

THE IRISH AUDITING AND ACCOUNTING SUPERVISORY AUTHORITY

In the Matter of a Complaint by the Health Service Executive against the Institute of Certified Public Accountants in Ireland

Decision of Enquiry Committee 1/2018

Introduction

1. On 26 April 2018 a Preliminary Enquiry Committee ("PEC") appointed by the Irish Auditing and Accounting Supervisory Authority ("IAASA") pursuant to the Companies (Auditing and Accounting) Act 2003 (Procedures governing the Conduct of Section 23 Enquiries) Regulations 2012 ("SI No 96 of 2012") issued its decision (the "PEC Decision"). A copy of this decision is appended to this decision at **Appendix 1**.
2. Arising from this decision of the PEC this Enquiry Committee was appointed by IAASA on 29 May 2018 pursuant to SI No 96 of 2012 and Regulation 5, in particular.

Remit of the Enquiry Committee

3. Pursuant to Regulation 5(5) of SI No 96 of 2012, the remit the Enquiry Committee is to conduct:

"... a full enquiry into whether the relevant prescribed accountancy body has failed to comply with its approved investigation and disciplinary procedures and, if the Enquiry Committee makes an adverse finding under Regulation 11(1), shall determine what sanctions, if any, to impose under these Regulations."

Work of the Enquiry Committee

4. At the outset the Enquiry Committee communicated the grounds for the establishment of the enquiry to the Institute of Certified Public Accountants in Ireland ("Institute"), Mr Derek Page ("Member") of Cronin & Company ("Member Firm") and the Health Service Executive ("Complainant") on 10 July 2018 and sought relevant submissions and documentation to assist its work. This prompted the following relevant replies:
 - a letter of 23 July 2018 from the Institute with enclosures; and
 - a letter of 02 August 2018 from the Complainant with enclosures.
5. The letters of 23 July and 02 August enclosed, respectively, a copy of the documents provided by the Institute and the Complainant to the Preliminary Enquiry Committee.
6. The Institute wrote a further letter dated 31 July 2018 to the Enquiry Committee. This letter stated, inter alia:

"The Institute is fully committed to ensuring that all parties to any investigation are afforded fair procedures. The Institute acknowledges the findings of the PEC that, irrespective of what the Institute believed were bona fides reasons for admitted departure from strict compliance with the Institute's Bye-Laws in certain instances, that prima facie breaches of the Institute's Articles of Association and Bye Laws occurred in our investigation of this complaint. As

previously indicated to the PEC, the Institute has at all times been open to resolving matters and has no objection in principle to address any determined deficiencies by way of fresh investigation, but was constrained by its Bye-Laws and the confidential nature of the PEC process from fully exploring these options with the Member and Complainant concerned. The Institute reiterates its willingness to conduct a fresh investigation if deemed appropriate by the Enquiry Committee and remains fully committed to ensuring all parties to an investigation are afforded fair procedures and process in the operation of its Bye-Laws."

7. By letter dated 21 August 2018 the Enquiry Committee wrote to the Institute stating, inter alia, that "... subject to any submissions that [the Member] may wish to make, the [Enquiry Committee] would propose not to further exercise its rights under Regulation 7(4) and proceed to make a decision under Regulation 11 based on the documentation already furnished to the [Enquiry Committee] by the Institute."
8. By letter dated 28 August 2018 the Enquiry Committee wrote to the Member enclosing a copy of the correspondence with the Institute referred to above and invited the Member, if he so wished, to make a submission to the Enquiry Committee setting out in writing "... any objection that [he had] to the [Enquiry Committee] proceeding on ..." the basis it set out in its letter of 21 August 2018 to the Institute.
9. By letter dated 12 September 2018 the Member responded and made the written submission to the Enquiry Committee. [REDACTED]

Summary of Decision of the Enquiry Committee

10. The Enquiry Committee has carefully considered all the documents and submissions furnished to it, including the *prima facie* decision of the Preliminary Enquiry Committee, the submissions made by the Institute, the Complainant and the Member and has determined that it is not satisfied that the Institute complied with the approved investigation and disciplinary procedures. Consequentially, the Enquiry Committee advises the Institute and, insofar as it is necessary, annuls the decision of the Institute of the 31st of March 2016 in which it was decided by a sub-committee of the Institute that, in relation to the subject of the enquiry, there was insufficient *prima facie* evidence of professional misconduct and annuls, insofar as it is necessary, the decision notified to the Complainant on 11 July 2016. The Enquiry Committee also directs that a fresh investigation be carried out by the Institute into the matter as soon as practically possible. The detail of the Enquiry Committee's deliberations is outlined below.

