

PRIVATE AND CONFIDENTIAL

NOTICE OF FINDINGS

by

Section 23 Enquiry Committee

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 Richard Trehy;

"Council", shall mean the Council of the Institute;

"CARB", shall mean the Chartered Accountants Regulatory Board.

"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 name and title of Chartered Accountants Ireland;

"Member", shall have the meaning assigned to by Section 4 of the Act;

"Respondent Member" shall mean the Member against whom the Complainant has 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 2012*.

Whereas:

- A. Following receipt of a complaint made by the Complainant against the Institute (a Prescribed Accountancy Body), the Board on 13 July 2010 appointed a Preliminary Enquiry Committee pursuant to the Act and the Regulations.
- B. By letter dated 13 February 2012, 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 27 March 2012 resolved to appoint an Enquiry Committee pursuant to the Act and the Regulations which said Committee was established on 27 March 2012.
- D. On 22 May 2012 the Enquiry Committee issued a notice pursuant to Regulation 5(3) of the Regulations addressed to the Institute and copied to the Respondent Member and the Complainant.

- E. By letter also dated 22 May 2012 the Enquiry Committee set out, inter alia, how it was minded to proceed.
- F. Subsequently the Enquiry Committee entered upon its enquiry and sought certain information and documents from the Institute.
- G. By letter dated 07 November 2012 addressed to the Institute and copied to the Respondent Member and the Complainant respectively, the Enquiry Committee advised the Institute of the amendment of the scope of its enquiry.

Background

How the Institute is required to deal with complaints under its Bye-Laws – a summary

At the relevant time the Complaints Committee of the Institute was a committee of not less than 9 persons appointed by the Council of the Institute. The majority of the Committee had to be non-members of the Institute ("lay members").

Each member of the Complaints Committee is appointed for a maximum of two terms of up to five years each. The quorum for meetings of the Complaints Committee was 5 persons so long as a majority of those in attendance consists of lay members.

Complaints are sent to the Secretary to the Complaints Committee who is obliged to convey the complaint to the Complaints Committee unless the complaint is resolved.

Once the complaint comes before the Complaints Committee, the Committee must first form an opinion as to whether the complaint is one that gives rise to or includes questions of public concern and/or is of complexity or importance.

If the Complaints Committee forms such an opinion, then the Committee may refer the complaint to a Special Investigator. Following investigation, the Investigator reports back to the Committee and certifies whether or not, in his opinion, a *prima facie* case exists that the Member is liable to disciplinary action in accordance with the Institute's Bye-Laws. If the Special Investigator certifies that a *prima facie* case exists, the Complaints Committee must refer the complaint to the Institute's Disciplinary Committee.

If the Complaints Committee forms the opinion that the complaint should not be referred to a Special Investigator, then it must investigate the complaint to determine whether or not a *prima facie* case has been made out.

If the Complaints Committee determines that a *prima facie* case has been made out, various options are available to it including referral of all or part of the complaint to the Disciplinary Committee.

If the Complaints Committee determines that no *prima facie* case is made out, the Committee notifies the Member and the Complainant (if any). If the Complainant is not satisfied with the finding, he can refer the Complaints Committee's decision to an Independent Reviewer who reviews the decision and reports back to the Complaints Committee while also informing the relevant member and the Complainant. The Complaints Committee re-considers the issues in the light of that report and notifies all relevant parties of what the Committee is minded to do. The Committee considers the replies of the parties and makes a final decision on whether or not a *prima facie* case is made out against the Member. If it determines that no *prima facie* case has been made out, that is the end of the matter. If the Complaints Committee determines that a *prima facie* case has been made out, the Committee may decide to refer all or part of the complaint to the Disciplinary Committee.

The Complaint

On 24 August 2007 a complaint was made to the Institute by the Complainant, the Liquidator of Olde Court Holiday Hostel Limited, in relation to the conduct of the Respondent Member. The complaint was dealt with by CARB, which is given responsibility by the Institute to deal with all regulatory matters. CARB, as part of the complaints process, referred the complaint (referred to at 2 & 3 below) to the Complaints Committee.

