** of 26 Highgate Grove, Queensbury, Bradford, West Yorkshire, BD13 2RU.

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 1 December 2015**

**Type of Member** Member

**Terms of complaint**

1. From 10 April 2014 to 5 August 2014 Mr S Smith ACA failed to submit an annual return on behalf of his firm, S M Smith Ltd, for the period ended 31 August 2013 contrary to Regulation 8 of the Practice Assurance Regulations.
2. From 11 August 2013 to 5 August 2014 Mr S Smith ACA engaged in public practice through his firm, S M Smith Ltd, without professional indemnity insurance as required by regulation 3.1 of the Professional Indemnity Insurance Regulations.

Mr Smith is therefore liable to disciplinary action under Disciplinary Bye-law 4.1c because 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**

01 December 2015

**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 £2,000  
c) costs £1,200

**Procedural matters and findings**

**Parties present** The Investigation Committee ("IC")

**Represented** Ms Joester of ICAEW represented the IC

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

**Decision on service**

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

**Documents considered by the tribunal**

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

**Findings on preliminary matters**

The tribunal decided to hear three complaints (this complaint with those numbered 023360 and 019019) together. It was satisfied that there was no disadvantage to the defendant in so doing.

All three bundles had been served on the defendant's registered address. The registered address had also been identified as a change of address at Companies House.

The tribunal considered the factors highlighted in R v Jones (those it was accepted should be considered in professional regulatory proceedings in considering whether to proceed in the absence of a defendant). The tribunal decided to proceed in Mr Smith's absence.

There had been no substantive response in writing to the bundles although he did telephone on 10 November 2015 confirming he had received the papers following which Ms Waller sent information in relation to the member support service.

Mr Smith had had communication in June 2015 with the Committee Secretary in which he indicated that he had been unwell. He had not responded further until November 2015. He had not provided any medical evidence to support his earlier assertion of ill health. There had been no communication from the defendant indicating that he wished to attend or for there to be an adjournment.

The tribunal was of the view, in all the circumstances, that it was in the public interest and indeed the interests of justice for this matter to proceed in the defendant's absence.

**Issues of fact and law**

1. The Annual Returns Team sent Mr Smith an annual return for his firm, S M Smith Ltd in July 2013. The return was due by 30 September 2013, however, no return was received. Mr Smith was sent further correspondence reminding him of the requirement to complete the documentation and requesting its return.
2. Mr Smith's failure to complete the return was referred to the Practice Assurance Committee, and its Secretary sent a further request for the return.

3. Since the return was not received the matter was referred to a case manager, and further correspondence was sent to Mr Smith.
4. The correspondence sent by the case manager on 29 April 2014 and 16 May 2014 was returned to him, with the envelopes indicating that Mr Smith was no longer at that address.
5. The case manager searched Companies House. The search revealed that S M Smith Ltd had changed its address. Accordingly, further letters were sent to the address registered at Companies House and to Mr Smith's personal email address. Further chasing letters were sent, but no reply was received.
6. The case manager wrote to Mr Smith again on 5 August 2014 at both the address registered at Companies House and the address he had registered with ICAEW. No reply was received.

### **First head of complaint**

7. Practice Assurance Regulation 8 provides that:

*'Member firms and PC holders shall provide any information requested by the Institute under the PA scheme (whether in the annual return or otherwise) promptly and in accordance with the terms specified.'*

8. Mr Smith was sent the Annual Return for his firm for completion in June 2013. He was given several opportunities to complete the return, culminating in the letter of 19 March 2014 from the Practice Assurance Committee Secretary, which stated that:

*'...your firm has still not submitted the Practice Assurance annual return we sent you in June 2013.*

*Please complete the enclosed annual return and send it to Simon Stone by 9 April 2014...*

*If we don't receive your firm's return by 9 April 2014, I may have to refer the matter to the Professional Conduct Department...*

*We look forward to hearing from you by 9 April 2014.'*

9. No response to the letter of 19 April was received from Mr Smith, and he has not sent his firm's annual return to ICAEW.

### **Second head of complaint**

10. Mr Smith confirmed in his 2012 Annual Return that he held a policy of PII which commenced on 11 August 2012. This policy would therefore have expired on 10 August 2013. Because he has not completed his 2013 Annual Return Mr Smith's firm has not confirmed that it was covered by a PII policy from 10 August 2013.
11. Mr Smith has failed to remove his firm from the register and is known to have been previously engaging in public practice through that firm. Whilst there was no positive evidence that Mr Smith had been engaging in public practice during the period of this head of complaint, he had not at any point claimed in response to this complaint that he had ceased practice. On the balance of probabilities therefore, the tribunal concluded that he had been engaged in public practice during the period of this head of complaint.

