

THE IRISH AUDITING AND ACCOUNTING SUPERVISORY AUTHORITY
("the Authority")

Terms of Settlement agreed pursuant to Regulation 16 of the Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 23 Enquiries) Regulations 2012 (SI No 96 of 2012) ("the 2012 Regulations")

In the Matter of a Complaint by Mr Richard Tobin ("the Complainant") to the Authority against the Institute of Chartered Accountants in Ireland (operating under the title of Chartered Accountants Ireland) ("ICAI")

Principal Steps in the Authority's Consideration of the Complaint

In May 2014, the Complainant lodged a formal complaint with the Authority in relation to the treatment by the ICAI of complaints made by him against Mr John O'Sullivan, an ICAI member ("Member"), and Westboro Partners, an ICAI member firm ("Member Firm" and "WP").

After considering the Complainant's information, Authority staff undertook a detailed review of relevant ICAI file papers on 11 February 2015.

Arising from this staff review, the Board of the Authority established a Preliminary Enquiry Committee ("PEC") comprising Paul Appleby (Chairman), Marie Daly and Bernadette McGrory Farrell under Section 933 of the Companies Act 2014 on 4 June 2015.

Notification of the PEC's establishment and its membership was made to the ICAI, its Member/Member Firm and the Complainant on 25 June 2015. The notice to the ICAI also requested the provision of specified documentation and information for consideration by the PEC.

Following delivery on 18 September 2015 of extensive material from the Chartered Accountants Regulatory Board ("CARB") on behalf of the ICAI, the PEC proceeded to examine the material.

On 29 October 2015, the PEC sought certain additional documentation and information which was provided by CARB on 4 December 2015.

On 17 December 2015, the PEC issued its draft determination to CARB seeking submissions on it.

In a 'without prejudice' reply on 8 January 2016, CARB expressed interest in concluding the matter by way of a settlement agreement under Regulation 16 of the 2012 Regulations.

On 12 January 2016, the Board of the Authority agreed that the PEC should proceed to consider settlement terms with the ICAI.

Main Events in CARB's Evaluation of the Complaint

The PEC's examination of the available documentation and information noted the following events in CARB's evaluation of the Complainant's complaint against the Member/Member Firm:

10 October 2011: The Complainant made his initial complaint to CARB against the Member and Member Firm.

6 March 2012: The minutes of the Complaints Committee record the following initial decision on the complaint:

"The Complaints Committee in accordance with Bye-Law 16.2 confirmed that the Committee required the services of the HoPC and her staff in carrying out further investigations into the (Complainant's complaint)."

(Note: HoPC is the Head of Professional Conduct in CARB.)

Late October 2012: In its submission to the next Complaints Committee meeting, the CARB Executive stated that the Complainant's complaint comprised the following specific matters:

- "A. In January 2010, WP acted inappropriately in obtaining a sum of money (Stg£21,250) that was earmarked for payment of a Capital Gains Tax liability and allocating it against fees due to the member firm.*
- B. WP as auditors had not acted in an independent manner and with integrity in the performance of the company audits over the years.*
- C. WP on a number of occasions had sold investments to the Company or had financially gained from investments entered into by the company which were not appropriate to the company's needs at the relevant times."*

In the same submission, the CARB Executive informed the Committee that the findings in respect of parts A and C of its investigation to date were as follows:

"A. The member has explained the context and provided documentary evidence that the complainant's fellow director approved the application of the funds against the member firm's fee outstanding".

"C. No evidence has been provided to demonstrate that the member or his firm acted inappropriately".

1 November 2012: In response to the CARB Executive's analysis with respect to the complaint as a whole, the minutes of the Complaints Committee meeting record the following decision:

"The Complaints Committee in respect of Part 2 of the alleged complaints directed the case manager to investigate further the perceived conflict of interest between Mr O'Sullivan acting as an advisor/consultant and/or shadow director of the company and the firm of Westboro Partners acting as the auditors of the company.

The Complaints Committee were concerned at the perceived conflict of interest of the firm acting as auditor while the member had a significant advisory role which may have compromised the objectivity required of auditors particularly with regard to the self-review threat.

