



**Irish Auditing and Accounting  
Supervisory Authority**

**PRIVATE AND CONFIDENTIAL**

**(UNTIL PUBLISHED BY THE IRISH AUDITING AND ACCOUNTING  
SUPERVISORY AUTHORITY, THE PROVISIONS OF SECTION 31 OF THE  
COMPANIES (AUDITING AND ACCOUNTING) ACT, 2003 APPLIES TO THIS  
DECISION)**

**ENQUIRY COMMITTEE**

**DECISION**

**In the Matter of the Institute of Chartered Accountants in Ireland and  
PricewaterhouseCoopers and Section 23 of the Companies (Auditing and Accounting) Act,  
2003**

**(Matter No.1/2010 ICAI/ PricewaterhouseCoopers)**

## DECISION

### **Definitions**

For the purposes of this Notice, the following definitions shall apply:

“Act”, shall mean the *Companies (Auditing and Accounting) Act 2003*;

“Authority”, shall mean the *Irish Auditing and Accounting Supervisory Authority*;

“Board”, shall mean the Board of the Authority;

“Complaint”, shall mean the complaint made by the Complainant to the ICAI;

“Complainant”, shall mean former Senator Shane Ross;

“Complaints Committee”, shall mean the Complaints Committee of the Institute;

“Council”, shall mean the Council of the Institute;

“CARB” shall mean the body set up within the Institute to deal with disciplinary matters under the Bye-Laws of the Institute.

“EC” and “Enquiry Committee” shall mean the Committee of the Authority set up pursuant to Section 27 of the Act and the Regulations;

“ICAI” and “Institute”, shall mean the Institute of Chartered Accountants in Ireland operating as Chartered Accountants Ireland;

“Member”, shall mean a member, member firm, affiliate or student of the Institute;

“Member Firm” shall mean PricewaterhouseCoopers Dublin (“PwC”), a Member and the firm against whom the Complainant made the Complaint, whose identity is a matter of public record;

“PEC” and “Preliminary Enquiry Committee”, shall mean the Committee of the Authority set up pursuant to Section 27 of the Act and the Regulations;

“Regulations”, shall mean the *Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 23 Enquiries) Regulations 2007 (S.I. 667 of 2007)*.

## Introduction

The Enquiry Committee has completed its enquiry into the above matter pursuant to the Section 23 Regulations<sup>1</sup>. Notification of the initiation of said enquiry was given to the ICAI by letter dated 14 January, 2011.

## Summary of Decision

The summary of the findings of the Enquiry Committee is as follows:-

- (1) *Article 73.2 of the Institute's Bye Laws requires the Institute's Complaints Committee to investigate a complaint against any of its members.*

*The EC found that a purported investigation by the Complaints Committee of its Member Firm between the dates of July 2008 and March 2009 did not amount to an investigation and thus the Institute breached Article 73.2 of its Bye-Laws.*

- (2) *Article 73.3(a) of the Institute's Bye Laws requires that, before the Institute's Complaints Committee reaches a decision, a synopsis of the complaint and brief details of the material before the Complaints Committee be provided to, inter alia, the member concerned.*

*In breach of Bye-law 73.3(a), the Institute's Complaints Committee failed to provide the Member Firm with a synopsis of the Complaint together with brief details of the material then before the Complaints Committee and upon which it proposed to base its decision as to whether or not a prima facie case had been made out.*

- (3) *Article 73.3(b) of the Institute's Bye Laws requires that, before the Institute's Complaints Committee reaches a decision, the Member concerned must be given an opportunity to make written representations to the Complaints Committee.*

*In breach of Bye-law 73.3(b), the Institute's Complaints Committee failed to provide the Member with the opportunity of making written representations to the Committee as the member firm may consider appropriate to the deliberations of the Committee.*

- (4) *Under the Institute's Bye-Laws certain rights and entitlements are afforded to a person who makes a complaint about a member of the Institute (including the right to refer a decision of the Complaints Committee to an Independent Reviewer and to be notified of the outcome of the complaint). Article 61 of the Institute's Bye-Laws defines a Complainant as "... a person ... who brings a Complaint to the attention of the Head of Professional Conduct". Neither Article 61, specifically, nor the Bye- Laws, generally, limit the number of complainants.*

*By e-mail dated 4 July, 2008, the Complaints Committee received a complaint from the Complainant about the Member Firm. On the same date the Head of Professional*

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<sup>1</sup> Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 23 Enquiries) Regulations 2007.

