

## **IRISH AUDITING AND ACCOUNTING SUPERVISORY AUTHORITY**

### **Terms of Settlement agreed pursuant to Regulation 16 of the Regulations**

**In the Matter of a complaint made by the Complainant against the  
Institute of Chartered Accountants in Ireland  
(operating under the title of “Chartered Accountants Ireland”)**

#### **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;

“Complainant”, shall mean the person who lodged the complaint;

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

“Enquiry Committee”, shall mean the Committee set up pursuant to Regulation 5 of the Regulations;

“Institute”, shall mean the Institute of Chartered Accountants in Ireland operating under the title of “Chartered Accountants Ireland”;

“Member”, shall mean a member of the Institute against whom the Complainant made a complaint to the Institute;

“Preliminary Enquiry Committee”, shall have the meaning assigned to it in the Regulations;

“Prescribed Accountancy Body”, shall have the meaning assigned to it by Section 4 of the Act; and

“Regulations”, shall mean the *Companies (Auditing and Accounting) Act 2003 (Procedures governing the conduct of Section 23 Enquiries) Regulations 2007*.

Whereas:

- A. Following receipt of a complaint made by the Complainant against the Institute (a Prescribed Accountancy Body), the Board appointed a Preliminary Enquiry Committee who first considered the matter at its meeting on 18 June 2008 pursuant to the Act and the Regulations.
- B. By Notification dated 15 June 2009 the Preliminary Enquiry Committee found that there existed a *prima facie* case against the Institute in relation to certain matters.
- C. As a consequence of the findings of the Preliminary Enquiry Committee, the Board on 16 June 2009 resolved to appoint an Enquiry Committee pursuant to Section 23 of the Act and the Regulations which said Enquiry Committee was established on 12 October 2009.
- D. By letter dated 10 December 2009 (the “Letter of Admissions”) the Institute wrote to the Secretary of the Preliminary Enquiry Committee making certain admissions and offered, *inter alia*, to settle the matter pursuant to Regulation 16 of the Regulations.
- E. Because the Enquiry Committee had been established the letter was referred to the Enquiry Committee.
- F. The Enquiry Committee considered the Letter of Admissions and the offer to treat the matter under Regulation 16. The Enquiry Committee considered it proper that, before it considered the matter under Regulation 16, it should examine the documents that had been before the Preliminary Enquiry Committee.
- G. On 19 February 2010 the Enquiry Committee received the documents that the Preliminary Enquiry Committee had examined in the course of its work. Having examined the documents the Enquiry Committee advised the Institute by letter 19 May 2010 that it was prepared to consider the matter under Regulation 16 and set out the terms of settlement it was prepared to recommend to the Board.
- H. By letter dated 11 June 2010 the Institute confirmed acceptance of the terms of settlement as set out in the letter dated 19 May 2010.
- I. On the date set out below the recommendation of the Enquiry Committee came before the Board (the Board members who were also members of the Enquiry Committee absented themselves) and the recommendation of the Enquiry Committee, after due consideration, was accepted and the settlement terms became binding on the parties.

## **Background**

1. By letter dated 26 February 2007 the Complainant made a formal complaint in writing against the Member. These complaints were put to the Member by the Institute who refuted the allegations made against him.
2. The Secretary to the Institute's Complaints Committee facilitated a conciliation process as provided for by Bye-Law 70.1, which proved unsuccessful. Thereafter, the obligation placed upon the Secretary to transmit the complaint to the Complaints Committee under Bye-Law 70.2 was not observed. The Secretary submitted what was described as the "entire file" not by way of an indicative complaint but for direction as to whether the file should be closed or alternatively further investigated with a view to preparing an indicative complaint.
3. The Complaints Committee met on 30 November 2007 and its decision was communicated to the Complainant by letter of 13 December 2007. It stated that the Complaints Committee had decided

*"...that the matter would now be closed on the basis of the lack of substance to the complaints made by you.*

*The Complaints Committee noted the distinct lack of evidence of breaches of ICAI standards in relation to your complaints that would warrant a determination that the matter be continued to be investigated. There were no grounds to conclude that indicative complaints be prepared against the member for further consideration."*