However, in the course of the complaints process, due to the Respondent Member's failure to respond to correspondence from the Head of Professional Conduct of CARB an additional complaint of failure to co-operate (referred to below at 1 and described as the "Secretarial Complaint") was made by CARB against the Respondent Member. The Complaints against the Respondent Member can be summarised as follows:

1. That he failed to respond adequately to correspondence from the Head of Professional Conduct in breach of the Respondent Member's duty to co-operate as set out in the Bye-Laws of the Institute. (the "Secretarial Complaint")
2. That he acted in breach of Fundamental Principle for Performance of the Ethical Guide for Members in that;
 - a. Financial Statements reported by the Respondent Member did not reflect the Shareholders Agreement dated 29 September 1998;
 - b. The Share Capital was incorrect;
 - c. The Share Premium Account was incorrect;
 - d. The Director's current accounts were incorrect; and
 - e. The Financial Statements for all the years during which the Respondent Member was auditor did not show a "true and fair view" of the state of the Olde Court Holiday Hostel Limited affairs and that he issued an unqualified audit report.
3. That he acted in breach of Fundamental Principle 4: Performance of the Ethical Guide for members, in that the member certified that certain parties had a balance of €127,000 with Olde Court Holiday Hostel Limited. This "alleged" loan was assigned to a third party who instigated court proceedings against the Complainant for this sum. The Complainant, as Liquidator, had to defend these proceedings while, at the same time, instigating proceedings to obtain the necessary Court Orders flowing from the errors in the Financial Statements.

The Complainant wrote to the Institute on 24 August 2007 complaining about a Respondent Member's failures as outlined above.

Decisions of the Institute's Complaints Committee

The complaint was considered by the Complaint Committee on 23 April 2008, 4 June 2008, 22 May 2009, 22 July 2009 and 27 August 2009.

When the complaint was first heard by the Complaints Committee on 23 April 2008, arising from correspondence from the Respondent Member, requesting additional time to respond the Complaints Committee adjourned the matter.

The matter was next considered by the Complaints Committee on 4 June 2008 when it was decided, *inter alia*, that the "complaint was not one that gave rise to or included questions of public concern". The Complaints Committee went on to find that in relation to matter 1 above that "there was sufficient evidence on file to support this complaint". However in relation to matters 2 and 3 above the finding was that there was "insufficient evidence".

The Complainant was informed by letter dated 11 June 2008 that *"The decision of the Committee was that a prima facie case had been established"*, he was subsequently informed on 30 September that this finding was only in relation to matter 1 (secretarial complaint) and on matter 2 & 3 *"the Committee found that there was insufficient evidence to support the complaints"*.

The Complainant not being satisfied with the findings of the Complaints Committee asked that the findings be reviewed and, in accordance with the Institute's Bye-Laws the matter was referred to the Independent Reviewer. The Independent Reviewers report found *"the decision of the Complaints Committee wrong or unsafe"*, this report was first considered at the Complaints Committee meeting of 22 May 2009 and the decision of the Committee was to defer the matter until further clarification was sought from the Independent Reviewer. The Complaint was subsequently considered at a meeting of the Complaints Committee on 22 July 2009 wherein, having considered the comments of the Independent Reviewer the Committee was *"minded not to change its original decision made on the 4th June 2008"*.

Following additional comments received from the Independent Reviewer the Complaints Committee reconsidered its decision but decided *"not to change its original decision made on 4 June 2008"*.

The Complaints Committee went on to say *"in arriving at this decision, the Committee reasoned that there was no evidence to indicate that the member was aware or should have been aware of the existence of the Shareholders Agreement when auditing the Company and that the evidence did not establish a prima facie case"*.

It is accepted by the Institute that the Respondent Member failed to co-operate with the Complaints Committee in relation to the complaint.