*Conduct also made a similar complaint about the Member Firm. While the Complaints Committee purported to consider the complaint it did so on the basis that the sole complainant was the Head of Professional Conduct and to the exclusion of the Complainant who had also made a complaint.*

*In breach of Bye-law 61, the Complaints Committee failed to comply with the Institute's bye-laws by failing to afford the Complainant the rights that the bye-laws afford to such complainants.*

Having considered all the circumstances of findings for the purpose of determining the level of sanction, it is the decision of the Enquiry Committee to

- (a) annul the decision of the Institute made by the Complaints Committee on 13 March, 2009;
- (b) direct the Institute to conduct a fresh investigation of the Complaint; and
- (c) require the Institute to pay the sum of €15,000 to the Authority

such decision to take effect within 14 days of service, on the Institute, of a High Court Order under Section 29 of the Act confirming the Decision.

### **Background & Context**

On 25 June, 2008 Greencore Group plc ('Greencore'/'the Group') issued an announcement to the Irish Stock Exchange to the effect that:

*"...it has uncovered a deliberate concealment of costs at its Mineral Water business which has led to a material misstatement of financial performance covering the financial years 2006, 2007 and the current financial year."*

During the years in question Greencore's financial statements were audited by the Member Firm. In response to the Group's announcement, on 27 June 2008 the Authority wrote to the Institute asking for details of its regulatory response, if any, and requesting to be kept apprised in a timely manner of any further regulatory developments regarding this matter.

On 4 July 2008, a response was received from the Institute advising that the matter was being addressed within the provisions of the Institute's disciplinary Bye-laws.

On 19 August 2008, the Institute provided the Authority with an update on its regulatory response up to that date. In summary, the ICAI advised that:

- as a preliminary step, it had agreed with the Institute of Chartered Accountants in England & Wales ('ICAEW') that the latter should conduct enquiries regarding PwC UK's audit of Hazelwood Grocery Ltd, ('HGL'), the Scottish subsidiary in which the alleged fraud was perpetrated; and

- it would then discuss the matter with the ICAEW, whereupon a determination would be made as to what, if any, action was required in respect of the Member Firm.

### **ICAI Complaints Committee's Findings**

On 20 February 2009, the ICAEW concluded its enquiries into PwC UK's audit of HGL and, in summary, concluded that, while there were issues in relation to the audit of HGL, the ICAEW was not planning to take any regulatory or disciplinary action in response to those issues.

In its report the ICAEW commented on the Member Firm's conduct and offered a view as to whether the Member Firm would have been expected to be alerted to the issues which affected the Group financial statements.

The matter was referred to the Complaints Committee which then considered it at its meeting on 13 March 2009. The Complaints Committee decided that there was no *prima facie* case and that no further investigation was warranted.

The minutes of that meeting, as confirmed on 22 May, 2009, state the conclusion of the Complaints Committee as follows:

*"The Committee, having considered this matter, first formed the opinion that the complaint was not one that gave rise to or included questions of public concern. The Committee considered the complaint file which raised issues that the member firm's audit procedures:*

*A should have detected a reported concealment of costs in a division of a group subsidiary company;*

*B were inadequate in that sufficient audit evidence was not obtained to support an unqualified audit opinion for the Group.*

*The Committee formed the opinion, having reviewed the complaint file and having considered the review report conducted by the Institute of Chartered Accountants in England & Wales, that a prima facie case had not been established and that no further investigation into this matter is warranted. When reaching its decision, the Committee was of the opinion that there was no evidence to support an ongoing investigation into the matters raised in the Irish Times article of June 2008."*

### **Relevant provisions of the ICAI Bye-laws**

Bye-law 61 defines 'Complainant' as

*“... a person...who brings a Complaint to the attention of the Head of Professional Conduct”.*

Bye-Laws 73.2 and 73.3 of the ICAI's Bye-laws state that:

- 73.2 *The Complaints Committee shall investigate the Complaint in order to decide whether or not a prima facie case has been made out that the member, affiliate, student or member firm concerned is liable to disciplinary action under this Chapter.*
- 73.3 *Before reaching a decision as to whether or not such a prima facie case has been made out, the Complaints Committee shall:*
- (a) *provide to the member, affiliate, student or member firm concerned, where the Complaint has been brought to the attention of the Head of Professional Conduct in writing, a copy of such writing and, where the Complaint was brought to the attention of the Head of Professional Conduct otherwise than in writing or came to the attention of the Head of Professional Conduct otherwise than as a result of a Complaint made by a Complainant, a synopsis prepared by the Head of Professional Conduct of the Complaint together with brief details of the material then before the Committee and upon which it proposes to base its decision as to whether or not a prima facie case has been made out; and*
  - (b) *give the member, affiliate, student or member firm an opportunity of making written representations to it as he or it may consider appropriate to the deliberations of the Committee.*

*In addition the Complaints Committee may, in its absolute discretion, give the member, affiliate, student or member firm concerned, the Complainant (if there is one) and the Head of Professional Conduct an opportunity of being heard before it. If the Complaints Committee gives any of such persons such an opportunity it shall offer a like opportunity to the other(s) of them.*

### **Establishment of Preliminary Enquiry Committee**

The Authority resolved on 12th October, 2009 to establish a PEC under the Act.

