

PUBLIC NOTICE

Enforcement Action

IN THE MATTER OF THE INSTITUTE THE INSTUTUTE OF CERTIFIED PUBLIC ACCOUNTANTS IN IRELAND (CPA IRELAND)

1. Following an enquiry by the Irish Auditing and Accounting Supervisory Authority ('the Authority') a Settlement Agreement has been agreed and the Authority has decided to **Censure** CPA Ireland by requiring CPA Ireland to pay €15,000 by way of sanction.

2. The contraventions were admitted by CPA Ireland.

Background

3. CPA Ireland received a written complaint from a member of the public regarding one of its members on 15 May 2018. On 17 May 2018 CPA Ireland returned the complaint form to the complainant. That complaint was not investigated by CPA Ireland in accordance with its Bye Laws and it forms the subject of Allegation 1.

4. On the 22 May 2018, CPA Ireland received further correspondence concerning the same complaint from a firm of solicitors in support of the original complaint. CPA Ireland wrote to the complainant confirming receipt of the letter from the solicitor and it informed the complainant that: "*the letter does not contain sufficient evidence to allow us to commence an investigation...*". The matter was not investigated by CPA Ireland in accordance with its Bye Laws and it forms the subject of Allegation 2.

5. Ten months later, on 22 March 2019, CPA Ireland received further correspondence from the complainant regarding the member. That correspondence attached a detailed published news article about the matters referred to in the complaint. The article referred to the fact that the member had been dismissed from his employment for the reasons stated in the complaint and that there was a High Court civil action being brought by the former employer against the member and that the matter was subject to a Garda investigation. The complaint was not investigated by CPA Ireland in accordance with its Bye Laws and it forms the subject of Allegation 3.

6. The member resigned from membership of CPA Ireland on the 2 April 2019 and on the 4 April 2019, he was removed from membership by CPA. At the relevant time CPA Ireland's regulations did not permit an investigation to proceed once a member ceased to be a member of CPA Ireland. CPA Ireland wrote to the complainant on 8 April 2019 stating that it could not consider the complaint as the member had resigned.

The Bye Laws of CPA Ireland

6. CPA Ireland's Bye Laws cover a wide range of functions. Bye Law 6 sets out CPA Ireland's disciplinary process. Bye Law 6.3.1 sets out that every member shall be liable to disciplinary action in accordance with the Articles of the Institute and the Bye Laws in force at the time the matters complained of took place.

7. For the purposes of the disciplinary process Bye Law 6.4.1 states that "*Misconduct includes but is not confined to any act or default on the part of the member....likely to bring discredit to himself...the institute or the profession of accountancy*".

8. A member shall be liable to the disciplinary process if it is alleged that in the course of carrying out his professional duties or otherwise that he is guilty of misconduct. Bye law 6.5.1 gives non-exhaustive examples of when the disciplinary process shall be instigated such as where an allegation is made alleging that:....*(i) He has acted or defaulted in some manner not mentioned above which tends to discredit himself, the Institute or the Profession of accountancy;...*"

9. Bye Law 6.11.1 describes a Complaint 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...*"

Allegations concerning non-compliance with approved investigation and/or disciplinary procedures

10. The relevant Bye Laws referred to in Allegations 1,2 and 3 are those that were effective from 21 June 2017.They are set out in Appendix I.

Allegation 1

Failure to investigate a complaint in accordance with Bye Law 6.11.2 and Bye Law 6.13.2

Particulars

On 15 May 2018 you received a complaint concerning your member [REDACTED]. On 17 May 2018 you returned the complaint form to the complainant stating that the complaint “must be accompanied by some evidence of misconduct”.

11. CPA Ireland received a written complaint from a member of the public regarding one of its members on 15 May 2018. That complainant identified the member by name, their place of work and their role within that organisation. The complainant stated that the member had been dismissed from their place of work as a result of a breach of trust which related to [REDACTED] and that the Gardai were involved. The complainant was alleging that the member had acted in a manner which suggested that his conduct discredited himself, the Institute or the Profession of accountancy.