Reason for the Enquiry Committees decision

Submissions by the Institute

11. The Enquiry Committee considered the reasoning behind the PEC Decision and the submissions made by the Institute, the Complainant and the Member to the Enquiry Committee. In relation to the submissions made by the Institute, by letter dated 31 July 2018 from the Institute to the Enquiry Committee, the Institute stated that it did not:

"propose to make any additional written submissions in this matter or request an opportunity to make oral submissions before the Enquiry Committee. The Institute believes that all relevant material was before, and considered, by the PEC and we would refer you

to the Institute's written submissions to the Preliminary Enquiry Committee (PEC) of 19 and 28 February 2018 together with enclosures and the Institute's letter of 13 April 2018 in reply to the draft conclusions of the PEC."

Article 50 and Bye-Law 6.10

12. Article 50(c) and Bye-Law 6.10.3 include provisions permitting the Investigation Committee of the Institute (the "Investigation Committee") to delegate such of its functions and powers to a sub-committee of its members. Article 50(b) and Bye-Law 6.10.2 state that the quorum for a meeting of the Investigation Committee shall be three persons as follows:

"The quorum for meetings of the Investigation Committee shall be three persons, so long as a majority of the attendance thereat consists of members who are not Members of the Institute."

13. The Member did not make any submission in relation to Article 50 and Bye-Law 6.10.

14. The Enquiry Committee, having carefully considered the reasoning of the PEC at paragraphs 13, 14, 15, 16 and 17 of the PEC Decision, agree with the reasoning therein and adopts same for the purpose of this decision.

Bye-Law 6.19.4

15. This Bye-Law states:

"The Investigation Committee may in its absolute discretion give a Member, Firm, Affiliated Partner or Student the opportunity to be heard before it and to be represented at that time by a Lawyer or a Member."

16. The Member's submission can be summarised thus; the two persons (the Audit Manager and consultant/author) present at the relevant hearing were not there in a representative capacity but as appropriately qualified witnesses and to "assist" the Complainant.

17. The Member relies on Bye-Law 6.18.7 which refers, inter alia, to the right of a member of the Institute *"to be heard and be represented by a lawyer or a Member of the Institute at an application and call witnesses to give evidence if he desires [emphasis added]"*. However, this Bye-Law deals with ex-parte applications to the Investigation Committee which is not relevant in the circumstances being considered by this Enquiry Committee. Bye-Law 6.19.4 (the relevant Bye-Law) does not confer an entitlement to call witnesses to give evidence and, presumably this was intentional. In any event, the gravamen of the decision of the PEC was that the two persons present with the Member acted in a representative capacity and not in the capacity as mere witnesses. The PEC expressed the view that:

"it is evident from the transcript of the hearing before the Investigation Sub-Committee on 7 March 2016 that the consultant ICAI member and author was a frequent contributor to the hearing and was clearly representing the Member Firm before the Sub-Committee. Indeed in response to Sub-Committee questions on a number of occasions, the principal of the Firm deferred to the consultant and allowed him to answer the questions on the Firm's behalf".

The Enquiry Committee agrees with this view.

18. The Enquiry Committee, having carefully considered the reasoning of the PEC at paragraphs 21, 22, 23 and 24 of the PEC Decision, agree with the reasoning therein and adopts same for the purpose of this decision.

Bye-Law 6.19.5

19. This Bye-Law states:

"The Investigation Committee may in its absolute discretion give a Complainant the opportunity to be heard before it. If the Investigation Committee affords the Complainant with this opportunity it shall also afford the Member, Firm, Affiliated Partner or Student with the same opportunity together with the right to be represented by a Lawyer or a Member."

20. The Complainant raised an issue about the fact that the Complainant was not given an opportunity to be heard in relation to its complaint. The Member submitted that he had "no idea why this opportunity was not given to the Complainant, but [he] should not have to suffer the additional expense of hiring professional representatives, the stress and time cost of a re-hearing."
21. The Member does not argue that the Complainant should not have been given the opportunity to be heard but takes issue with a potential consequence of the Investigation Committee not giving the opportunity to the Complainant i.e. the Enquiry Committee directing a fresh investigation. The Enquiry Committee has some sympathy with the Member given that the Investigation Committee took no issue with the role played by the persons who accompanied the Member. However, the role of the Enquiry Committee is to ensure that the Institute complied with its Bye-Laws and, in the absence of any evidence that the Member would be prejudiced to the extent that he could not have a fair hearing, the Enquiry Committee is entitled to consider all of the options open to it, including directing a fresh investigation.
22. The Enquiry Committee, having carefully considered the reasoning of the PEC at paragraphs 41, 42, 43 and 44 of the PEC Decision, agree with the reasoning therein and adopts same for the purpose of this decision.

The Independent Review Process (particularly Bye-Laws 6.24.6, 6.24.7 and 6.24.8)

23. Bye-Law 6.24 relates to the independent review process. The relevant provisions at issue are:

6.24.6

The Independent Reviewer shall carry out the review based solely on all documentation that was in the possession of the Investigation Committee when it was carrying out its investigation in relation to the Complaint. If the Independent Reviewer is provided with new information that was not before the Investigation Committee and if he is of the opinion that this information is significant he can require the Investigation Committee to reopen the case or can require the new information to be dealt with under these Bye-Laws as a new Complaint.