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

12. The tribunal found the complaint proven on both heads.

13. There has been a clear request for information made to Mr Smith in the letter to him from the PAC Secretary dated 19 March 2014. Mr Smith's failure to comply with that request is a breach of Practice Assurance Regulation 8.
14. Mr Smith has failed to confirm to ICAEW, as required, that he had a policy of PII in place during the period of the complaint. The tribunal concluded on the evidence before it that he did not have a policy in place during that period, and that he is therefore in breach of regulation 3.1 of the Professional Indemnity Insurance Regulations.
15. By reason of the above Mr Smith is therefore in breach of Disciplinary Bye-law 4(1)(c).

### **Matters relevant to sentencing**

16. Mr Smith had no previous disciplinary record. There did not appear to be any other mitigation. It was an aggravating feature that the neglect of Mr Smith's client affairs and regulatory requirements had extended for a long period of time as reflected in the particulars in the three complaints. Mr Smith's conduct had fallen well below the professional standards required of a chartered accountant. Provision of the annual return was a critical component of ensuring the ICAEW's role of monitoring the standards within the profession of chartered accountancy. The availability of professional indemnity insurance was similarly a critical aspect of the protection of the public and the lack of any such insurance was a very serious matter.
17. The tribunal took into account its *Guidance on Sentencing* and noted that the starting point for this complaint would be a severe reprimand and a fine.
18. The tribunal was of the view that the appropriate fine for this complaint would, were it not for the other two complaints, be £3,450. In light of the three complaints being heard together, acting proportionally, the tribunal reduced the fine for this complaint to £2,000.
19. The tribunal noted that the three complaints could have been put before it as one complaint and broadly related to the same set of facts. As such, it was careful to ensure that it had acted proportionately overall in relation to all three complaints both with regard to sanction and costs.

### **Sentencing Order**

20. The tribunal imposed a severe reprimand and a fine of £2,000 and ordered Mr Smith to pay costs of £1,200.

### **Decision on publicity**

21. Publicity with names.

<b>Chairman</b>	Mr David Wilton FCA
<b>Accountant Member</b>	Mr Mike Ranson FCA
<b>Non Accountant Member</b>	Ms Mary Kelly
<b>Legal Assessor</b>	Ms Melanie Carter

**021170**

**13 Mr Stephen Michael Smith ACA** of 26 Highgate Grove, Queensbury, Bradford, West Yorkshire, BD13 2RU

**A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 1 December 2015**

**Type of Member** Member

**Terms of complaint**

As at 9 September 2014 Mr S Smith ACA failed to reply to the following emails sent from a client, Mr 'A', requesting the return of his and/or his wife's financial records, contrary to section 150.1 of the Code of Ethics.

11 March 2013  
5 August 2013  
23 August 2013  
1 October 2013  
2 October 2013  
3 October 2013  
9 October 2013  
4 December 2013  
21 January 2014

Mr Stephen Michael Smith is therefore liable to disciplinary action under Disciplinary Bye-law 4.1b.

namely 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**

01 December 2015

**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) fine £1,500  
b) costs £1,200

**Procedural matters and findings**

**Parties present** The Investigation Committee ("IC")

**Represented** Ms Joester 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 Investigation Committee's IC's bundle.
<b>Findings on preliminary matters</b>	<p>The tribunal decided to hear three complaints (this complaint with those numbered 023360 and 021170) together. It was satisfied that there was no disadvantage to the defendant in so doing.</p> <p>All three bundles had been served on the defendant's registered address.</p> <p>The tribunal considered the factors highlighted in R v Jones (those it was accepted should be considered in professional regulatory proceedings in considering whether to proceed in the absence of a defendant). The tribunal decided to proceed in Mr Smith's absence.</p> <p>There had been no substantive response in writing to the bundles although he did telephone on 10 November 2015 confirming he had received the papers following which Ms Waller sent information in relation to the member support service.</p> <p>Mr Smith had had communication in June 2015 with the Committee Secretary in which he indicated that he had been unwell. He had not responded further until November 2015. He had not provided any medical evidence to support his earlier assertion of ill health. There had been no communication from the defendant indicating that he wished to attend or for there to be an adjournment.</p> <p>The tribunal was of the view, in all the circumstances, that it was in the public interest and indeed the interests of justice for this matter to proceed in the defendant's absence.</p>

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

1. Mr and Mrs 'A' were clients of Mr Smith, who was a sole practitioner working out of his residential address, for a number of years. He was instructed to work on the accounts for Mr 'A' and Mrs 'A's businesses. As their accountant he held the books and records for both businesses.
2. In early 2013 Mr 'A' became aware that Mr Smith had moved from his address and failed to provide the 'A's with a forwarding address. Mr and Mrs 'A' were concerned by this, due to their obligations to file accounts and records with HMRC. They therefore made several attempts to contact Mr Smith, including attending at his former address and a possible

current address (Highgate Grove, Queensbury), telephoning and emailing him. An email dated 28 June 2014 made reference to Mr 'A' having received a telephone call in which Mr Smith had indicated that he would be delivering the books "soon".

