DISCIPLINARY ORDERS AND REGULATORY DECISIONS

Date published: 2 October 2013

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Mr Hong Kee Ng FCA of Suite 1, Central House, Woodside Park Commercial Centre Catteshall Lane, Godalming, Surrey GU7 1LG.

A panel of the Appeal Committee (AP) made the decision recorded below having heard an appeal on 5 September 2013

Type of Member Member

Date of Disciplinary Committee (DC) hearing: 10 April 2013

Terms of complaint found proved by the Disciplinary Tribunal (DCT):
Breach of Disciplinary Bye-law 4(1)(a) in that in the course of carrying out professional work or otherwise he committed defaults likely to bring discredit on himself, the Institute or the profession of accountancy' because between 13 October 2009 and 20 June 2011 he failed to comply with Section 210 of the Code of Ethics in that in relation to a client who had moved to another accountancy firm:
1 he failed to answer promptly a professional enquiry letter dated 13 October 2009 received from the new firm in relation to the client;
2 he failed to provide the additional information requested in a letter from the new firm dated 11 October 2010

Decision of the DCT:
The DCT imposed the following sanctions:
Severe reprimand, fine of £3,450 and costs of £1,866

Grounds of appeal:
Mr Ng appealed against the finding of the DT and the amount of fine and costs imposed on the grounds that:
1 he did eventually provide the information sought
2 the client was not disadvantaged

Decision of Appeal Panel:
The AP dismissed the appeal

Procedural matters and findings:
1 The appellant did not appear, and Mr Ben Jowett appeared for the Investigation Committee (IC)
2 The hearing was in public
Reasons for decision:

1. Mr Hong Kee Ng FCA appeals against the decision of the DCT made in his absence on 10 April 2013. The complaint against him related to a client for whom he had acted, but who had transferred to another firm for accountancy services. It was alleged that on 13 October 2009 the new firm wrote to the appellant asking for information in relation to the client’s tax returns for 2007 and 2008, and that despite reminders, the appellant did not reply until 2 October 2010, nearly a year later; and that the information he then provided was incomplete, and the enclosures he said he had sent with the letter were not included. On 11 October 2010 the new firm requested further information, but the appellant never replied. These omissions breached the Code of Ethics, section 210, and constituted a disciplinary offence under Disciplinary Bye-law 4(1)(a) in that in the course of carrying out professional work or otherwise he had committed defaults likely to bring discredit on himself, the Institute or the profession of accountancy.

2. The DCT found the charges proved, severely reprimanded him, fined him £3,450 and ordered him to pay costs of £1,866, a total financial obligation of £5,316.

3. The appellant appeals against those findings. He was not present at the hearing of his appeal, having sent an email to ICAEW the previous day, 4 September 2013, saying that he would not be appearing. He was invited by ICAEW to apply for an adjournment, and it was suggested that it would be to his advantage to appear; he was invited alternatively to apply for a hearing by video link. He did not respond to either of those suggestions.

4. It was difficult to ascertain from the appellant’s notice of appeal the grounds on which he was seeking to set aside the finding that the allegation against him was proved. He appears to be saying that he eventually did provide the information sought, although he has provided no evidence to that effect apart from his assertion. He mentioned software difficulties, which seem to relate to a problem in downloading a copy of the electronic tax return, but he has provided no evidence that he asked HMR&C for the copy he required. The appellant also referred to his absence abroad, but has provided no evidence to show where he went, or how long he was away, or why correspondence could not be answered in his absence. In short, he has provided no cogent evidence to support his challenge to the findings against him of failing to respond to correspondence and of failing to provide information requested.

5. In his email of 4 September 2013 the appellant said:

“My appeal is not only against the financial penalties. It also relates to the Institute’s findings. The main grounds of my appeal is [sic] that the complainant received all the information asked for albeit over a longer period than would be expected. Also the former client did not suffer in any way. As a matter of fact he was given a refund based on accounts submitted by me.”

However, it remains the case that the appellant has still provided no other evidence in support of his assertions.