6.24.7

If, following a review in accordance with this Bye Law 6, the Independent Reviewer is of the opinion that the decision of the Investigation Committee was correct the Secretary shall on his behalf so inform the Member, Affiliated Partner, Student or Firm concerned, the Investigation Committee and the Complainant in writing, stating his reasons for forming such an opinion.

6.24.8

If, following a review in accordance with this Bye Law 6, the Independent Reviewer is of the opinion that the decision of the Investigation Committee was wrong, he shall remit the case to the Investigation Committee for reconsideration stating In Writing his reasons for forming such

an opinion. At the same time the Secretary shall on his behalf inform the Member, Affiliated Partner, Student or Firm concerned, and the Complainant, In Writing, that he has decided to remit the matter to the Investigation Committee for reconsideration."

24. The Member did not make a submission in relation to the above Bye-Laws.
25. The Enquiry Committee, having carefully considered the reasoning of the PEC at paragraphs 27, 28, 29 and 30 of the PEC Decision, agree with the reasoning therein and adopts same for the purpose of this decision.

Last Submission by the Member

26. The Member finished up his submission stating "*It is simply unfair that I should have to endure further disciplinary Action by IAASA when the problems lie solely in the manner in which the CPA Institute Bye-Laws are written. I was fairly exonerated at the Institute Investigation Sub-Committee, in 2016 and that should be the end of the matter, from my point of view.*"
27. In relation to this submission the Enquiry Committee notes that IAASA is examining this matter pursuant to Section 933 of the Companies Act 2014 in relation to the conduct of the matter by a prescribed accountancy body and is not engaged in a disciplinary action with a member of prescribed accountancy bodies. The Enquiry Committee notes the Member's views about perceived unfairness, but it is of the view of the Enquiry Committee that, if the Bye-Laws are correctly applied, he should not suffer an injustice. The Enquiry Committee must also weigh the fairness or lack thereof in the Institute not conducting the matter in accordance with its Bye-Laws. In these circumstances the Enquiry Committee is entitled to consider all options open to it in relation to any sanction.

Other Observations of the PEC

28. The Enquiry Committee note the observations of the PEC from paragraph 37 to 50 (excluding paragraphs 40 to 44) of the PEC Decision. The Enquiry Committee take the view that these are matters to be considered by IAASA and the Institute and, as such, the Enquiry Committee makes no findings in regard to any of the matters therein contained.

Decision

29. The Enquiry Committee has carefully considered the sanctions that are available to it. The Enquiry Committee notes that from a very early stage i.e. during the early stages of the PEC process that the Institute, to its credit, was open to reaching a settlement with IAASA. Unfortunately, due to the statutory framework it was not possible to agree an appropriate settlement and the matter had to proceed to this stage of the process. The Enquiry Committee also notes that all of the parties fully co-operated with the Enquiry Committee, dealt with the process as expeditiously as possible and complied, in the main, with any time limits imposed on them.
30. Taking the previous paragraph into consideration the Enquiry Committee:
 - a. finds that the Institute should be advised;
 - b. annuls, insofar as it is necessary, the decision of the Institute of the 31st of March 2016 in which it was decided by a sub-committee of the Institute that, in relation to the subject of the enquiry, there was insufficient *prima facie* evidence of professional

misconduct and annuls, insofar as it is necessary, the decision notified to the Complainant on 11 July 2016;

- c. directs that a fresh investigation should be undertaken by the Institute and that such fresh investigation should be commenced as soon as reasonably practical but no later than six weeks from the date this decision has legal effect; and
- d. makes no direction as to levying the costs of this enquiry or imposing a monetary penalty on the Institute.



Caitriona Crowley,

Chair of Enquiry Committee

10 December 2018

APPENDIX 1

THE IRISH AUDITING AND ACCOUNTING SUPERVISORY AUTHORITY

In the Matter of a Complaint by the Health Service Executive against the Institute of Certified Public Accountants in Ireland