4. The Minutes of the meeting of the Complaints Committee dated 30 November 2007 stated as follows:

*"The Complaints Committee directed the closure of the above case on the basis of a lack of substance to the complaint against the member. Further, Committee members expressed concern that the complainant was engaging in an abuse of process on the basis that he brought similar and related complaints against the above member on previous occasions."*

5. The Complainant was also informed by the Secretary to the Complaints Committee that there was no avenue for him to appeal the matter under the Institute's Bye-Laws by email on 17 December 2007.
6. By letter dated 13 February 2009 the Preliminary Enquiry Committee was advised by the Institute that the Complainant's complaint

*"..... was referred to the Complaints Committee by [the Secretary] seeking its direction on how to proceed. Please be advised that while there is no specific Bye-Law which deals with such referrals, it is however commonsense and implicit in the process that it is open to the executive to seek directions in relation to cases where guidance is required on how to proceed."*

## **Issues**

7. The following issues were identified by the Preliminary Enquiry Committee;-
- i) Whether there was a formal complaint in existence.
  - ii) Whether the complaint was dealt with within the Bye-Laws of the Institute.
  - iii) Whether the procedure for seeking directions from the Complaints Committee in respect of the complaint was a procedure within the Bye-Laws of the Institute.
  - iv) Whether in light of the failure of the conciliation process under Bye-Law 70.1 there was a requirement upon the Secretary to transmit the complaint to the Complaints Committee for the purpose of determining whether or not there was a *prima facie* case in respect of the complaint.
  - v) Should it be found that a non-Bye-Laws procedure had been adopted in bringing the complaint before the Complaints Committee and having regard to the decision of that Committee, whether the Complainant was denied recourse to the Independent Reviewer under Bye Law 74.1

## **Relevant Bye Laws**

- 70.1 *If the Secretary is, in his absolute discretion, of the opinion that it is appropriate to do so, the Secretary may attempt to resolve any Complaint (whether such Complaint was brought to the Secretary's attention by a Complainant or has otherwise come to the Secretary's attention) by conciliation or in some other way not involving disciplinary action under this Chapter; and if the attempt is successful the Secretary shall take no further action with respect to such Complaint unless subsequently the Secretary, in his absolute discretion considers that new facts or matters have come to light which could alter the circumstances or render such resolution by the Secretary inappropriate.*
- 70.2 *The Secretary shall convey each Complaint to the Complaints Committee unless it has been resolved under Bye-Law 70.1.*
- 73.1 *In any case where the Complaints Committee is of the opinion that a Complaint should not be referred to a Special Investigator the following provisions of this Bye-Law shall apply.*
- 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.*
- 74.1 *If the Complaints Committee decides in relation to any Complaint that a prima facie case as aforesaid has not been made out against the member, affiliate, student or member firm concerned, the Complainant who made such a Complaint may, within one month of being notified in writing of such decision but not thereafter,*

*refer the decision of the Complaints Committee to an Independent Reviewer for review in accordance with Bye- Law 74.*

### **Findings**

The Enquiry Committee adopts the determinations of the Preliminary Enquiry Committee and makes the following findings:-

- i) Notwithstanding that there was a valid complaint in existence, as demonstrated by the recourse to the conciliation process as provided for under Bye-Law 70.1, the Institute adopted a procedure, not provided for in the Bye-Laws, to transmit the matter to the Complaints Committee for the purpose of seeking its directions on the future handling of the complaint, which is also a procedure not within the provisions of the Bye-Laws.
- ii) Notwithstanding that the Secretary to the Complaints Committee engaged in a conciliation process in respect of the complaint pursuant to Bye-Law 70.1, he failed to transmit the complaint to the Complaints Committee, as required pursuant to Bye-Law 70.2.
- iii) The Institute's Complaints Committee dealt with the complaint otherwise than in accordance with its jurisdiction, which was to determine whether or not there was a *prima facie* case to be found, pursuant to Bye-Law 73.2.
- iv) By reason of the procedure adopted in transmitting the complaint to the Institute's Complaints Committee and the decision making process adopted by the Complaints Committee, the Complainant was denied recourse to the Independent Reviewer as provided for in Bye-Law 74.1