6. The appellant’s bald assertions of facts contrary to those alleged against him are not an adequate defence to charges of failing to answer correspondence or provide information, and this AP declines to set aside the finding of guilt.

7. When it comes to the amount of the financial penalty imposed, the appellant has presented some accounts, on which this AP would have liked to question him, but his absence makes that impossible, and our questions remain unanswered. Whatever the reason for his absence, its effect is that we are not persuaded that the penalty that the DCT imposed was greater than would be reasonable in relation to the appellant’s finances. This AP therefore rejects that ground of appeal as well.
8. This AP therefore sees no basis for criticising the approach or conclusions of the DCT and declines to overrule them.

9. We are nevertheless left in some doubt about the appellant's true means. The application for costs is modest, totalling £1,000, and this AP is satisfied that it is entirely reasonable, and that all possible concessions have been made by reducing the costs claimed for time spent by the IC’s advocate to £58: this is more than generous, given that they are normally charged at £150 an hour. However, this AP gives effect to its doubt about the appellant’s true means by making no order as to costs. This leaves the appellant in the same position as if he had not appealed. It implies no criticism of the way this case has been dealt with by ICAEW at any stage.

Chairman: Mr Peter Susman QC
Accountant Member: Mr Tony Ball FCA
Accountant Member: Mr Jonathan Dennis FCA
Accountant Member: Mr Hasan Mirza ACA
Non Accountant Member: Mr Geoff Baines 006160
A panel of the Appeal Committee (AP) made the decision recorded below having heard an appeal on 5 September 2013

**Type of Member**

Member

**Date of Disciplinary Tribunal Hearing:** 11 July 2012

**Terms of complaint found proved by the Disciplinary tribunal:**

Breaches of Disciplinary Bye-law 4(1)(c) in failing to comply with Principal Bye-Law 56(c) in each of the years ending 31 October 2006 to 2011 by certifying compliance with the Continuing Professional Development (CPD) requirements for that year within the period permitted

**Decision of the Disciplinary tribunal:**

The DCT imposed the following sanctions:

Reprimand, fine of £3,000, and costs of £1,500

**Grounds of appeal:**

The appellant’s real omission was to fail to ensure that a change of address was notified to ICAEW, since it was this that caused him to be unaware of the obligations to notify CPD compliance, when he had in fact complied with all his CPD obligations. The fine was accordingly excessive.

**Decision of Appeal Panel:**

The AP accepted the appellant’s contentions and reduced the fine to £750

**Procedural matters and findings:**

1. The appellant appeared on his own behalf by video link from Dubai, and Mr Ben Jowett appeared for the Investigation Committee (IC)

2. The hearing was in public

**Reasons for decision:**

1. Andrew John Sinclair Tait FCA appeals against the fine of £3,000 imposed by the DCT on 11 July 2012 on charges under Disciplinary Bye-law 4(1)(c) of having failed to certify compliance with CPD requirements for each of the years ending 31 October 2006 to 2010, in each case contrary to Principal Bye-law 56C. The sanction imposed by the DCT was that he be reprimanded, pay a fine of £3,000 and costs of £1,500.
2. This was yet another case where the fundamental cause of the complaint was the failure of the appellant to register a current address with ICAEW. He had consequently not received the initial notification of the requirement for certification of continuing professional development, nor any subsequent annual members’ pack from ICAEW. Previous such cases have come before an AP chaired by Richard Mawrey QC, and we consider it important that there should be consistency in the way that these cases are dealt with on appeal.

3. The appellant’s employment with a well-known oil company required frequent changes of address. The appellant has told us that although he always arranges a forwarding service for one year when he changes address, for reasons he cannot explain communications from ICAEW about CPD were not forwarded to him. He has no other members of ICAEW working under him who would have told him about the change in the regulations as it affects CPD. He has paid his dues to ICAEW every year by direct debit. He took very prompt action when he discovered what the DT had decided. In other words, his evidence, which we accept without reservation, shows that his true offence was inadvertent failure to keep ICAEW up to date with his changed address.