Decision of Preliminary Enquiry Committee 2/2017

Introduction and Summary of Initial Events

1. On 20 May 2015, the Health Service Executive (“Complainant”) sent a complaint (“Complaint”) to the Institute of Certified Public Accountants in Ireland (“Institute”). This related to the conduct of statutory audits by Cronin & Company (“Member Firm”) of the annual financial statements of Positive Action Ltd, a company in liquidation (“Company”) which was funded by the Complainant. The basis for the Complaint was that in the auditing of the Company financial statements, principle 4 of the Institute’s Guide to Professional Ethics was breached. This requires a member “to carry out his or her professional work with due skill, care, diligence and expedition and with proper regard to the technical and professional standards of a member”. There followed a process of consultation on the Complaint between the Institute and the Member Firm and the Institute and the Complainant.
2. On 8 December 2015, the Chair of the Institute’s Investigation Committee, at a meeting with the Secretary of the Institute, confirmed that neither she nor any other member of the Committee should hear the Complaint against the Member Firm, because a principal of the Member Firm was serving on the Institute’s Investigation Committee. She accordingly decided to appoint a sub-committee of the Investigation Committee (comprising three newly appointed members of the Committee) and delegated all of the functions and powers of the full Committee to the Sub-Committee in respect of the Complaint. This action was taken to address the possible conflict of interest and perception of bias concerns. A new Secretary to the Sub-Committee was appointed for a similar reason. It was also decided that the Complaint would not be laid before the Chair or the full Committee and that the full Committee would not be advised of its existence.
3. When the Member Firm attended before the Investigation Sub-Committee on 7 March 2016, it was represented by the principal of the Member Firm who served on the Investigation Committee, an accountant from the Firm and a consultant. The Complainant was not afforded a hearing before the Investigation Sub-Committee.
4. Ultimately on 31 March 2016, the Sub-Committee determined that there was insufficient *prima facie* evidence of professional misconduct. This decision led to the Complainant requesting that this decision be examined by an Independent Reviewer who sought in her subsequent report dated 30 May 2016 that the reasons for the decision be itemised. However she did not challenge the Sub-Committee’s decision. This outcome, accompanied by the Sub-Committee’s reasons for its decision, was notified to the Complainant on 11 July 2016.

5. The Complainant then appealed to the Irish Auditing and Accounting Supervisory Authority (“IAASA”) whose staff later met the Complainant. In February 2017, IAASA staff did a desk review of the Institute’s file relating to the case. This disclosed a number of grounds of apparent non-compliance by the Institute with certain of its Articles and Bye-Laws in its consideration of the Complaint. Arising from the results of this work, the Board of IAASA appointed a Preliminary Enquiry Committee (“PEC 2/2017”) in late 2017 to examine the matter.

Purpose of a Preliminary Enquiry

6. Pursuant to the Companies (Auditing and Accounting) Act 2003 (Procedures governing the Conduct of Section 23 Enquiries) Regulations 2012 (“SI No 96 of 2012”), the purpose of a preliminary enquiry is to determine if a full enquiry is warranted. Regulation 4(3) states:
“A full enquiry will be initiated where a Preliminary Enquiry Committee determines that:
 - (a) there is a prima facie case that a prescribed accountancy body has failed to comply with its approved investigation and disciplinary procedures; and*
 - (b) the circumstances of the matter are such as to warrant the initiation of a full enquiry by the Authority.”*

Work of PEC 2/2017

7. At the outset, PEC 2/2017 communicated the grounds for the establishment of the Preliminary Enquiry to the Institute, the Member Firm and the Complainant on 19 January 2018 and sought relevant submissions and documentation to assist its work. This prompted the following replies:
 - a letter of 6 February 2018 from the Member Firm;
 - a letter of 19 February 2018 and enclosures from the Institute;
 - a letter of 19 February 2018 and enclosures from the Complainant, and
 - a second letter of 28 February 2018 and enclosures from the Institute.
8. Having considered these submissions and enclosures, PEC 2/2017 prepared a Draft Conclusion and sent it to the Institute on 22 March 2018 for its observations. After requesting and receiving clarification of the process of settlement envisaged under Regulation 16 of SI No 96 of 2012, the Institute forwarded its observations on the Draft Conclusion to PEC 2/2017 on 13 April 2018. After taking account of these observations at a meeting on 24 April 2018, PEC 2/2017 finalised this Decision and decided to forward it to the Board of IAASA for consideration.

Summary of Decision of PEC 2/2017

9. Pursuant to Regulation 4(3) of SI No 96 of 2012, PEC 2/2017 has determined that there is a *prima facie* case that in adjudicating on the Complaint, the Institute failed to comply with its approved investigation and disciplinary procedures in three particular respects and that the circumstances of the matter are such as to warrant the initiation of a full enquiry by the Authority. The detail of the PEC’s deliberations is outlined in the following sections. Later on, the PEC also makes a

number of other observations on the matters before it. The final section contains its overall conclusion.

The Appointment of the Investigation Sub-Committee (Article 50 and Bye-Law 6.10)

10. Article 50(c) and Bye-Law 6.10.3 include provisions permitting the Investigation Committee to delegate such of its functions and powers to a sub-committee of its members. Article 50(b) and Bye-Law 6.10.2 state that the quorum for a meeting of the Investigation Committee shall be three persons as follows:

“The quorum for meetings of the Investigation Committee shall be three persons, so long as a majority of the attendance thereat consists of members who are not Members of the Institute.”