Relevant Provisions of the Institute Bye-Laws 2007:

Bye-Laws 66.2, 66.3, 73.2, 73.4, 73.5, 74.2 and 75 state that:-

- 66.2 Subject to Bye-Law 66.3, the quorum for meetings of the Complaints Committee shall be five persons, so long as the majority of the attendance thereat consists of members of the Committee who are not members of the Institute. Any meeting of the Complaints Committee at which a quorum is present shall be competent to exercise all the functions and powers conferred upon the Complaints Committee by these Bye-laws.
- 66.3 The Complaints Committee may delegate such of its functions and powers to sub-committees of its own members as it may deem necessary or convenient. Any sub-committee so formed shall, in the exercise of the functions and powers so delegated, conform to any regulations that may be imposed on it by the Complaints Committee.
- 73.2 The Complaints Committee shall investigate the complaint in order to determine whether or not a prima facie case has been made out that the member, affiliate, student or member firm is liable to disciplinary conduct under this chapter.
- 73.4 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, affiliate, student or member firm concerned and, if there is one, the Complainant, giving the reasons for its decision.
- 73.5 If the Complaints Committee is of the opinion that a prima facie case as aforesaid has been made out, it may in its absolute discretion:
- (a) decide that no further action be taken on the Complaint or any specified part of it; or
 - (b) decide that the Complaint should rest on the file of the member, affiliate, student or member firm concerned for a period of two years, in which case the matter will be treated as rendering the member, affiliate, student or member firm concerned liable to disciplinary action and that whilst no action in respect thereof will on this occasion be taken, it may subsequently be taken in the event of a further Complaint concerning the

member, affiliate, student or member firm concerned being considered by the Complaints Committee. The member, affiliate, student or member firm concerned must agree that the matter can be left to lie on their file. If agreement is not given the Complaints Committee may proceed with the case in accordance with any of the provisions in this Bye-Law; or

- (c) decide that, notwithstanding such prima facie case, further consideration of the whole or part of the Complaint be deferred on such terms and conditions as it considers appropriate, whether for either or both of the following purposes, namely;
 - (i) to enable the Complaints Committee to obtain such information, explanations, documents and computer and other electronic records as it considers necessary, or
 - (ii) if the substance of the Complaint is the failure of the member, affiliate, student or member firm concerned to satisfy a judgment debt or the occurrence of an Insolvency Event in relation to the member of affiliate, to enable the Complaints Committee to monitor any steps taken by the member, affiliate, student or member firm concerned to deal with the matter; or
- (d) deal with the whole or part of the Complaint under Bye-law 75, or
- (e) refer the whole or part of the Complaint to the Disciplinary Committee as a Formal Complaint, and the Complaints Committee shall notify, in writing, the member, affiliate, student or member firm concerned, and, (if there is one), the Complainant, that a prima facie case has been made out against the member, affiliate, student or member firm concerned, and which course of action, of those listed in this Bye-law, the Complaints Committee intends to take and the reasons for its decision.

74.2 If a decision of the Complaints Committee is referred to an Independent Reviewer for review in accordance with Bye-Law 74.1, the Independent Reviewer shall, as soon as practicable, review such decision in accordance with this Bye-Law 74. Where it takes an Independent Reviewer longer than three months to complete a review, he shall, (through the Head of Professional Conduct) provide at three monthly intervals, a report in writing to the Complaints Committee on the progress of his review and indicating the likely further time required to complete the review.

75.1 Where the Complaints Committee decides to deal with the Complaints under this Bye-Law, the following provisions of this Bye-Law shall apply.