The Complaints Committee further directed that upon further investigation of part 2 of the alleged complaints they will re-visit parts 1 and 3 and will make a determination of the three matters together."

(Note: Parts 1, 2 and 3 in these minutes correspond with parts A, B and C respectively in the CARB Executive's submission to the meeting.)

28 November 2012: CARB informed the Complainant by letter of the outcome of its November meeting:

"The Complaints Committee at its meeting on the 1st November 2012 did not make a determination in relation to the complaint file. Instead it requested that the investigation be continued."

CARB sent a similar letter to the Member/Member Firm on the same date.

14 March 2013: Following receipt of the results of the CARB Executive's further investigative work, the minutes of the Complaints Committee record the following decision:

"The Complaints Committee having reviewed and considered all correspondence and documentation provided to date, considered that the member firm had not adequately demonstrated how it had considered and documented threats to its audit independence for audit years 2006-2008 inclusive, the safeguards it employed to overcome those threats and its communication of these considerations to those charged with governance.

The Complaints Committee directed that this aspect alone be subject to further investigation by the complaints executive."

28 March 2013: CARB wrote to the Member/Member Firm stating inter alia:

"The Complaints Committee considered the complaint file at its March meeting and directed as set out in the enclosed 'Further Consideration' document. These are the only remaining matters that require a response."

(Note: The enclosure in substance reproduced the Committee's preceding decision.)

15 April 2013: In reply to an enquiry from the Complainant, CARB informed him as follows:

"The Complaints Committee considered the complaint file at the 14 March meeting and directed that the investigation continue."

September 2013: In its submission to the next Complaints Committee meeting, the CARB Executive described the results of its investigations on the outstanding complaint as follows:

"1. The member firm acted in breach of the Institute's Ethical Guide (2003) and Code of Ethics for Members (2006): Fundamental Principle: Objectivity: by the provision of non-audit services to the audit client in respect of 2006-2008 accounting years as a partner in the member firm:

- a) undertook assignments that required him to interact directly and on a number of occasions with 3rd parties and financial institutions on behalf of the audit client;*
- b) attended regular management meetings with the two board directors;*

thereby allowing a situation to arise where reasonable and informed public perception might consider that the member firm was not sufficiently independent to act as auditor.

2. The member firm acted in breach of the Institute's Code of Ethics for Members: Fundamental Principle: (c): Professional Competence and Due Care in that the member firm's audit documentation did not comply with the requirements of International Standard on Auditing (ISA) 230: particularly paragraphs 5 to 6.1 (ISA 2004) and paragraph 9 (ISA 2006) regarding the undertaking of an engagement to provide non-audit services to an audit client (Auditors Ethical Standard 5: paragraph 37 and 38) in that the member firm's working papers:

- a) did not adequately reflect the reasoning for a decision to undertake an engagement to provide non-audit services to an audit client;*
- b) did not adequately explain how the adopted safeguards were considered sufficiently effective to guard against the potential threats to the firm's objectivity – particularly, self-interest, self-review, management, familiarity and advocacy threats;*
- c) did not identify and document how the audit approach was designed and executed to safeguard against the potential threats to the firm's objectivity."*

26 September 2013: After considering the CARB Executive's conclusion that it appeared that the member firm was accordingly liable to disciplinary action, the Complaints Committee recorded the following decision in the minutes of its meeting:

"The Complaints Committee, following a thorough investigation of the complaint, formed the opinion, in respect of part 1 of the complaint that a prima facie case had not been made out that the member firm was liable to disciplinary action under the Disciplinary Bye-Laws. In forming that opinion the Complaints Committee had regard to the provisions of Bye-Law 7 as to the liability of the member firm to disciplinary action and it considered all the evidence before it. Having done so, the Complaints Committee concluded that a complaint brought pursuant to Bye-Law 7 would not have any real prospect of being established before a Disciplinary Tribunal. The Complaints Committee reasoned that the evidence was not sufficiently conclusive to support the complaint.