Institute Submissions

11. In its submissions to PEC 2/2017, the Institute recognised that there was not strict compliance with this minimum quorum requirement at the Investigation Committee meeting on 8 December 2015 when it was decided to constitute a sub-committee of Committee members to examine the Complaint and to delegate the Committee’s functions and powers to that Sub-Committee. However, the Institute sought to justify the contravention on the following basis:

- strict compliance was deemed to be inappropriate. Specifically, it was inappropriate for any existing member of the Investigation Committee to have an investigative function into a complaint against a co-member of the Committee as this would give rise to an obvious conflict of interest and a reasonable apprehension of bias. It was to ensure impartiality and to safeguard the integrity of the investigative process that the Chair took the decision to delegate the Committee’s functions to the Sub-Committee of members who had no prior relationship on the Committee with the principal of the Member Firm which was the subject of the Complaint;
- the Independent Reviewer expressed the view at paragraph 1.5.6 [sic] of her Report that the Chair’s actions were necessary and appropriate. The relevant paragraph 1.5.7 of the Report states:

“In the circumstances, I am satisfied that the Chair took the necessary and appropriate course of action in establishing a Sub-Committee compiled of individuals who had not served on any committee with the Member in question. Further, it was appropriate, having regard to fair procedures and confidentiality, that the [sic] Mr. Siggins take on the role of Secretary and the case not be laid before the Chair or the full Committee, and the full Committee not be made aware of its existence.”

- the lacuna in the Institute’s Articles/Bye-Laws which came to notice with this conflict of interest situation has since been rectified with appropriate amendments made to both documents in June 2017 with the approval of IAASA.

12. The Institute also submitted that its steps to avoid a conflict of interest or perception of bias were appropriate and necessary having regard to current jurisprudence. In support of its stance, it cited the High Court Judgment in O’Ceallaigh v An Bord Altranais [2009] IEHC 470.

Views of PEC 2/2017

13. Having considered the Institute's submissions, PEC 2/2017 accepts that in dealing with the Complaint against the Member Firm, the Institute was required to act to safeguard its planned investigation from conflicts of interest and objective bias. The PEC agrees that the appointment to the Investigation Committee of three new members and the constitution of a sub-committee with delegated powers comprising these new members and a new secretary to hear the Complaint was an appropriate response.
14. However, PEC 2/2017 does not accept that it was necessary to breach the quorum requirement in Article 50(b) and Bye-Law 6.10.2 in order to achieve this end. The PEC believes that there was no impediment to a minimum of three members of the Investigation Committee (excluding the principal of the Member Firm sitting on the Committee) being informed that a complaint had been received against a Committee member. Similarly, the PEC takes the view that in line with the above provisions, Committee decisions to establish a sub-committee of its three new members to hear the Complaint and to delegate its functions and powers to the Sub-Committee would have been regarded as an entirely proper response in the circumstances.
15. Moreover, the PEC considers that the further decision made at the Institute meeting on 8 December 2015 that the Investigation Committee would not even be advised of the existence of the Complaint was similarly inappropriate. This decision sought to deny the Committee information about the work of its own Sub-Committee.
16. As a consequence of the decisions taken at the Institute's meeting on 8 December 2015 in contravention of Article 50(b) and Bye-Law 6.10.2, the appointment of the Sub-Committee to hear the Complaint was defective.
17. It follows from the above that the PEC considers unnecessary the subsequent amendment by the Institute (with the agreement of IAASA) of Article 50(b) and Bye-Law 6.10.2, the purpose of which was to address the 'lacuna' which was perceived by the Institute to exist in each provision.

The Hearing of the Member Firm before the Investigation Sub-Committee (Bye-Law 6.19.4)

18. Bye-Law 6.19.4 states:
"The Investigation Committee may in its absolute discretion give a Member, Firm, Affiliated Partner or Student the opportunity to be heard before it and to be represented at that time by a Lawyer or a Member."
19. The two persons who accompanied the principal of the Member Firm to the hearing of the Investigation Sub-Committee on 7 March 2016 were:
 - an accountant from the Firm who was a member of the Association of Chartered Certified Accountants ("ACCA"), and

- a consultant who was a member of the Institute of Chartered Accountants in Ireland (“ICAI”) and an author of a book on auditing published by the ICAI.

Institute Submissions

20. In its submissions to PEC 2/2017, the Institute stated:

“Whilst the member is given an opportunity to be heard and to be represented by a lawyer or a member there is nothing in the Memorandum & Articles or bye law 6 which prevents a member bringing other persons with him in a support capacity and it has been the custom and practice of the Investigation Committee to permit this.

In this instance, the member was not ‘represented’ by either of the two individuals who attended with him. He represented himself and the two individuals attended by way of support and with the agreement of the Committee.”