12. On 17 May 2018 CPA Ireland returned the complaint form to the complainant stating that the complaint;

“must be accompanied by some evidence of misconduct...Examples of the type of evidence could include:- Board Minutes of [REDACTED] where by allegations against [REDACTED] were substantiated or details of the reasons for the termination of his contract.- Any information in the public arena which specifically identifies [REDACTED] and provides evidence of the allegation. ”

The letter went on to state;

“As to-date you have not provided any evidence to substantiate the allegation being made we return herewith your complaint form. This can be resubmitted with supporting evidence if and when you obtain same (sic)”.

13. Bye Law 6.11.2 sets out the manner in which a complaint may come to the attention of the Secretary of the Institute and Bye law 6.13.2 sets out a specific procedure to be followed when a written complaint is received. It provides that ‘*the Secretary shall follow the following procedure*’ (*emphasis added*):

1. *On receipt of a written Complaint the Secretary shall acknowledge receipt of same to the Complainant. The Secretary shall also advise the Complainant in Writing that a copy of the Complaint (together with any attached documentation) will be sent to the Member, ...for his/its response and that a copy of the response, or a summary of same, shall be forwarded to the Complainant when received.*

2. *The Secretary shall send the written Complaint (together with any attached documentation) to the Member, ... with a request for his/its response. The time period within*

which a response is required will be set out clearly in writing on a letter enclosing the said form.....

14. The Secretary had received a written complaint the contents of that complaint disclosed an allegation of a serious nature, and it was not investigated. The complaint was not sent to the member as stipulated in the rules.

Allegation 2

Failure to investigate a complaint in accordance with Bye Laws 6. 11.2, Bye Law 6.13.1 and Bye Law 6.13.2:

Particulars

On the 22 May 2018 you received further correspondence from [REDACTED] solicitors concerning the complaint referred to in allegation 1 above, attaching a press release from [REDACTED] and an internet print out from Bloomberg news item.

15. On the 22 May 2018 CPA Ireland received further correspondence concerning the same complaint from a firm of solicitors in support of the complainant's original complaint. The solicitor confirmed the identity of the member, his role as Head of Finance and the fact that the member had been dismissed from his employment and that there was a garda investigation. The solicitor's correspondence informed CPA Ireland that he was assisting the Garda with its enquiries. The solicitor attached two documents that were in the public domain, confirming the details about the member namely, his identity, employment role, the fact of the dismissal and Garda involvement. That letter from the solicitor also referred to CPA Ireland's previous request for Board minutes;

"you refer to Board Minutes which are not accessible by {the complainant}. Your Institute has a regulatory role. That role gives you the locus standi to seek such minutes or other material from the [REDACTED] and/or [REDACTED]. A complaint coupled with your regulatory role should initiate or prompt your institute into an enquiry?"

16. Notwithstanding that CPA Ireland had requested the complainant to provide information in the public arena, it wrote to the complainant on 11 June 2018, confirming receipt of the letter from the solicitor and it informed the complainant that: *"the letter does not contain sufficient evidence to allow us to commence an investigation..."*

17. As set out above Bye Law 6.11.2 sets out the manner in which a complaint may come to the attention of the Secretary of the Institute and Bye law 6.13.2 sets out a specific procedure to be followed when a written complaint is received. Again, the procedures provided for within the Bye Laws were not followed.

18. In addition to the solicitors written complaint not being investigated, Bye Law 6.13.1 provides for the Secretary to consider the liability of a member for disciplinary action when a matter comes to the attention of the Secretary through media reports. Bye Law 13.1 sets out the steps to be followed by the Secretary in those circumstances:

...

1. The Secretary shall reduce the matter(s) into Writing in the standard form available on the Institute's Website. If the Secretary is able to obtain a copy of the relevant media report(s) such report(s) will be attached to the standard form.

2. This form, and any other documentation relating to the complaint is sent to the Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student for his/its response. The time period within which a response is required will be set out clearly in writing on a letter enclosing the said form. Any extension of the said time period will be solely at the Secretary's discretion and can be granted either on the request in writing by the Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student, or on the Secretary's own initiative if he considers it necessary.

19. The procedures set out in the Bye Laws were not followed.

Allegation 3

Failure to investigate a complaint in accordance with Bye Laws 6.11.2, Bye Law 6.13.1 and Bye Law 6.13.2

Particulars

On 22 March 2019 you received further correspondence from the complainant (as set out in allegation 1) regarding your member. You were provided with media print outs concerning the complaint.