### **Underlying Reasons**

In determining the sanctions, the Enquiry Committee also adopts the following underlying reasons as found by the Preliminary Enquiry Committee:-

1. In circumstances where there were specific Bye-Laws in existence for dealing with a complaint, these ought to have been applied without recourse to a procedure which was not provided for in the Bye-Laws.
2. There was no reason, in all the circumstances, to seek to rely upon a non-Bye-Law based process to deal with the matter. The Institute does not identify any necessity arising as would justify a non Bye-Law procedure in this case and, thus, the Complaints Committee ought to have dealt with the matter strictly within the provisions of the Bye-Laws.
3. The manner in which the Institute and the Complaints Committee chose to deal with the complaint and the decision thereby reached, had the effect of by-passing the protection afforded by Bye Law 74.1 to a Complainant who has had an adverse finding made by the Complaints Committee against his interest and was thereby denied a review of that adverse decision. This constitutes a substantive failure and not merely a technical failure given the denial of a review of the decision of the Complaints Committee to the Complainant.

4. The Enquiry Committee is not satisfied, in the light of the admission of the Institute made in its letter to the Preliminary Enquiry Committee dated 13 February 2009, that the Complainant's grievances

*"...were dealt with in accordance with ICAI's complaints process..."*

as was stated in the Institute's submission to the Preliminary Enquiry Committee of 9 April 2009.

5. The Complaints Committee, it is understood, had the full file before it in relation to the Complainant and it is evident from the content of the decision communicated to the Complainant and the content of the minutes of the Complaints Committee that in order to have come to the conclusion it in fact did come to, namely that there was a lack of substance in relation to the complaints, the Complaints Committee would have had to have conducted a detailed consideration of the matter and, in the circumstances, it is the view of the Enquiry Committee that the decision amounted to a finding of no *prima facie* determination.
6. In acting as it did, and in reaching the decision it reached, the Complaints Committee was in all but name exercising its jurisdiction under the Bye-Laws as regards reaching a determination in the matter before it and had it done so expressly under the Bye-Laws in terms of deciding that no *prima facie* case had been disclosed, the Complainant in the view of the Enquiry Committee would not have been denied recourse to the Independent Reviewer, as occurred.
7. The Enquiry Committee acknowledges the admissions made by the Institute in the Letter of Admissions. In making such admissions the Institute has negated the need for the Enquiry Committee to go through the lengthy process involved in a Section 23 Enquiry, thus saving time and resources of the Authority which can be expended elsewhere.

### **Sanctions**

In light of the admissions of the Institute, the above finding of the Enquiry Committee, the underlying reasons given by the Enquiry Committee and having regard to all of the circumstances, the Enquiry Committee considers that, subject to the approval of this settlement by the Board pursuant to Regulation 16 of the Regulations, the appropriate sanctions are:-

- a. to annul the purported decision of the Institute's Complaints Committee as notified to the Complainant in its letter dated 13 December 2007 together with any associated or related decision of the Institute;
- b. to direct that the Institute conducts an investigation into the complaint made by the Complainant in his letter dated 26 February 2007, the said investigation to be commenced as soon as possible but in any event within 3 months of the approval of this settlement by the Board; and
- c. to require the Institute to pay the sum of €10,000 to the Authority within 28 days of notification of the approval of this settlement by the Board.

Together the above sanctions shall be referred to as the "Sanctions".

**Other matters**

The Institute agrees, as part of the terms of the settlement that the Sanctions shall take effect on approval of the terms of the settlement by the Board and the Institute irrevocably waives any right or entitlement to have the decision confirmed pursuant to Regulation 13 of the Regulations.

**David Butler**

**Secretary**

**on behalf of the Institute of Chartered Accountants in Ireland (operating under the title of “Chartered Accountants Ireland”)**

**Brian G Shiels**

**Chairman of the Enquiry Committee**

On 20 July 2010, the terms of this settlement came before the Board. Having considered the terms of the proposed settlement a majority of the Directors of the Board (the Directors who are also members of this Enquiry Committee not taking part in the decision) resolved to approve the said terms set out above pursuant to Regulation 16 of the Regulations.

**Ian Drennan**

**Chief Executive**

**on behalf of the Irish Auditing and Accounting Supervisory Authority**