The Complaints Committee, following a thorough investigation of the complaint, formed the opinion that the evidence which it had considered in respect of part 2 of the complaint established a prima facie case. In arriving at this determination the Complaints Committee reasoned that it was clear from the evidence that the member firm did not comply with the requirements of International Standard on Auditing (ISA) 230 in that the member firm's working papers were not adequate. The Complaints Committee decided to deal with the

complaint under Bye-Law 16.7(a) and decided that no further action be taken against the member firm."

1 October 2013: CARB informed the Complainant of the above decisions of the Complaints Committee and advised him that under Bye-Law 20 he could request within three months referral of the 'no prima facie case' decision (part 1 of the complaint above) to an Independent Reviewer of Complaints.

CARB also informed the Member/Member Firm that day of the Committee's decisions and advised that under Bye-Law 16.10 it was open to a Member Firm to refer the 'prima facie case' decision (part 2 of the complaint above) to a Disciplinary Tribunal as a Formal Complaint.

17 December 2013: The Complainant asked CARB to refer his complaint in its entirety to the Independent Reviewer. In doing so, he made reference to other aspects of his complaint which were not reflected in the Complaints Committee's decisions.

18 December 2013: CARB referred certain complaint papers to the Independent Reviewer which only included the matters put before the Complaints Committee meeting on 26 September 2013 and later papers.

18 March 2014: The Independent Reviewer submitted his Report to CARB, the Member/Member Firm and the Complainant in which he concurred with the Complaints Committee's 'no prima facie case' decision made at its meeting on 26 September 2013.

PEC Findings vis-à-vis Bye-Law 16.5

Bye-Law 16.5 of the ICAI's Disciplinary Bye-Laws which were effective from 1 December 2012 states:

"If the Complaints Committee is of the opinion that a prima facie case has not been made out in respect of any Complaint, it shall so notify in writing the member, member firm, student or affiliate concerned and, if there is one, the Complainant, giving the reasons for its decision."

Prior to its meeting on 14 March 2013, the Complaints Committee had made no formal decision on the merits of the Complainant's complaint. However at its meeting on 14 March 2013, the Committee decided that no prima facie case had been made out against the Member or Member Firm with respect to the following aspects of the complaint:

- the inappropriate use of funds apparently intended for payment of a CGT liability, and
- the selling of inappropriate investment products.

Accordingly contrary to Bye-Law 16.5:

- the Complainant was never advised that the Complaints Committee had decided that no prima facie case had been made out in respect of these two aspects of his complaint nor was he advised of the reasons for those decisions. Indeed after the 'no prima facie case' decisions were made on 14 March 2013, CARB told him that the Committee had directed that the investigation continue. This information was incomplete and only partially correct;

- neither the Member/Member Firm was ever advised of the reasons for the above 'no prima facie case' decisions, although the decisions themselves were notified indirectly.

The PEC also considers it regrettable that the approved minutes of the Complaints Committee meeting of 14 March 2013 were deficient in failing to indicate that two 'no prima facie case' decisions had been made at that meeting in respect of the Complainant's complaint.

PEC Finding vis-à-vis Bye-Law 20.1

Bye-Law 20.1 of the ICAI's Disciplinary Bye-Laws which were effective from 1 December 2012 states:

"If the Complaints Committee decides in relation to any Complaint that a prima facie case has not been made out against the member, member firm, student or affiliate concerned, the Complainant who made such a complaint may, within three months of being notified in writing of such decision but not thereafter, by a request in writing ask the Head of Professional Conduct to refer the decision of the Complaints Committee to an Independent Reviewer for review in accordance with this Bye-Law 20. Upon receipt of such a request in writing, the Head of Professional Conduct shall so refer such decision to an Independent Reviewer."

Contrary to Bye-Law 20.1, the ICAI failed to refer to an Independent Reviewer the two aspects of the Complainant's complaint in respect of which the Complaints Committee had decided on 14 March 2013 that no prima facie case had been made out. The ICAI's referral to the Independent Reviewer on 18 December 2013 only related to the portion of the Complaint which was considered at the Complaints Committee meeting on 26 September 2013 and the associated later documentation.

