

in section 35 of the Professional Accountants Ordinance ("**PAO**"). The sanctions imposed by a Disciplinary Committee could be any one or more of the following:

- (1) permanent or temporary removal of respondent's name from the register of CPAs;
- (2) cancellation of respondent's practising certificate;
- (3) respondent be reprimanded;
- (4) respondent pay a penalty of not exceeding HK\$500,000;
- (5) a practising certificate shall not be issued to respondent either permanently or temporarily;
- (6) respondent pay costs and expenses of and incidental to the proceedings.

3. In considering the disciplinary orders to impose, the Committee has in mind the objects of the Institute as set out in section 7 of the PAO which include the following:

- (a) to regulate the practice of the accountancy profession;
- (b) to represent the views of the profession and to preserve and maintain its reputation, integrity and status; and
- (c) to discourage dishonourable conduct and practices by CPAs.

4. Therefore, the Committee imposes sanctions which are not only proportionate to the nature of the failure and the harm or potential harm caused by the breach, but also with the aim to:

- (a) protect public interest;
- (b) deter non-compliance with professional standards;
- (c) maintain and promote public confidence in the profession; and
- (d) declare and uphold proper standards of conduct and performance.

5. The Committee has taken the following steps in determining the disciplinary order:

- (1) determined the nature and seriousness of the offence;
- (2) determined appropriate sanctions based on case severity before considering other factors; and

- (3) considered impact of other factors on sanctions (i.e. past similar cases, aggravating and mitigating factors) in determining the disciplinary order.

Sanctions

- 6. The 1st and 2nd Complaints and the first 3 grounds of the 3rd Complaint concerned the Respondent's conduct in respect of the Cordell Trust monies.
 - (a) The 1st Complaint (established) was of dishonourable conduct and professional misconduct because the Respondent used trust monies for unauthorized purposes. Dishonesty of the Respondent was involved. There is no question that this is at the most serious end of the potential range of misconduct by a CPA.
 - (b) The 2nd Complaint (established) was of failing to separate client funds from the CPA's firm's funds. In the context of this case, where client funds were misused rather than e.g. temporarily mixed but without any loss to the client, this is a serious breach.
 - (c) The relevant parts of the 3rd Complaint (established) were improper conduct of practice which the CPA knew might discredit the profession, based on the misuse of trust funds. As indicated in the Decision, the very serious misconduct of the Respondent amounts to breaches of several different provisions but, insofar as we are concerned with the same conduct, there is no justification for giving different sanctions for these complaints.
 - (d) We have no doubt that the most serious misconduct warrants the most serious penalty, namely permanent removal of the Respondent's name from the register of CPAs.
 - (e) It is not disputed that the Respondent is bankrupt. We have taken account of the Respondent's ability to pay alongside the need to impose a penalty with deterrent effect. We consider the permanent removal from the register to have the necessary deterrent effect. We see no merit in also ordering a financial penalty which on the evidence could not be paid.
 - (f) The Respondent's submissions on mitigation address (1) details of her voluntary educational contributions to the profession, (2) letters of support from members of the general community, and (3) areas of disagreement with the Decision (which are not relevant to mitigation). We are prepared to accept at face value (1) the Respondent's educational contributions and (2) that the Respondent has proved herself to members of the general community, in particular her church community, to be a kind, generous and decent person. None

of this, however, can explain or exonerate (even in part) the misuse of trust funds.

- (g) We take into account the fact that the High Court decision addresses many of the same items of misconduct by the Respondent and that the Respondent is serving a prison sentence by way of punishment. No doubt, this should have a deterrent effect on the Respondent and other CPAs who would consider such misconduct. However, the interests of the public require protection against such unscrupulous conduct, once the Respondent is at liberty to work again.
 - (h) Further, we consider there are the following aggravating factors: a lack of remorse; a lack of compensation to the client; this conduct in respect of this client was not isolated, as we see from the other established complaints; the Respondent benefited financially from the breaches. We have not been given any analysis of whether the TDB decision or criminal decisions indicate other prior professional misconduct, so we do not treat those as aggravating.
 - (i) This conduct warrants permanent removal of the Respondent's name from the register in our view. The conduct has been addressed by 3 complaints, all of which are made out. Each in isolation would warrant permanent removal as a sanction (but it must be noted that each complaint is effectively in respect of the same conduct).
7. The 4th Complaint (established) was of seeking to deceive a client Mr. de Neree that his funds were safe (rather than having been transferred without authority) by relying on a forged bank statement.
- (a) This professional misconduct and dishonourable conduct is at the most serious end of the potential range of misconduct by a CPA and again dishonesty of the Respondent was involved.
 - (b) We repeat the considerations addressed at 6(f)-(h) above. The only additional relevant mitigation is that the Respondent admitted this complaint (albeit she has still expressed no remorse). In our view, this is relevant to costs. However, it does not detract from the public interest that the Respondent should not be permitted to work as a CPA for the indefinite future.
 - (c) This offence warrants permanent removal of the Respondent's name from the register in our view.
8. The 5th Complaint (established) was of failing to observe professional standards by disparaging the work of Graham Moore whilst promoting her own practice. We regard this as unprofessional conduct which must be condemned, but it is not of the serious nature seen in Complaints 1-4. We have regard to the mitigating and aggravating factors addressed above, and

see no further factors of relevance to this complaint. We consider the appropriate sanction is a reprimand.