75.2 The Complaints Committee may, with the agreement of the member, affiliate, student or member firm concerned, make:

- (a) any one or more of the Orders which, on finding a Formal Complaint proved, a Disciplinary Tribunal would have power to make in respect of a Respondent by virtue of:
 - (i) Bye-Law 80.4 (a) (viii), (ix) or (x);
 - (ii) Bye-Law 80.4 (b) (iii), (iv) or (v);
 - (iii) Bye-Law 80.4 (c) (v) or (vi);
 - (iv) Bye-Law 80.4 9d) (iii), (iv), or (v),
 according to whether the Respondent is a member, affiliate, student or a member firm; and
- (b) an order that the member, affiliate, student or member firm concerned shall pay to the Institute a specified sum by way of costs.

75.3 Any such Order may be made upon such terms and conditions (if any) as the Complaints Committee, may, in its absolute discretion, consider appropriate.

75.4 Before making an Order under Bye-law 75.2, the Complaints Committee shall serve on the member, affiliate, student or member firm concerned a notice describing the action which it

proposes to take if the member, affiliate, student or member firm agrees, and specifying the Order which it would make in that event.

75.5 A notice under Bye-Law 75.4 must:

- (a) *be in or substantially in such form as may be prescribed by regulations made by the Complaints Committee;*
- (b) *explain the extent to which the finding of the Complaints Committee would be published and/or otherwise communicated to others; and*
- (c) *state that, if the member, affiliate, student or member firm concerned does not agree in writing to the proposed action within a stated period, of not less than fourteen days a Complaint will be referred to the Disciplinary Committee which, in the event of its finding that Complaint proved in whole or in part, would have available to it the complete range of Orders mentioned in Bye-Laws 80.4 (a), 80.4 (b), 80.4 (c) and 80.4 (d) depending on whether her or it is a member, affiliate, student or member firm*

75.6 *At the same time as serving a notice under Bye-Law 75.4 on the member, affiliate, student or member firm concerned, the Complaints Committee will advise the Complainant (if there is one) that the member, affiliate, student or member firm concerned has been offered the opportunity to consent to an Order under this Bye-law 75.*

Preliminary Enquiry Committee

On making a complaint to the Authority the matter was referred to a Preliminary Enquiry Committee, in accordance with Section 23 of the Act and Regulation 4, to determine whether the Authority should initiate a full enquiry. The Preliminary Enquiry Committee duly sat and determined that the Authority should initiate a full enquiry and issued its findings to this effect on 8 February 2012. On 27 March 2010 the Authority appointed this Committee to carry out a full enquiry in accordance with Section 23 of the Act.

Work of the Enquiry Committee

The Enquiry Committee in carrying out its enquiry considered the initial complaint made to the Authority and reviewed the findings of the Preliminary Enquiry Committee. On 22 May 2012 the Enquiry Committee issued a Notice pursuant to Regulation 5(3) of the Regulations (the "Notice") setting out the scope of the full enquiry which included five *prima facie* findings of the Preliminary Enquiry Committee. These *prima facie* findings are set out in detail at paragraphs two to six below in the Findings of the Enquiry Committee. The Committee then sought and received certain documents and explanations from the Institute, which it considered germane to its enquiry. Supplementary documents and explanations were sought as necessary.

By letter dated 7 November 2012 the Enquiry Committee wrote to CARB referring to the Notice and informing CARB of its intention to widen the scope of the enquiry to include consideration of potential breaches of Bye Law 66.2 by adding the following to its scope:

"That the Institute's Complaints committee was not quorate pursuant to its obligations under Bye-Law 66.2 in considering and purporting to make a decision in relation to the complaint against the Respondent Member, a member of the Institute, at its meeting on 04 June 2008."

In response to this letter CARB wrote to the Enquiry Committee by letter dated 28 November 2012 stating, *inter alia*:

We repeat our assertion that the E[nquiry] C[ommittee] should limit the scope of its enquiry to the grounds set out in relation to the determination of the Preliminary Enquiry Committee ("PEC") that a prima facie case exists, particularly in view of the fact that the PEC specifically considered Bye-Law 66.2 and did not make a finding in respect of this issue."