### **Determination of Preliminary Enquiry Committee**

Having reviewed the matter, the PEC determined, pursuant to the PEC's Notification dated 13 July, 2010 that there was a *prima facie* case that the Institute failed to comply with its approved investigation and disciplinary procedures, based on the grounds as set out in the foregoing Notification, copies of which have been furnished to the Institute. Furthermore the PEC determined that the circumstances of the matter were such as to warrant the initiation of a full enquiry by the Authority.

### **Establishment of an Enquiry Committee**

Consequent upon the determination of the PEC, the Board of the Authority resolved on 14 September, 2010 to establish an Enquiry Committee to conduct an enquiry under Section 23 of

the Act and regulation 5 of the Regulations, notification of which was given to the ICAI under cover of the Enquiry Committee's letter dated 14 January, 2011. During the course of the enquiry, the Enquiry Committee considered submissions made by the ICAI, pursuant to regulation 7(1) of the Section 23 Regulations.

### **Findings of the Enquiry Committee**

Having reviewed the submissions, information and the documentation provided, the Enquiry Committee makes the following findings (in italics):

- (1) *That a purported investigation by the Complaints Committee of its Member Firm between the dates of July 2008 and March 2009 did not amount to an investigation and thus the Institute breached Article 73.2 of its Bye-Laws.*

Bye-law 73.2 requires the Complaints Committee to investigate complaints. The Institute has asserted that its actions, including the processing of certain paperwork by the Head of Professional Conduct in relation to the matter, the conveying of the complaint "as part of the current and live complaints ("open cases")" to the Complaints Committee on 28 August 2008 constituted "a perfectly appropriate investigation by the Complaints Committee". The Committee does not accept this assertion.

It appears from the documentation furnished by the Institute that an investigation by the Complaints Committee did not take place concerning the above complaint in that the aforementioned Disciplinary Bye-law states that the Complaints Committee "*shall investigate the Complaint*" in circumstances where "Complaint" is defined in the Disciplinary Bye-laws as "... any complaint, allegation, expression of concern, matter or event touching or apparently touching upon the conduct (whether by act or omission), behaviour, performance or affairs of any member... or member firm..."

From the documentation furnished by the Institute, it is evident that the Complaints Committee did not carry out an investigation into the Member Firm but, rather, relied upon a Report prepared by the Institute of Chartered Accountants in England and Wales on PwC UK. The Institute has asserted that the Complaints Committee is entitled to rely on material supplied by third parties. Whilst the Enquiry Committee accepts this in principle, as part of a proper and thorough investigation, the Enquiry Committee does not accept that the provision of documentation by the ICAEW of a separate firm could or did amount to an investigation of the Member Firm as required by the ICAI Bye-laws and particularly notes that the ICAI did not even write to the Member Firm in advance of the matter being considered by the Complaints Committee.

The Institute makes the assertion that in relying on the ICAEW's report in determining that a *prima facie* case had not been established and that no further investigation was warranted, there was no failure on the part of the Complaints Committee to properly investigate the complaint at issue in breach of the Bye-laws. The Enquiry Committee does not accept this assertion and is of the view that the sole reliance on the ICAEW report did not amount to an investigation within the meaning of the Bye-Laws.

The Institute asserts that it “would be inappropriate and beyond the vires of the EC for it to make a finding against CARB in this regard” and that the EC “does not have the vires to determine and make a finding as regards what constitutes a proper and adequate investigation of a complaint.” Bye-Law 73.2 states the “Complaints Committee shall investigate the Complaint”. This is a mandatory provision and a cornerstone of the Institute’s disciplinary process in investigating the conduct of any of its members. The Enquiry Committee is entitled and within its vires to examine what, if any, investigation of the complaint took place. It is also entitled and within its vires to come to a conclusion that the purported investigation was carried out in such perfunctory or other manner as to not amount to an investigation and therefore not in compliance with its own bye-laws. Based on this premise the Enquiry Committee was not satisfied that the complaint was investigated.

- (2) *That, in breach of Bye-law 73.3(a), the Institute’s Complaints Committee failed to provide the Member Firm with a synopsis of the Complaint together with brief details of the material then before the Complaints Committee and upon which it proposed to base its decision as to whether or not a prima facie case had been made out.*

Bye-law 73.3(a) requires the Head of Professional Conduct to prepare a synopsis together with brief details of the material then before the Complaints Committee and upon which it proposed to base its decision as to whether or not a *prima facie* case had been made out. There is no evidence in the documentation furnished by the Institute to suggest that this was carried out.