Views of PEC 2/2017

21. Having carefully considered the Institute’s submissions, PEC 2/2017 does not accept them. Firstly, the limits of a member’s representation are defined by Bye-Law 6.19.4 and the similar provisions in Bye-Laws 6.19.3 and 6.19.5. While Bye-Law 6.19.4 gives the Investigation Committee discretion to permit a member representation before it of a lawyer or a member of the Institute, it does not confer any discretion on the Committee to permit other categories of person to represent the member at its hearing.
22. Secondly in the PEC’s view, it is evident from the transcript of the hearing before the Investigation Sub-Committee on 7 March 2016 that the consultant ICAI member and author was a frequent contributor to the hearing and was clearly representing the Member Firm before the Sub-Committee. Indeed in response to Sub-Committee questions on a number of occasions, the principal of the Firm deferred to the consultant and allowed him to answer the questions on the Firm’s behalf.
23. Thirdly, Articles 49 (m) and (o) and Bye-Law 6.26 govern attendance as observers before the Investigation Committee, and these confer attendance rights solely on the Financial Regulator and IAASA. No other category of person is permitted to attend the Committee as an observer. While the PEC accepts that the ACCA member who attended the Sub-Committee hearing did not speak and did not therefore play any representative role at the hearing, nevertheless he was not entitled under the Articles of Association or Bye-Laws to observe the Sub-Committee’s proceedings.
24. In consequence, PEC 2/2017 concludes that the hearing was defective as it was not conducted in accordance with Bye-Law 6.19.4.

The Independent Review Process (particularly Bye-Laws 6.24.6, 6.24.7 and 6.24.8)

25. Bye-Law 6.24 relates to the independent review process. The relevant provisions at issue are:
- “6.24.6

The Independent Reviewer shall carry out the review based solely on all documentation that was in the possession of the Investigation Committee when it was carrying out its investigation in relation to the Complaint. If the Independent Reviewer is provided with new information that was not before the Investigation Committee and if he is of the opinion that this information is significant he can require the Investigation Committee to reopen the case or can require the new information to be dealt with under these Bye-Laws as a new Complaint.

6.24.7

If, following a review in accordance with this Bye Law 6, the Independent Reviewer is of the opinion that the decision of the Investigation Committee was correct the Secretary shall on his behalf so inform the Member, Affiliated Partner, Student or Firm concerned, the Investigation Committee and the Complainant In Writing, stating his reasons for forming such an opinion.

6.24.8

If, following a review in accordance with this Bye Law 6, the Independent Reviewer is of the opinion that the decision of the Investigation Committee was wrong, he shall remit the case to the Investigation Committee for reconsideration stating In Writing his reasons for forming such an opinion. At the same time the Secretary shall on his behalf inform the Member, Affiliated Partner, Student or Firm concerned, and the Complainant, In Writing, that he has decided to remit the matter to the Investigation Committee for reconsideration."

Institute Submissions

26. In its submissions to PEC 2/2017, the Institute made the following points:

- the Independent Reviewer expressed herself unable to form a view on the validity of the Sub-Committee's decision in the absence of any reasons or findings of fact relating to the evidence before it;
- the sole reason for her remitting the matter back to the Sub-Committee was to secure the reasons for its decision of no *prima facie* evidence of misconduct, because the parties were entitled to know those reasons as a matter of fair procedure. This was the only aspect on which the Independent Reviewer expressed any criticism of the Sub-Committee;
- there is no express provision in the Bye-Laws for a remittal to address only a perceived procedural flaw, namely in this case the failure to give reasons;
- at the end of the process, the Institute provided the Complainant with the Independent Reviewer's report, the Sub-Committee's reasons for its decision of no *prima facie* evidence of misconduct and the Independent Reviewer's response to notification of those reasons (in which she declined to state whether the Sub-Committee's decision was correct or wrong).

Views of PEC 2/2017

27. Having considered the Institute's submissions in the context of Bye-Law 6.24, PEC 2/2017 notes that the Institute is silent on the validity of the decision of the Independent Reviewer not to comply with Bye-Law 6.24.7 or 6.24.8 during or at the end of the independent review process. The PEC is

of the view that the process of independent review required her to determine if the decision of the Investigation Sub-Committee was either correct (Bye-Law 6.24.7) or wrong (Bye-Law 6.24.8).

28. Part of the decision of the Independent Reviewer which is relevant to Bye-Law 6.24.6 above stated:
"In the absence of any reasons or findings of fact relating to the evidence before the Sub-Committee, I am unable to form a view regarding the decision reached by the Sub-Committee."
29. Having regard to Bye-Law 6.24.6 which required the Independent Reviewer to review the Sub-Committee's decision based solely on the documentation before it, it is the PEC's view that she was not entitled to refrain from opining on the validity of the Sub-Committee's decision in the absence of a statement of reasons. In consequence, it fell to the Institute to secure compliance by her with both Bye-Law 6.24.6 and the requirement under either Bye-Law 6.24.7 or 6.24.8. Once she was not prepared to comply with one or both of these requirements and although there was no specific provision in the Bye-Laws, the Institute had an implicit entitlement, in the view of the PEC, to initiate a fresh process of independent review in order to provide the Complainant with the recourse included in the Bye-Laws.
30. In consequence, PEC 2/2017 concludes that the Institute's process of independent review in this case was defective and that the Complainant was denied proper recourse to Bye-Law 6.24.