The Enquiry Committee has considered this assertion and notes that Regulation 5(5) states:

"An Enquiry Committee *shall* conduct a *full enquiry* into whether the relevant prescribed accountancy body has failed to comply with its approved investigation and disciplinary procedures ...[emphasis added]"

The Committee notes that its obligation is to carry out a "full enquiry" and it is not subjected or limited by the Regulations in its enquiry to the *prima facie* findings of the Preliminary Enquiry Committee. As a consequence the Enquiry Committee is of the view that, merely because a preliminary committee made no reference to or came to a view there was insufficient or no evidence of a particular breach of the Institute's Bye-Laws, in carrying out its enquiry, a subsequent Enquiry Committee can, if it comes across information in the course of its inquiry that leads to a conclusion that there may have been additional breach or breaches, widen its scope to include the additional matter or matters. Indeed, it would be a perverse outcome that an Enquiry Committee, if it came across a breach of the Bye-Laws in the course of its full enquiry, could not enquire further into the matter merely because a preliminary committee had not, for whatever reason, made a *prima facie* finding. Consequently, the Enquiry Committee rejects the assertions of CARB on behalf of the Institute and as such the potential breach of Bye Law 66.2 is dealt with in the Enquiry Committee's Findings at paragraph one below.

The focus of the Enquiry Committee's deliberations has been the extent to which the Institute complied with its Bye-Laws in its consideration of the complaint of the Complainant, including at the Complaints Committee meetings on 23 April 2008, 4 June 2008, 22 May 2009, 22 July 2009 and 27 August 2009.

FINDINGS OF THE ENQUIRY COMMITTEE

Having reviewed the information, the documentation and submissions advanced by the Institute the Enquiry Committee makes the following findings:

- 1. That the Institute's Complaints committee was not quorate pursuant to its obligations under Bye-Law 66.2 in considering and purporting to make a decision in relation to the complaint against Mr John A. McGuigan, a member of the Institute, at its meeting on 04 June 2008.**

The Enquiry Committee has established that at the start of the Complaints committee meeting on 4 June 2008 that there were 11 of committee members present. Of this number 5 were members of the Institute and 6 were not members of the Institute ("lay members"). As such, when the meeting commenced the Complaints committee was quorate i.e. having the overall necessary numbers and of those present the majority were lay members. However, when the matter of the complaint against the Respondent Member came up on the agenda for consideration one of the lay members absented himself. The result of such abstention was that when this matter was considered there were an equal number of members of the Institute and lay members.

In its letter dated 26 October 2012 CARB on behalf of the Institute, without taking any issue as to the facts outlined above, submitted the meeting was quorate in accordance with Bye-Law 66.2 "*in that the majority of Complaints Committee members thereat were not members of the Institute 'given there were six lay members and five' members of the Institute 'present at the meeting'.*" The submission goes on "*However, we do note that one lay member absented himself from the meeting during the consideration of the complaint under investigation 'hence, for that segment only, there were an equal number of lay members and non-lay members present'.*" The letter then submits that "*the presumption of validity and legal certainty would require that any Complaints Committee decision in this complaint against Mr McGuigan 'should not be reconsidered'.*"

The issue therefore for consideration for this Enquiry Committee was whether the fact that the Complaints committee was quorate when it first sat governs the entire meeting irrespective of what happened during the course of the meeting.

Bye-Law 66.2 states:

"Subject to Bye-Law 67.3, the quorum for meetings of the Complaints Committee shall be five persons, so long as the majority of the attendance thereat consists of members of the Committee who are not members of the Institute. Any meeting of the Complaints Committee at which a quorum is present shall be competent to exercise all the functions and powers conferred upon the Complaints Committee by these Bye-laws."

In the Enquiry Committee's view, were it to accept the submission of CARB on behalf of the Institute, Bye-Law 66.2 would be satisfied as long as the Complaints Committee were quorate at the beginning and end of the meeting irrespective of who was present in between. The Enquiry Committee does not accept that merely because a meeting was quorate for parts of the meeting that it confers validity on that part or parts of the meeting where a quorum was not present.