The Institute has asserted that the Member Firm was at all times during the investigation afforded its natural justice rights and that in any event, no *prima facie* case was found. Whilst noting the Institute’s response, the fact remains that the Complaints Committee did not comply with the Bye-Law.

- (3) *That, in breach of Bye-law 73.3(b), the Institute’s Complaints Committee failed to provide the Member Firm with the opportunity of making written representations to the Committee as the member firm may consider appropriate to the deliberations of the Committee.*

Bye-law 73.3(b) requires the Complaints Committee to provide the member firm with the opportunity of making written representations to the Committee the member firm considers appropriate to the deliberations of the Committee. There is no evidence in the documentation furnished by the Institute that this was done.

The Institute has asserted that natural justice was afforded to the member firm through correspondence issued by the Secretary of the Complaints Committee and the ICAEW to PwC in London, Dublin and Glasgow. However, no evidence exists that the Member Firm was afforded the opportunity of making written representations to the Complaints Committee.

- (4) *That, in breach of Bye-law 61, the Complaints Committee failed to comply with the Institute's bye-laws by failing to afford the Complainant the rights that the bye-laws afford to such complainants.*

Bye-law 61 defines 'Complainant' as

*"... a person... who brings a Complaint to the attention of the Head of Professional Conduct".*

Complainants, as defined under the Disciplinary Bye-laws, are afforded certain rights, for example, the right to request the Head of Professional Conduct to refer certain decisions of the Complaints Committee to an Independent Reviewer. As confirmed and accepted by the Institute, Mr. Shane Ross was not treated as a complainant as defined in the Disciplinary Bye-laws.

The Institute has asserted that by the time the Complainant had lodged a complaint with the Institute, a complaint was already in being and that therefore, it was not necessary or required by the Bye-laws to treat Mr. Shane Ross as a "complainant". The Enquiry Committee rejects this assertion. There is nothing in the Bye-Laws that says that there cannot be more than one complainant and therefore the Complainant came within the definition of "Complainant".

In addition, the Institute asserts that Mr. Shane Ross would have no "*locus standi*" to be treated as a complainant. There exists no requirement in the Bye-laws for Complainants to have *locus standi* (standing) in order to bring a complaint, and accordingly, this assertion is rejected by the Enquiry Committee.

### **Conclusion and Decision with respect to Sanctions.**

The Enquiry Committee finds as follows:-

1. That, in contravention of its approved investigation and disciplinary procedures, the Institute's Complaints Committee's purported investigation into, whether, in acting as auditor to Greencore Group plc, PricewaterhouseCoopers ('PwC'), a member firm of the Institute, failed to comply with the Institute's standards, did not amount to an investigation in breach of the ICAI's disciplinary Bye-law 73.2.
2. That, in breach of Bye-law 73.3(a), the Institute's Complaints Committee failed to provide the member firm with a synopsis prepared by the Head of Professional Conduct of the Complaint together with brief details of the material then before the Complaints Committee and upon which it proposed to base its decision as to whether or not a *prima facie* case had been made out.

3. That, in breach of Bye-law 73.3(b), the Institute's Complaints Committee failed to provide the Member Firm with the opportunity of making written representations to the Committee as the member firm may consider appropriate to the deliberations of the Committee.
4. That, in breach of Bye-law 61, by not treating Senator Shane Ross, who lodged a complaint with the Head of Professional Conduct by email dated 4 July, 2009, as a 'Complainant', the Complaints Committee failed to comply with the Institute's bye-laws and failed to afford Senator Ross the rights that the bye-laws afford to Complainants.

In light of the foregoing, the Enquiry Committee finds that the purported decision of the Complaints Committee of 13 March, 2009 in relation to the above matter to be deficient.

The Enquiry Committee has further decided that a monetary sanction should be imposed in the sum of €15,000.

As a consequence of findings 1 – 4 above, and having considered all of the circumstances of the matters in question, including all representations made by or on behalf of the Institute, the Enquiry Committee has decided under Regulation 12(1) of the Regulations to:-

- (a) annul the decision of the Complaints Committee made on 13 March, 2009;
- (b) direct a fresh investigation of the Complaint to commence within 14 days of this Decision taking effect; and
- (c) require the Institute to pay the sum of €15,000 to the Authority within 14 days of a Court Order pursuant to Section 29 of the Act.

These sanctions must receive the confirmation of the High Court before they take effect.

  
**Tony Kelly (Chairperson)**

**Date:** 7 MARCH 2012