3. As Mr Smith failed to make any further contact with Mr and Mrs 'A' they made a complaint to ICAEW in December 2013. Unfortunately, Mr Smith has failed to answer any of the correspondence sent to him by the conciliator, who was initially assigned to the matter, or to the investigation case manager who subsequently took over due to Mr Smith's lack of response.
4. Due to Mr Smith's lack of response Mr and Mrs 'A' have instructed a new accountant. Both of them have experienced significant inconvenience as a result of not having their business records returned, particularly Mrs 'A' as she had handed over the only copies of her records to Mr Smith.
5. Mr 'A' emailed Mr Smith on nine occasions, as set out in the complaint, requesting the return of his/his wife's financial records. Mr Smith completely failed to respond and has retained both Mr and Mrs 'A's financial records. The email address used by Mr 'A' is the email address listed for Mr Smith at ICAEW.

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

6. The tribunal found the complaint proven.
7. Section 150.1 of the ICAEW Code of Ethics provides:

*'The principle of professional behaviour imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession.'*

*Professional accountants shall conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.'*

8. In failing to reply to Mr 'A's communications and in retaining Mr and Mrs 'A's financial records Mr Smith has breached s150.1 of the Code of Ethics, and has conducted his practice inefficiently or incompetently to such an extent that he has brought discredit on himself, the Institute and/or the profession of accountancy.
9. Mr Smith is therefore in breach of Disciplinary Bye-law 4(1)(b).

### **Matters relevant to sentencing**

10. Mr Smith had no previous disciplinary record. There did not appear to be any other mitigation. It was an aggravating feature that the neglect of Mr Smith's client affairs and regulatory requirements had extended for a long period of time as reflected in the particulars in the three complaints. Mr Smith's conduct had fallen well below the professional standards required of a chartered accountant. Retaining clients' books after ceasing to carry out their work was a completely unacceptable way for a chartered accountant to behave. This was aggravated by the fact that the client had repeatedly chased Mr Smith and there had inevitably been considerable inconvenience to the clients.

11. The tribunal took into account its *Guidance on Sentencing* and noted that the starting point for this complaint would be a reprimand and a fine. Given that Mr Smith had been severely reprimanded in relation to complaint number 021170, the tribunal did not impose an additional reprimand for this complaint, but noted that had it been the only complaint before it, Mr Smith would have, in addition, received a reprimand for this matter.
12. The tribunal noted that the three complaints could have been put before it as one complaint and broadly related to the same set of facts. As such, it was careful to ensure that it had acted proportionately overall in relation to all three complaints both with regard to sanction and costs.

### **Sentencing Order**

13. The tribunal imposed a fine of £1,500 and ordered that Mr Smith pay costs of £1,200.

### **Decision on publicity**

14. Publicity with names.

<b>Chairman</b>	Mr David Wilton FCA
<b>Accountant Member</b>	Mr Mike Ranson FCA
<b>Non Accountant Member</b>	Ms Mary Kelly
<b>Legal Assessor</b>	Ms Melanie Carter

**019019**

## APPEAL COMMITTEE PANEL ORDER

**14 Mr Neil Edward Hooton ACA** of 369 Blackburn Road, Astley Bridge, BOLTON, BL1 8DY

**A panel of the Appeal Committee made the decision recorded below having heard an appeal on insert date of hearing 2 November 2015**

**Type of Member** Member

Date of Disciplinary Tribunal Hearing 7 July 2015

Date of Appeal Panel Hearing 2 November 2015

Terms of complaint found proven before the Disciplinary Tribunal

The complaint is that Neil Edward Hooton ACA is liable to disciplinary action under Disciplinary By-law 4.1a

'...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'

because:

On 24 May 2011, Neil Hooton ACA prepared and issued an audit report, in the name of 'A' in respect of the financial statements of 'B' Limited for the year ended 30 September 2010 when he was not a principal or employee of that firm.

### **Sentencing Order**

Practising Certificate withdrawn

Appeal against finding? No

Appeal against Sentencing order? Yes

Decision of Appeal Panel Allowed in part

The order of the Disciplinary Committee was varied as follows:

1. The Appellant's practising certificate is withdrawn for a period of 18 months from 2 November 2015.
2. When applying for a new certificate the Appellant must submit with the application six-monthly drug hair tests and a letter from his general practitioner confirming his rehabilitation from drugs.