9. The 6th Complaint (established) related to the Coron Trust.
 - (a) The complaint was of dishonourable conduct and professional misconduct because the Respondent used trust monies for unauthorized purposes, failed to separate client funds from CPA funds, and further issued documents containing materially false or misleading statements. There is no question that this is at the most serious end of the potential range of misconduct by a CPA as dishonesty was involved.
 - (b) We repeat our considerations of the mitigating and aggravating factors as stated above in respect of the 1st-3rd Complaints. By way of additional mitigation, the Respondent admitted this complaint. This is relevant to costs. However, it does not detract from the public interest that, in our view, the Respondent should not be permitted to work as a CPA for the indefinite future.
 - (c) This offence warrants permanent removal of the Respondent's name from the register in our view.
10. The 7th Complaint (so far as established) relates to Azure Tax Pte Ltd (a company jointly owned by the Respondent and Dr. Wilson).
 - (a) The complaint was of dishonourable conduct and professional misconduct because the Respondent used monies for unauthorized purposes. There is no question that this is at the most serious end of the potential range of misconduct by a CPA and as dishonesty was again involved.
 - (b) We repeat our considerations of the mitigating and aggravating factors as stated above in respect of the 1st-3rd Complaints.
 - (c) This offence warrants permanent removal of the Respondent's name from the register in our view.
11. The 8th Complaint (so far as established) is of dishonest and improper conduct of the Respondent's practice. The relevant conduct was theft of funds from three separate clients (Ms. Gujadhur, Mr. Nicol and Mr. Parker).
 - (a) There is no question that this is at the most serious end of the potential range of misconduct by a CPA.
 - (b) We repeat our considerations of the mitigating and aggravating factors as stated above in respect of the 1st-3rd Complaints.

- (c) This offence warrants permanent removal of the Respondent's name from the register in our view.

Costs

12. The normal course on costs would be to order that they follow the event. However, the conduct of these proceedings has given the Committee much concern. For that reason the Decision at para 83 sought submissions on why the Complaints were not amended to rely on the High Court decision and resulting conviction (in order to save the substantial time and cost involved in the Committee having to address the truth of the facts underlying the complaints), and the less than satisfactory compilation of the bundles for the Committee at the liability stage.
13. Having taken account of the submissions made:
- (a) The Committee is not satisfied that the Complainant should receive the full costs of pursuing these proceedings after the High Court conviction in July 2016. The Committee was not informed of the High Court convictions and no direction was sought (in contrast to the District Court convictions). The substance of the complaints in these proceedings and in the High Court was the same. As at July 2016, only the first instalment of the Respondent's Case in these proceedings had been filed (at end June 2016). A great deal of time on the part of the Committee would have been saved if the Complaint had been amended to rely on the High Court convictions. The substance is the same and no significant difference in sanctions would be likely. Indeed, the Complainant approaches its submissions on sanctions as if it had amended the Complaint to rely on the conviction.
- (b) The Committee recognizes that even if there had been an amendment of the Complaint, some costs would still have been incurred. The Committee will adopt the approach that the Complainant can recover its costs in full until August 2016 (allowing 1 month to digest the High Court convictions and seek amendment), and only 10% of its costs thereafter. Had the Complaint been amended to rely on the convictions, (1) it would have been unanswerable, (2) there would only have been a need for submissions on sanctions and costs, (3) it is unlikely that any significant assistance from eminent and expensive external legal practitioners would have been required, (4) the Clerk to the Committee would have had much less work to do as there would not have been a need for the Respondent to address all 8 individual complaints. The Respondent is to pay 100% of the costs of the Complainant and the Committee's Clerk incurred until the end of August 2016, and 10% of the costs of the Complainant and the Committee's Clerk thereafter. The Complainant will bear 90% of the

costs of the Committee's Clerk from the beginning of September 2016. The Committee will then finalise the quantum of the costs payable.

- (c) We record our disappointment at the state of the bundles provided to the Committee by the Complainant for the purpose of deciding the issue of liability on the papers (in light of the Respondent's incarceration). The bundles were not indexed, and were not compiled in a substantive chronological way in order to assist the Committee to decide whether the factual complaints were made out, but contained various complaint documents and pieces of correspondence each with their own attachments. The Respondent may have requested additions to the bundles, but that did not mean they should not be incorporated in a logical or helpful way. The state of the bundles unnecessarily prolonged and complicated the task for the Committee.
- (d) The Complainant is to lodge its statement of costs, and that of the Committee's Clerk, showing their costs incurred before and after the end of August 2016; along with a calculation of 10% and 90% of the post August 2016 costs. This is to be done within 14 days. The Respondent is at liberty to comment on those calculations within 14 days thereafter.

Ms. ISMAIL, Roxanne, SC
Chairman

Mr. TSANG, Man Hing, Johnson
Member

Mr. DONOWHO, Simon Christopher
Member

Mr. YOUNG, Ngai Man, Simon
Member

Mr. BEST, Roger Thomas
Member