Various Other Article and Bye-Law Matters

Institute Submissions

31. The Institute represented that the appointment of the Secretary to the Sub-Committee was made in accordance with Article 40(g). It also stated that the subsequent decision of the Sub-Committee under Article 50(h) in addressing if the Complaint entailed matters of public concern and/or of complexity or importance was made in accordance with the Article. It attributed the failure to record the complete decisions made under these Articles in the minutes of the relevant meetings to administrative oversights.
32. The Institute acknowledged various failures to comply with the requirements of Bye-Laws 6.13.2 and 6.24.3 in respect of Institute acknowledgements and correspondence, requests to the Institute for additional time, non-compliance with deadlines for reply and the consequences of failing to reply on time. However it indicated that these shortfalls occurred both with respect to the Member Firm and the Complainant and that no preferential treatment was accorded to one side over the other. It also submitted that a rigid adherence to Bye-Law requirements in certain instances could have been detrimental to the investigative process.

Views of PEC 2/2017

33. On Articles 40(g) and 50(h), PEC 2/2017 notes the submissions of the Institute. The PEC is not making further enquiries in these areas as no such enquiries are necessary at this time.
34. Having considered the other Institute submissions, PEC 2/2017 accepts that the Institute did not favour either party in this case in acting under Bye-Laws 6.13.2 and 6.24.3. However the PEC

considers that the Institute should comply with its Articles and Bye-Laws to the greatest possible extent. Experience in this case suggests that the Bye-Laws are unduly prescriptive and that in relevant instances greater flexibility should be given to the Secretary of the Institute to determine more minor matters during the course of an investigation.

35. Arising from its evaluation of the Institute's documentation in this case, PEC 2/2017 wishes to identify another matter of concern, namely the practice of failing to include reasons for the taking of particular decisions required by the Articles and Bye-Laws (e.g., decisions under Article 50(h) and Bye-Law 6.19.6 in the case of this Complaint). This practice denies the Institute's internal and external stakeholders of a proper appreciation of the deliberations associated with each such decision. It is therefore the PEC's view that the Institute needs to improve its performance in this area.
36. The PEC's experience with this case suggests that the Institute may need to consider the merits of amending:
- Bye-Law 6.19.6 to remove the option of denying a statement of reasons for a decision to any of the parties to a complaint;
 - Bye-Law 6.24.6 to permit the statement of reasons to be part of the documentation which is considered by the Independent Reviewer.

Other Observations of PEC 2/2017

Complaint File Documentation

37. PEC 2/2017 notes a number of omissions from the Institute's Complaint File documentation including:
- the audited financial statements of the Company for the years 2009 to 2012 inclusive which are the subject of the Complaint;
 - ISA 200 and ISA 240 (extracts from which are included in the reasons for the Investigation Sub-Committee's decision) or associated commentary on the proper application of relevant auditing standards, excepting one document on the Complaint File from www.accaglobal.com/ie about ISA 240 which indicated *inter alia* that external auditors had secondary responsibilities for the detection of fraud. (The PEC notes that the representations made on behalf of the Member Firm at the hearing denied any responsibility for the fraud at the Company.¹);
 - any documentation which might indicate that the Investigation Sub-Committee had satisfied itself of the validity of the representation made on behalf of the Member Firm at the hearing as to what the law accepted as constituting proper books of account in the case of Faxhill Homes Ltd. (While the PEC does not know if this representation is valid, it is aware that Faxhill

¹ Page 82, line 14, in particular of the transcript of the hearing of 7 March 2016.

Homes Ltd and a director were convicted and fined in 2001 for breaching Section 202 (Proper Books of Account) of the Companies Act 1990 and other provisions of the Companies Acts².)

38. Similarly, PEC 2/2017 notes that the reasons accompanying the decision of the Investigation Sub-Committee do not comprehensively address each of the ten alleged deficiencies in the Complaint pertaining to the Member Firm's auditing performance. Accordingly it is not evident from the available documentation that the Sub-Committee deliberated on all of these alleged deficiencies and reached a determination on each one.
39. In the circumstances, the PEC is of the view that there are circumstances suggesting that the Institute:
- could have made further enquiries before arriving at its determination on the validity of the Complaint, and/or
 - could have better documented its deliberations where any such enquiries were made.

The Complainant and a Hearing (Bye-Law 6.19.5)

40. Bye-Law 6.19.5 states:

"The Investigation Committee may in its absolute discretion give a Complainant the opportunity to be heard before it. If the Investigation Committee affords the Complainant with this opportunity it shall also afford the Member, Firm, Affiliated Partner or Student with the same opportunity together with the right to be represented by a Lawyer or a Member."

41. Having considered the Institute's documentation, PEC 2/2017 notes that there is no record of the Investigation Sub-Committee having offered the Complainant a hearing under Bye-Law 6.19.5. Similarly, there is no record of the Sub-Committee having considered exercising this option.
42. The PEC notes that there were factual disputes and differences of opinion between the Member Firm and the Complainant over a large number of matters. Some of these matters included:
- the extent to which the Member Firm offered to or withheld from the Complainant the correct data set of the Company's records in its possession;
 - the differing Company bank reconciliation statements forwarded by the Member Firm to the Institute and the Complainant;
 - the inclusion by the Member Firm in the Company's audited financial statements of transactions which were not correctly accounted for;
 - the Member Firm's response to the writing of large Company cheques close to its financial year-end;

² Companies Report 2001, pages 36-40, at <https://www.cro.ie/Portals/0/corporate%20publications/company%20law/companiesreport2001f.pdf>.