## **Procedural matters and findings**

- 1 The Appellant was present at the hearing and represented by Mr Edward Lamb of counsel. The Investigating Committee was represented by Ms Annabel Joester.
- 2 The hearing was in public.
- 3 The Appellant applied to adduce further evidence as to his medical and psychological condition
- 4 On 30 September 2015 the Chairman granted permission for the Appellant to adduce the further evidence requested.

## **Grounds of appeal**

- 5 While not contesting either the imposition of a severe reprimand or the order for costs made by the Disciplinary Committee, the Appellant sought a decision imposing a time limit on the period of the withdrawal of his practising certificate.

## **Decision**

- 6 The period for the withdrawal of the practising certificate would be fixed at 18 months from the date of the appeal, 2 November 2015
- 7 When applying for a new certificate the Appellant must submit with the application six-monthly drug hair tests and a letter from his general practitioner confirming his rehabilitation from drugs.
- 8 No order as to costs.

## **Reasons for decision**

- 9 Though the subject-matter of the complaint against the Appellant was very serious, the Panel was satisfied that at the time the Appellant's judgment had been severely impaired by his addiction to drugs and that his physical and psychological health had deteriorated to a point where he had acted very foolishly and wrongly. The Panel agreed with the Disciplinary Committee, however, that these factors were sufficient mitigation to save the Appellant from what would otherwise have been a decision to exclude him from membership and that withdrawal of the practising certificate was the appropriate penalty.
- 10 Ms Joester very properly conceded that the Disciplinary Committee had been in error in not setting a time limit for the withdrawal of the certificate and, on that basis, that the Appeal Panel was entitled to approach the sentencing exercise afresh. She also conceded that it would not be appropriate in the circumstances for the Investigation Committee to seek its costs of the appeal. For that reason no order for costs has been made.
- 11 The Panel heard evidence from the Appellant and his mother Mrs Hooton and considered documents from his general practitioner and a drug testing laboratory. It was clear to the Panel that the Appellant had made genuine efforts to cure himself of his drug habit and to re-establish himself both physically and psychologically. The Panel was impressed by the support afforded the Appellant by his family and were satisfied that the Appellant had resolved to get himself back into a condition where he could safely be allowed to practice.

- 12 The Panel had therefore to carry out a balancing exercising weighing on the one hand the gravity of the Appellant's conduct and on the other his efforts to resolve his problems. It was decided that a withdrawal of the certificate for a period of 18 months would mark the seriousness of the offence but allow the Appellant the chance to rehabilitate himself and return to practice.
- 13 At the same time the Panel considered it appropriate to place conditions on the Appellant before he is permitted to take out a new certificate, so that the Institute and the public can have confidence that his rehabilitation has continued successfully.

<b>Chairman</b>	Mr Richard Mawrey	
<b>Non Accountant Member</b>	Mr Geoff Baines	
<b>Accountant Member</b>	Mr Lee Antony Manning FCA	
<b>Accountant Member</b>	Mr David Anthony Ingram FCA	
<b>Non Accountant Member</b>	Ms Lesley Cartwright	<b>008534</b>

## CESSATION OF MEMBERSHIP

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

**Mr Stephen Smith of Bradford**  
**Miss Jocelyn Sarah Jowett of Marylebone, London**

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

## INVESTIGATION COMMITTEE CONSENT ORDERS

- 16 Rayner Essex LLP**

Consent order made on 4 January 2016

With the agreement of Rayner Essex LLP of Tavistock House South, Tavistock Square, London, WC1H 9LG, the Investigation Committee made an order that the firm be reprimanded, fined £750 and pay costs of £3,455 with respect to a complaint that:

Rayner Essex LLP provided Dr X with an incorrect estimate of his income tax liability for the years 2007-08 and 2008-09 resulting in Dr X making insufficient tax payments amounting to £43,043.10.

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**005322**

## REGULATORY DECISIONS

### AUDIT REGISTRATION COMMITTEE

#### ORDER – 9 DECEMBER 2015

##### **17 Publicity statement**

RS Partnership Limited, Riverside House, 14 Prospect Place, Welwyn Garden City, Hertfordshire, AL6 9EN, has agreed to pay a regulatory penalty of £3,000 which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of Audit Regulations 2.03a and 6.06 in that the firm failed to ensure a director, appointed in 2012, had audit affiliate status; and for the inaccurate completion of its 2013-2015 annual returns.

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**029627**

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