4. The approach of the DCT in this case, as in other cases, was therefore mistaken. As was held in one of the previous cases, if the IC has allowed several years non-compliance with the requirement to certify CPD to elapse before seeking to contact the member concerned, or to bring disciplinary proceedings, it is inappropriate to treat each year’s non-compliance as a separate offence for the purposes of penalty and to calculate the fine on an annual basis, rather than to recognise the true default as a single inadvertent failure to register a current address.

5. The appellant explained how he had in fact complied with CPD requirements.

6. Given that fact, and in line with previous appeal decisions, we consider it appropriate to reduce the fine to £750. Because it was the appellant’s responsibility to ensure that his current address was notified, we do not interfere with the decision of the DCT to reprimand him, or to order him to pay costs of £1,500. However, since his appeal has been successful in part, we make no order for the costs of the appeal.

7. One practical effect of our decision is that provided the appellant pays the reduced fine and the costs awarded against him by the DCT, his membership of ICAEW will be treated as not having been withdrawn.

Chairman Mr Peter Susman QC
Accountant Member Mr Tony Ball FCA
Accountant Member Mr Jonathan Dennis FCA
Accountant Member Mr Hasan Mirza ACA
Non Accountant Member Mr Geoff Baines 006767
INVESTIGATION COMMITTEE CONSENT ORDERS

3 Mr Richard Charles Bridgen FCA

Consent order made on 28 August 2013

With the agreement of Mr Richard Charles Bridgen of 10 Dashwood Avenue, High Wycombe, HP12 3DN, the Investigation Committee made an order that he be severely reprimanded, fined £2,750 and pay costs of £2,280 with respect to a complaint that:

Mr R Bridgen FCA, on behalf of his firm, X, failed to obtain and submit to ICAEW the results of external hot file reviews, in breach of conditions and restrictions imposed by the Audit Registration Committee, as set out in letters dated 3 March 2009 and 4 March 2011, in respect of the following audits of the financial statements of Y Limited:

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<tr>
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<tr>
<td>31 December 2008</td>
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<td>31 December 2009</td>
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<td>31 December 2010</td>
<td>undated</td>
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4 Mr Roger Arthur Holden Chadwick FCA

Consent order made on 28 August 2013

With the agreement of Mr Roger Arthur Holden Chadwick of 11 Oakfield Court, 252 Pampisford Road, South Croydon, Surrey, CR2 6DD, the Investigation Committee made an order that he be reprimanded, fined £1,500 and pay costs of £868 with respect to a complaint that:

Between 1 January 2007 and 21 May 2012 Mr R A H Chadwick FCA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.
5  Mr Thomas Harvey FCA

Consent order made on 29 August 2013

With the agreement of Mr Thomas Harvey of 157 Lower Blandford Road, Broadstone, Dorset, BH18 8NU, the Investigation Committee made an order that he be reprimanded, fined £1,000 and pay costs of £1,005 with respect to a complaint that:

1. Mr T Harvey FCA prepared the following financial statements of X Limited but failed to advise the directors that the company did not meet the conditions for exemption from audit under s249A Companies Act 1985 in that the balance sheet total exceeded £2.8m.
   a. Year ended 31 January 2007, approved on 18 October 2007

2. Mr T Harvey FCA prepared the following financial statements of X Limited but failed to advise the directors that the company did not meet the conditions for exemption from audit under s477(2) Companies Act 2006 in that the balance sheet total exceeded £3.26m:
   a. Year ended 31 January 2010, approved 26 October 2010

6  Bevan & Buckland

Consent order made on 30 August 2013

With the agreement of Bevan & Buckland of Langdon House, Langdon Road, SA1 Swansea Waterfront, Swansea, SA1 8QY, the Investigation Committee made an order that the firm be reprimanded, fined £2,000 and pay costs of £3,618 with respect to a complaint that:

1  On or around 23 June 2010 Bevan & Buckland prepared the financial statements for X Ltd for the year ended 30 September 2009, on behalf of the directors of the company, which stated that the company was entitled to exemption from audit under section 477 of the Companies Act 2006 when this was not the case as the turnover of the company exceeded £6.5m.