On the 8 April 2019 you wrote to the complainant stating that you could not consider the complaint as the member had resigned. The member was removed from the CPA register on 4 April 2019.

20. On 22 March 2019 CPA Ireland received further correspondence from the complainant regarding the member attaching a news article about the matter, confirming that the Member had been dismissed

from his employment and that there was a High Court civil action being brought by the former employer against the member and that the matter was subject to a Garda investigation. Again, the disciplinary process set out in the Bye Laws was not complied with. On 2 April 2019 the member resigned from membership of CPA Ireland and on 4 April 2019, he was removed from membership by CPA Ireland. CPA Ireland wrote to the complainant on 8 April 2019 stating that it could not consider the complaint as the member had resigned. At the relevant time CPA Ireland's regulations did not permit an investigation to proceed once a member ceased to be a member of CPA Ireland.

Sanction

21. In coming to the appropriate and proportionate sanction, the Authority had regard to its Sanctions Guidance.

22. The Authority had regard to the following factors in mitigation:

- CPA Ireland fully cooperated with the Authority during the course of the enquiry.
- CPA Ireland has demonstrated a commitment to dealing with cases in accordance with its procedures.
- The issues that were identified in this case have not been repeated subsequently. On 28 April 2021 CPA Ireland amended its constitution to set out that where a member serves written notice of his intention to resign prior to the commencement of a disciplinary process but after a complaint has been made then, *"any such resignation shall not take effect until the date that the Institute notifies in writing the person proposing to resign that the investigation or disciplinary process has concluded or the Complaint concerning such person has been withdrawn and the resignation is entered in the Institute's register of members."*

23. However, the Authority also took into account the following aggravating factors:

- On three separate occasions the complainant provided information concerning the member which CPA Ireland did not act upon.
- As a result of CPA Ireland failing to comply with their own procedures the member was able to resign from membership consequently an investigation could not be pursued.

24. The non-compliance with the Bye Laws was a serious procedural irregularity and undermined public confidence in the disciplinary process.

25. The Authority considered that the non-compliance in this case was so serious that to advise or admonish would not be appropriate or proportionate.

26. Having regard to all the circumstances in this case the Authority considered that the appropriate and proportionate sanction is **Censure** by requiring CPA Ireland to pay €15,000.

DATED: 25 March 2022

APPENDIX I

The Relevant Bye Laws in relation to Allegation 1, Allegation 2 and Allegation 3 are as follows:

6.11.2

A Complaint may come to the Secretary's attention as follows:

(a) ...

(b) ...

and

A matter may also come to the attention of the Secretary of the Institute as a result of reports in the media or by some other means, including anonymous complaints, which indicates that a Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student may be liable to disciplinary action. For the avoidance of any doubt such a matter that comes to the attention of the Secretary will be considered a Complaint for the purpose of this Bye Law 6.

6.13.1

When a matter comes to the attention of the Secretary through media reports or by some other means other than a Complaint in Writing which indicates that a Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student may be liable to disciplinary action under this Bye Law 6 the Secretary shall follow the following procedure:

1. The Secretary shall reduce the matter(s) into Writing in the standard form available on the Institute's Website. If the Secretary is able to obtain a copy of the relevant media report(s) such report(s) will be attached to the standard form.

2. This form, and any other documentation relating to the complaint is sent to the Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student for his/its response. The time period within which a response is required will be set out clearly in writing on a letter enclosing the said form. Any extension of the said time period will be

solely at the Secretary's discretion and can be granted either on the request in writing by the Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student, or on the Secretary's own initiative if he considers it necessary.

6.13.2

When the Secretary receives a written Complaint in relation to a Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student the Secretary shall follow the following procedure:

1. On receipt of a written Complaint the Secretary shall acknowledge receipt of same to the Complainant. The Secretary shall also advise the Complainant in Writing that a copy of the Complaint (together with any attached documentation) will be sent to the Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student for his/its response and that a copy of the response, or a summary of same, shall be forwarded to the Complainant when received.

2. The Secretary shall send the written Complaint (together with any attached documentation) to the Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student with a request for his/its response. The time period within which a response is required will be set out clearly in writing on a letter enclosing the said form. Any extension of the said time period will be solely at the Secretary's discretion and can be granted either on the request in writing by the Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student, or on the Secretary's own initiative if he considers it necessary.