Consequently the Enquiry Committee finds that, in relation to the complaint the subject matter of this enquiry, the Complaints Committee was in breach of Bye-Law 66.2.

2. **That, based on a complaint made to the Authority, the Complaints Committee failed to properly investigate, within the proper meaning of Bye-Law 73.2 whether, in acting as Auditor to Olde Court Holiday Hostel Ltd., the Member, failed to comply with the Institute's standards.**

The Enquiry Committee has examined the documentation provided by CARB. Following examination of this documentation the Enquiry Committee requested in writing that CARB identify what documents were considered and were before the Complaints Committee Members in arriving at their decision. To which in written reply CARB set out a number of documents which either had been previously supplied to the Enquiry Committee or were miscellaneous resource material consisting of various guides, acts, Bye-Laws and auditing standards. In addition CARB submitted, *inter alia*, that "...while the decision [of the Complaints Committee] itself may form part of the Section 23 enquiry, the decision can only be examined insofar as to determine whether there was compliance with the relevant Bye-Laws".

In relation to this latter submission, while the Enquiry Committee were not satisfied, from the documents available to it, that there was insufficient evidence to make a *prima facie* finding against the Respondent Member it could not be said that, by reference to the strict wording of Bye-Laws 73.2, that the Complaints Committee failed to comply with this Bye-Law.

Consequently the Enquiry Committee finds that the allegation is not established.

3. **That the Institute's Complaints Committee failed, pursuant its obligation to do so under Bye-Law 73.4, to accurately inform the Complainant (Mr Richard Trehy) following its meeting 04 June 2008.**

Following this meeting of the Complaints Committee a letter dated 11 June 2008 was sent by CARB to the Complainant stating "*The decision of the Committee was that a prima facie case had been established*". However, a subsequent letter from CARB dated the 11 June 2008 (postmarked 30 September 2008) to the Complainant indicated that a *prima facie* case was found regarding only the secretarial complaint, a complaint not made by the Complainant and of which the Complainant was, up to that point, not aware.

In its submissions to the Enquiry Committee this was accepted by the Institute.

Consequently, the Enquiry Committee finds that the allegation has been established.

4. **That the Institute's Complaints Committee failed, pursuant to its obligations to do so under Bye-Law 73.5 and its confidentiality obligations to the Member, when it informed the Complainant of the outcome of the complaint the Institute brought against the member regarding his lack of co-operation with the Institute's investigation and disciplinary process.**

In its submissions to the Enquiry Committee this was accepted by the Institute.

Consequently, the Enquiry Committee makes a finding that this allegation has been established

5. **That the Institute's Independent Reviewer failed, pursuant to its obligations to do so under Bye-Laws 74.2, to report to the Complaints Committee in the event that the review takes longer than three months.**

In its submissions to the Enquiry Committee this was accepted by the Institute.

Consequently, the Enquiry Committee makes a finding that this allegation has been established.

6. **That the Institute's use of a Consent Order under Bye-Law 75, rather than immediate referral to the Disciplinary Committee as a formal complaint for failure to co-operate was not appropriate in this case.**

CARB has submitted, *inter alia*, that the allegation, on its face, does not raise any question as to the compliance by the Complaints Committee with the quoted Bye-Law i.e. merely because the Preliminary Enquiry Committee was of the view that the matter before the Complaints Committee ought to have been dealt with in a particular way did not mean that the Complaints Committee failed in its obligation under Bye-Law 75.

The Enquiry Committee accepts the submission by CARB on behalf of the Institute and consequently makes a finding that the allegation not established.

Sanction

The Enquiry Committee invited CARB on behalf of the Institute to make a submission in relation to sanctions that should be applied.