This incomplete referral to the Independent Reviewer occurred notwithstanding that the Complainant had asked the Head of Professional Conduct by letter dated 17 December 2013 to refer his complaint in its entirety to an Independent Reviewer. The failure to refer the other two 'no prima facie case' decisions deprived the Complainant of his right under the Bye-Law to an independent review of those decisions. Moreover as the Independent Reviewer only received an incomplete picture of the overall complaint, the failure to inform him of those decisions may also cast doubt on the validity of his decision with respect to the one 'no prima facie case' decision considered by him. Having regard to the intention of the Bye-Laws that all 'no prima facie case' decisions be remitted for review by an Independent Reviewer where such a request is made by a complainant, the PEC considers that the existing decision of the Independent Reviewer on only one aspect of the complaint cannot be safely allowed to stand.

Settlement

Pursuant to Regulation 16 of the 2012 Regulations and in order to help remedy the original defaults in complying with Bye-Laws 16.5 and 20.1 and secure a fresh evaluation of all relevant matters within the context of the overall complaint, the PEC is prepared, subject to the ICAI's acceptance of

the terms hereunder (which acceptance is acknowledged by the signing of this document), to recommend to the Authority's Board settlement on the following terms and conditions:

- a) the ICAI arranges, within 14 days of the notification of the approval of this settlement by the Authority's Board, to amend the minutes of the Complaints Committee meeting on 14 March 2013 to include appropriate reference to the 'no prima facie case' decisions made at that meeting;
- b) the ICAI communicates in writing the 'no prima facie case' decisions made at the Complaints Committee meeting on 14 March 2013 and the reasons therefor to the Complainant and the Member/Member Firm within 14 days of the notification of the approval of this settlement by the Authority's Board;
- c) the ICAI refers to an Independent Reviewer all 'no prima facie case' decisions made by the Complaints Committee in respect of the Complainant's complaint against the Member/Member Firm, including in particular the following:
 - the inappropriate use of funds apparently intended for payment of a CGT liability,
 - the selling of inappropriate investment products and
 - the provision of non-audit services to the audit client in respect of the 2006-2008 accounting years.

This referral will be made no earlier than 14 days and no later than 28 days after the notification of the approval of this settlement by the Authority's Board. This referral to an independent Reviewer reflects the fact that there is an unsatisfied outstanding request from the Complainant for such a referral. It is the PEC's view that the ICAI should appoint a new person to act as Independent Reviewer of the above decisions in order to isolate the new referral from the former defective procedure;

- d) the ICAI complies with the provisions of the current Disciplinary Regulations in respect of the new Independent Reviewer review and in respect of the consequences of any decision made by him/her on foot of the referral;
- e) the ICAI pays a fine of €15,000 to the Authority within three months of notification of the approval of this settlement by the Authority's Board;
- f) subject to Regulation 16(4), publication of the 'Settlement Agreement' by the Authority.

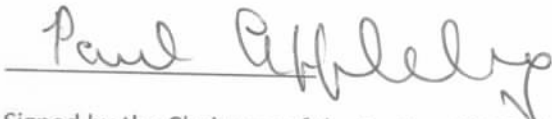
Other Matters

The ICAI agrees that the terms of this Settlement shall take effect on notification of approval of the terms of the Settlement by the Authority's Board, and the ICAI irrevocably waives any right or entitlement to have the decision confirmed pursuant to Regulation 13 of the 2012 Regulations.

In the event that the Board does not approve the terms of the Settlement or if the Board does approve the terms of the Settlement and the ICAI does not comply or fully comply with its terms, the Authority reserves the right to proceed with an enquiry pursuant to Section 933 of the Companies Act 2014.



Signed by the Secretary
on behalf of the Institute of Chartered Accountants in Ireland
(operating under the title Chartered Accountants Ireland)



Signed by the Chairman of the Section 933 Preliminary Enquiry Committee

On 8 March 2016, the terms of this Settlement came before the Board of the Irish Auditing and Accounting Supervisory Authority. Having considered the terms of the proposed Settlement, a majority of the Directors of the Board (the Directors who are also members of this Preliminary Enquiry Committee not taking part in the decision) resolved to approve the said terms set out above pursuant to Regulation 16 of the 2012 Regulations.



Signed by the Chairman
On behalf of the Board of the Irish Auditing and Accounting Supervisory Authority