2  On 29 September 2011 Bevan & Buckland issued an audit report on the financial statements of X Ltd for the year ended 30 September 2010, in breach of Audit Regulation 3.08 in that:
   a. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 510 ‘Initial engagements and continuing engagements – opening balances’ in that the firm failed to obtain sufficient appropriate audit evidence to conclude that the opening balances were not materially misstated; and
   b. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 ‘Audit Evidence’ in that the firm failed to obtain sufficient appropriate audit evidence in order to draw reasonable conclusions in respect of goodwill; and
c. the financial statements did not comply with Financial Reporting Standard for Smaller Entities (effective April 2008) as the company failed to disclose all material transactions with the company’s director for the current or previous year.

3 On or around 9 April 2009 Bevan & Buckland prepared the financial statements for Y Ltd for the year ended 31 October 2008, on behalf of the directors of the company, which stated that the company was entitled to exemption from audit under section 249A(1) of the Companies Act 1985 when this was not the case as the balance sheet total of the company exceeded £2.8m.

7 Mr Peter James Fallon FCA

Consent order made on 30 August 2013

With the agreement of Mr Peter James Fallon of 96 Woodville Road, Hartshorne, Swadlincote, Derbyshire, DE11 7EX, the Investigation Committee made an order that he be reprimanded and fined £1,000 with respect to a complaint that:

1. Between 15 August 2006 and 9 November 2012 Mr P Fallon FCA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51a.

2. Between 15 August 2006 and 9 November 2012 Mr P Fallon engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.

8 Mr Colin Graham Morgan ACA

Consent order made on 3 September 2013

With the agreement of Mr Colin Graham Morgan of 30 Cardy Road, Hemel Hempstead, HP1 1SQ, the Investigation Committee made an order that he was reprimanded, fined £1,000 and pay costs of £742 with respect to a complaint that:

Between 1 October 2006 and 31 January 2013 Mr C Morgan ACA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51a.
9  Mr Nicholas Charles Taylor FCA

Consent order made on 5 September 2013

With the agreement of Mr Nicholas Charles Taylor of Temple Chambers, 4 Abbey Road, Grimsby, South Humberside, DN32 0HF, the Investigation Committee made an order that he be reprimanded and pay costs of £1,180 with respect to a complaint that:

On 26 July 2012 Mr N Taylor was a director of X Limited, a company engaged in public practice, which entered into a creditor’s voluntary liquidation.

10  Mr Cameron Frazer Gunn ACA

Consent order made on 20 September 2013

With the agreement of Mr Cameron Frazer Gunn of One America Square, London, EC3N 2LB, the Investigation Committee made an order that he be reprimanded, fined £1,000 and pay costs of £2,130 with respect to a complaint that:

On 12 June 2012 Mr C Gunn in his capacity as joint administrator of the X Group in sending to creditors his first notification of the pre-packaged sale that he had completed which failed to provide the following information:

1. No analysis of the values by asset category was provided;
2. No analysis of the sales consideration by asset category was provided to enable creditors to compare realisations to the independent valuations obtained;
3. The secured creditor who was connected to the source of the introduction, involved with the purchase and connected to the purchasing company was not named;
4. No background information was provided with regard to each individual company.

and has accordingly failed to have sufficient regard to the requirements of Statement of Insolvency Practice 16 as clarified by Dear IP issue no 42.
11 Mr Michael David Roberts ACA

Consent order made on 20 September 2013

With the agreement of Mr Michael David Roberts of 26 Curzon Road, Preston, Birkenhead, Merseyside, CH42 8PH, the Investigation Committee made an order that he be reprimanded, fined £1,000 and pay costs of £1,330 with respect to a complaint that:

1. Between July 2008 and 10 March 2013 Mr M Roberts ACA engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51a.

2. Between July 2008 and 7 April 2013 Mr M Roberts ACA engaged in public practice without professional indemnity insurance as required by Regulation 3.1 of the Professional Indemnity Insurance Regulations.