The Enquiry Committee has made four findings in which the allegations have been established. In examining sanctions the enquiry Committee has taken into account the submissions of the Institute and in arriving at sanctions, the Enquiry Committee looked at each breach to decide what was the appropriate and proportionate sanction relative the breach that was found. With regard to any monetary sanction, while such sanction should be proportionate it should also be of dissuasive effect

In relation to each finding in turn (using the numbering above):

Finding 1.

In its submission as to sanction CARB has made the point that this is a "*technical breach*" caused by inadvertence on the Complaints Committee behalf in respect of one segment of the meeting and not deliberate, dishonest, reckless nor negligent. CARB has further argued that because of the presumption of validity and legal certainty would require that ... the complaint against the member should not need to be reconsidered.

For the reasons stated above in its findings the Enquiry Committee does not accept this presumption of validity argument, furthermore the Enquiry Committee is of the view that this breach is far from “technical” in nature.

The regulation of Chartered Accountants is devolved, in part, to the Complaints Committee. The Complaints Committee is charged with investigating complaints, be it from the public or otherwise, about the Institutes Members and, where, appropriate, applying sanctions to the Member up to and including removal of membership of the Institute. As such the Complaints Committee is very important in the regulation of the Members of the Institute. The makeup, powers and obligations of the Complaints Committee are set out in the Bye-Laws, which Bye-Laws have been approved of by the Authority.

Bye-Law 66.2 in addition to dealing with the quorum of the Complaints Committee sets out the requirement that, in exercising its power, the Complaints Committee **must** have more lay-members than members of the Institute. The purpose of this is obvious, namely, that the lay members, if they were so minded, could outvote the members. This is, in the Enquiry Committee's view, a core requirement and to describe it as “technical” in nature is to fundamentally misunderstand the nature and purpose of this requirement of Bye-Law 66.2. Given the importance of the adherence to this requirement the Enquiry Committee was concerned that this fact was not picked up, if not by the Chairman of the Complaints Committee, by the person present and responsible for taking the minutes of the relevant Complaints Committee.

Therefore the Enquiry Committee:

- a. censures the Institute;*
- b. annuls all of the decision made by the Complaints Committee on behalf of the Institute relating to the complaint against the Respondent Member at its meeting on 04 June 2008;*
- c. directs the Institute to conduct a fresh investigation into the matter; and*
- d. requires the Institute to pay to the Authority the sum of €10,000.*

Finding 3. & 4.

The Institute accepted these allegations at an early date. In its submission CARB on behalf of the Institute describes the breach as “technical” and ascribes the breaches to “human administrative error” and says since then it has increased its resources and introduced case management to “minimise room for error”.

The Committee notes the Institutes submissions and the steps it has taken for the future. Nonetheless there were breaches and ones that could have been avoided by proper management.

Therefore the Enquiry Committee censures the Institute and requires the Institute to pay to the Authority the sum of €5,000 in respect of each of the two breaches (a total of €10,000 for findings 3 and 4)).

Finding 5.

The Institute accepted these allegations at an early date. In its submission CARB on behalf of the Institute describes the breach as “technical” and ascribes the breaches to inadvertence on the part of the Independent Reviewer and that the deviation from the required procedure was marginal and that there has been no prejudice to either the Respondent Member or the Complainant.

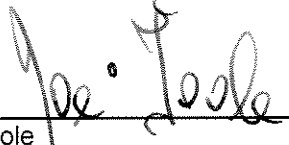
The Enquiry Committee notes the Institutes submissions and accepts that the breach was due to the Independent Reviewer, nevertheless there was little evidence of the secretariat of

CARB following up with the Independent Reviewer to try to ensure that the Independent Reviewer had his report back to the Complaints Committee within the required time.

Therefore the Enquiry Committee censures the Institute and requires the Institute to pay to the Authority the sum of €2,000 in respect of the breach.

The decisions above shall take effect in accordance with Regulation 13.

Dated 27 day of May 2013



Joe O'Toole
Chairperson of the Enquiry Committee