- the existence of a material Company liability for legal fees;
 - the charging of a director's private business expenses to the Company;
 - the alleged statements made to the Complainant by the Member Firm about the Company at different times;
 - the extent to which the Complainant could rely on the validity of the audited annual accounts.
43. Offering a hearing to the Complainant under Bye-Law 6.19.5 would have assisted the Sub-Committee in two important respects:
- the Sub-Committee could better establish to what extent the Complainant's and Member Firm's differing accounts of certain factual matters were accurate;
 - the Sub-Committee could better evaluate the explanations and representations made by the Complainant and Member Firm of the professional obligations of the Member Firm in the circumstances of the case.
44. Having regard to the factual disputes and differences of opinion involved in this case and the fact that only one of the parties to the Complaint was given a hearing, the PEC is of the view that there are circumstances suggesting that the Institute may not have adhered to fair procedures in evaluating the Complaint.

Summary Submissions of the Parties to the Complaint

Initial Submissions

45. As indicated earlier, PEC 2/2017 invited the parties to the Complaint to make submissions to it on the matters at issue. In its replies of 19 and 28 February 2018, the Institute submitted that insofar as there was any failure by it to comply with its approved investigation and disciplinary procedures, the failure involved was insufficient to warrant the establishment of a full enquiry in all of the circumstances.
46. In its reply of 6 February 2018, the Member Firm submitted that the Institute thoroughly investigated the Complaint, with each party able to state their case in full and have all relevant facts considered.
47. In its reply of 19 February 2018, the Complainant submitted that the case raises significant matters of public interest, because public bodies make decisions about the funding of voluntary organisations based on their receipt of audited accounts.

PEC's Draft Conclusion

48. In replying to the PEC's Draft Conclusion on 13 April 2018, the Institute reiterated that any breach of the Institute's Bye-Laws in this instance arose either by way of genuine inadvertence and/or in an effort to avoid a conflict of interest/reasonable apprehension of bias and was motivated by a desire to ensure an independent investigation for the benefit of all parties concerned. At the same time, it noted the PEC's Draft Conclusion that its efforts did not, in particular with respect to the Complainant, do so in this instance.
49. While stating that it had no principled objection to a *de novo* investigation of the Complaint, the Institute pointed out that its Bye-Laws contain no provision to set aside or otherwise deem null and void the outcome of a completed investigation. Nor do its Bye-Laws contain a power or provision permitting the Institute to direct the holding of a fresh *de novo* enquiry. The Institute added that in circumstances where the PEC's Draft Conclusion was not shared with the Member Firm or the Complainant, its confidentiality obligations precluded it from ascertaining the willingness of these parties to submit to a new enquiry outside the Institute's Bye-Laws. In consequence, the Institute felt unable to explore the option of settlement under Regulation 16 of SI No 96 of 2012. Moreover it noted that the ordering by IAASA of a *de novo* investigation is typically made following a full enquiry.
50. Notwithstanding these comments, the Institute confirmed its willingness to engage and explore a resolution of matters and to make a substantive submission on how that might be achieved. It is the view of PEC 2/2017 that this is beyond its remit and relevant to future IAASA regulatory and monitoring decisions vis-à-vis the Institute.

Overall Conclusion

51. PEC 2/2017 has determined that the following substantive *prima facie* breaches of the Institute's Articles of Association and Bye-Laws occurred in its investigation of the Complaint against the Member Firm:
- Article 50(b) and Bye-Law 6.10.2 (as they existed on 8 December 2015 when the Investigation Sub-Committee was established) dealing with the appointment of the Investigation Sub-Committee;
 - Bye-Law 6.19.4 relating to the hearing of the Member Firm before the Investigation Sub-Committee, and
 - Bye-Law 6.24.6 and Bye-Law 6.24.7 or 6.24.8 governing a significant part of the independent review process.
52. It is evident that these *prima facie* breaches relate to a number of aspects of the Institute's investigation of the Complaint commencing with the formation of the Investigation Sub-Committee and continuing through the conduct of its investigation and the process of independent review of its decision.

53. The PEC has therefore concluded that the rights of the Complainant under the Articles and Bye-Laws to a proper investigation of the Complaint can only be vindicated by proceeding to a Full Enquiry or by a satisfactory settlement of the matter prior to the conclusion of the Enquiry. It is also the view of the PEC that the performance of the Member Firm in this case can only be definitively determined by an investigation in full compliance with the applicable Articles and Bye-Laws.

Chair of PEC 2/2017

26 April 2018