009495

12 Mr Andrew Mark Sherling FCA

Consent order made on 23 September 2013

With the agreement of Mr Andrew Mark Sherling of 100 Green Lane, Edgware, HA8 8EJ, the Investigation Committee made an order that he be reprimanded, fined £1,000 and pay costs of £780 with respect to a complaint that:

Between 16 February 2006 and 21 May 2013 Mr A M Sherling FCA failed to comply with written assurances he had given on behalf of his firm, X, following a QAD visit, that he would ensure that all of his clients received a full engagement letter or a letter containing the minimum required information.

013970

13 Mr Christopher Michael Parker ACA

Consent order made on 23 September 2013

With the agreement of Mr Christopher Michael Parker of Unit 2 Waterfall Trade Park, Stancliffe Street, Blackburn, Lancashire, BB2 2QD, the Investigation Committee made an order that he be reprimanded, fined £500 and pay costs of £1,500 with respect to a claim that:

Between 26 March 2012 and 18 December 2012 Mr C M Parker ACA CTA MAAT engaged in public practice without holding a practising certificate, contrary to Principal Bye-law 51a.

007121
14  Mr Anthony John Epstein FCA

Consent order made on 23 September 2013

With the agreement of Mr Anthony John Epstein of Flat 3, Kingsdale Court, 367 Cockfosters Road, Hadley Wood, Barnet, Hertfordshire, EN4 0JF, the Investigation Committee made an order that he be reprimanded, fined £1,000 and pay costs of £900 with respect to a complaint that:

Between 13 September 2005 and 16 October 2012 Mr A J Epstein FCA, engaged in public practice without holding a practising certificate from the ICAEW contrary to Principal Bye-law 51a.

15  Mr Allon Schick-Maier ACA

Consent order made on 23 September 2013

With the agreement of Mr Allon Schick-Maier of 21 Culverlands Close, Stanmore, HA7 3AG, the Investigation Committee made an order that he be reprimanded, fined £3,000 and pay costs of £1,880 with respect to a complaint that:

1. Between 17 March 2006 and 27 July 2012 Mr A Schick-Maier ACA failed to comply with written assurances he had given on behalf of his firm, X Ltd, following a QAD visit that he would:
   a. notify clients of the basis of fees and the complaints procedures at the next point of contact;
   b. issue engagement letters to all new limited company clients taken on since April 2006.

2. Between 17 March 2006 and 23 July 2012 Mr A Schick-Maier ACA failed to comply with a written assurance he had given on behalf of his firm, X Ltd, following a QAD visit that he would appoint an alternate to enable the proper distribution or processing of Clients’ Money held by the firm in the event of the incapacity or death of the sole practitioner.

3. Between 17 March 2006 and 29 March 2013 Mr A Schick-Maier ACA failed to comply with written assurances he had given on behalf of his firm, X Ltd, following a QAD visit that he would obtain suitable identification documents for all new clients taken on by the firm since 1 March 2004.
Mr Marek Tadeusz Szczesniak FCA

Consent order made on 23 September 2013

With the agreement of Mr Marek Tadeusz Szczesniak of Kensington House, 7 Roe Lane, Hesketh Park, Southport, PR9 9DT, the Investigation Committee made an order that he be severely reprimanded, fined £3,000 and pay costs of £2,000 with respect to a complaint that:

Between around 22 September 2010 and 3 February 2012 Mr M T Szczesniak FCA failed to comply with assurances given to ICAEW following its visit to X on 31 August 2010 and 1 September 2010 that he would rectify the following matters:

1. There were no procedures in place to carry out client due diligence on existing clients in respect of anti-money laundering procedures.

2. His clients had not been given written terms of engagement He had not obtained a bank letter acknowledging trust status as required by the Clients' Money Regulations.

3. There were inadequate disclosures in company accounts prepared by the firm in that:
   a. the firm described itself as auditor when an audit had not been carried out; and
   b. there were no related-party disclosures (re directors) including any ultimate controlling party.

4. There was an inadequate record of work done on accounts.

5. Insurance details were not disclosed to new clients as required by the Provision of Services Regulations 2009.

6. Clients were not informed in writing of:
   a. the basis of fees; and
   b. the complaints procedure.

7. Back-ups and other computer procedures were not kept offsite.

8. No annual Practice Assurance compliance review had been undertaken.

9. Recording of continuing professional development was inadequate in that it did not evidence, reflect, act or impact.

10. Sub-contractors did not have written sub-contractor agreements.

008566
17  **Ian Richmond Limited**

Consent order made on 23 September 2013

With the agreement of Ian Richmond Limited of Chapel Ash House, 6 Compton Road, Wolverhampton, WV3 9PH, the Investigation Committee made an order that the firm be severely reprimanded, fined £3,000 and pay costs of £1,187 with respect to a complaint that:

Between 5 December 2005 and 13 March 2012 Ian Richmond Limited paid clients’ money into their office account on 46 occasions totalling £83,999.10 contrary to paragraph 10 of the Clients’ Money Regulations.

009633

18  **Mr Stephen Douglas Pearce FCA**

Consent order made on 23 September 2013

With the agreement of Mr Stephen Douglas Pearce of 11 Cornerstone Court, 2 Hemming Street, London, E1 5BL, the Investigation Committee made an order that he be reprimanded and pay costs of £1,780 with respect to a complaint that:

Mr Stephen Pearce FCA was a director of X Limited, a company in public practice, which entered into creditors’ voluntary liquidation on 5 August 2011.

004742

19  **Mr Melvyn Dubell FCA**

Consent order made on 23 September 2013

With the agreement of Mr Melvyn Dubell of 16 Hartfield Avenue, Elstree, Borehamwood, WD6 3JE, the Investigation Committee made an order that he be reprimanded, fined £2,350 and pay costs of £6,500 with respect to a complaint that:

Mr M Dubell FCA, in his capacity as director of X Limited, failed to ensure that there was adequate documentation to support:

i. Payments by X Limited to the directors and their connected companies of approximately £692,000 between 2 November 2007 and 24 November 2008.

ii. Payments by X Limited to its parent company, Y Limited of approximately £792,000 between 23 August 2007 and 20 November 2008.

006652
REGULATORY DECISIONS
AUDIT REGISTRATION COMMITTEE

ORDER – 7 AUGUST 2013

20  Publicity statement

Briants, Maritime House, Discovery Quay, Falmouth, Cornwall, TR11 3XA, 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 3.10 and 6.06 for issuing audit reports from an unregistered trading office and for inaccurate disclosures on its annual returns since 2008.

ORDER – 7 AUGUST 2013

21  Publicity statement

Montgomery & Co, Norham House, Mountenoy Road, Moorgate, Rotherham, S60 2AJ, has agreed to pay a regulatory penalty of £2,000, which was decided by the Audit Registration Committee. This was in view of the firm’s admitted breach of a condition imposed under audit regulation 7.01 for failing to arrange and submit the results of an external whole-firm review and its breach of audit regulation 2.08 for failing to reply to ICAEW correspondence.

ORDER – 4 SEPTEMBER 2013

22  Publicity statement

Manor Close Limited, 114-116 High Street, Gosforth, Newcastle upon Tyne, NE3 1HB, has agreed to pay a regulatory penalty of £5,500, which was decided by the Audit Registration Committee. This was in view of the firm’s admitted breach of audit regulations 3.20 and 6.06 for failing to carry out annual cold file reviews, failing to honour an assurance provided following a previous QAD visit and for the inaccurate completion of its 2008-2011 annual returns.
ORDER – 7 AUGUST 2013

23  Publicity statement

Bharat Shah & Co, 786 London Road, Thornton Heath, Surrey, CR7 6JB, 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 regulation 2.08 in that the firm failed to arrange for external cold file reviews to be carried out on an annual basis contrary to an assurance given after its previous Quality Assurance Department visit.
INVESTMENT BUSINESS COMMITTEE

ORDER – 19 SEPTEMBER 2013

24 Publicity statement

KLSA LLP of Klaco House, 28-30 St John’s Square, London EC1M 4DN has agreed to pay a regulatory charge (determined by the Investment Business Committee) of £623 in view of the firm’s admitted breach of DPB Regulation 2.03b. The charge is equivalent to DPB and Audit affiliate fees saved as a result of not applying for affiliate status at the appropriate time.

013497

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