

PROFESSIONAL REGULATION IN THE FINANCIAL SECTOR – 24 MAY 2016

NOTES FOR A TALK ON REGULATORY FUNCTIONS OF IAASA

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INTRODUCTION

1. The Irish Auditing and Accounting Supervisory Authority (IAASA) was established pursuant to the provisions of Part 2 of the Companies (Auditing and Accounting) Act, 2003. That Act has now been replaced with the Companies Act 2014 which makes provision for IAASA (Sections 900 to 944). Its members are each prescribed accountancy body (or individual or body corporate nominated by same to be a member) and the following designated bodies: Director of Corporate Enforcement, the Central Bank, the Irish Stock Exchange, the Revenue Commissioners or any other body prescribed.
2. The objects of IAASA are to:
 - Supervise how the Prescribed Accountancy Bodies ('PABs') regulate and monitor their members;
 - To promote adherence to high professional standards in the auditing and accountancy profession;
 - To monitor whether the financial statements or accounts of certain classes of companies comply with the Act;
 - Act as a specialist source of advice to the Minister on auditing and accounting matters.
3. In this paper I am going to deal exclusively with the supervision function of IAASA in relation to the PAB's.

Prescribed Accountancy Body

4. A Prescribed Accountancy Body is any accountancy body that comes within the supervisory remit of the Authority. There are currently nine prescribed bodies:
 - ACCA - Association of Chartered Certified Accountants;
 - AIA - Association of International Accountants;

- CIMA - Chartered Institute of Management Accountants;
- CIPFA - Chartered Institute of Public Finance & Accountancy;
- ICAEW - Institute of Chartered Accountants in England & Wales;
- ICAI - Institute of Chartered Accountants in Ireland;
- ICAS - Institute of Chartered Accountants of Scotland;
- ICPAI - Institute of Certified Public Accountants in Ireland; and
- IIPA - Institute of Incorporated Public Accountants

Recognised Accountancy Body

5. A Recognised Accountancy Body means a body of accountants recognised under section 930 for the purposes of the 2010 audits regulations or section 1441 of the Companies Act. A recognised accountancy body is permitted to authorise its members and/or member firms to perform audits under the Companies Acts, provided that those members and/or member firms satisfy certain additional conditions. There are currently six recognised bodies:

- ACCA - Association of Chartered Certified Accountants;
- ICAEW - Institute of Chartered Accountants in England & Wales;
- ICAI - Institute of Chartered Accountants in Ireland;
- ICAS - Institute of Chartered Accountants of Scotland;
- ICPAI - Institute of Certified Public Accountants in Ireland; and
- IIPA- Institute of Incorporated Public Accountants

6. In order to legitimately act as an auditor under the Companies Acts (i.e. to audit the financial statements of a company), a person/firm must be a Registered Auditor. To become a registered auditor, a person/firm must:

- Be a member of a recognised accountancy body; and
- Have been authorised by that body to act as an auditor i.e. hold a valid practising/audit certificate.

Individual authorisations

7. A small number of individuals are personally authorised to act as auditors on foot of individual Ministerial authorisations.

8. The introduction of the European Communities (Statutory Audits) (Directive 2006/43/EC) Regulations 2010 (“SI 220 of 2010”) brought important changes and requirements for these individuals. Regulation 25(3) provides that these individuals’ deemed approval to act as an auditor shall cease to have effect unless they become either a member, or subject to the regulation, of a Recognised Accountancy Body.

SUPERVISION OF THE PAB’S

9. It may be seen from the above that although IAASA regulates the accountancy profession, accountants are not subject to statutory regulation in the way as many other professionals, such as doctors, vets, nurses, teachers, dentists, solicitors, pharmacists and so on. Rather they are subject to regulation by the PAB’s.
10. In turn IAASA supervises the PAB’s although in certain limited cases it has direct power to regulate individuals whether those be persons or firms. The scheme primarily focuses on the regulation of the PAB’s disciplinary processes, with only a secondary role for the IAASA in directly regulating members of those bodies where it is either appropriate or in the public interest to do so by undertaking an investigation into a possible breach of a PAB’s standards by a member.
11. Within IAASA, this work is carried out by the Regulatory Supervision and Monitoring Unit (RMS). The main activities of RMS are:
 - supervising the manner in which the prescribed accountancy bodies regulate their members (including the operation of their admissions, licensing, complaints, investigations, disciplinary and appeals processes);
 - supervising the manner in which the recognised accountancy bodies monitor those of their members and member firms authorised to act as auditors under the Companies Acts;
 - examining the prescribed accountancy bodies’ regulatory and monitoring plans and annual reports;
 - liaising with other countries’ oversight Authorities;
 - the ongoing development of policies and procedures pertaining to the supervision of the profession;
 - assisting the Board to discharge its functions as an advisor to the Minister.

Intervention in disciplinary process of prescribed accountancy bodies under Section 933

12. As noted above IAASA has responsibility for supervising the Prescribed Accountancy Bodies ('PABs') regulation and monitoring of their members and member firms. Under Section 905, IAASA may require changes to and approve the investigation and disciplinary procedures and standards of each PAB and any amendments to same.
13. Section 933 of the Act provides that the Authority may, following a complaint or on its own initiative and for the purpose of determining whether a PAB has complied with its approved investigation and disciplinary procedures, enquire into:
 - a decision by a PAB not to undertake an investigation into a possible breach of its standards by a member;
 - the conduct of an investigation by a PAB into a possible breach of its standards by a member; or
 - any other decision of a PAB relating to a possible breach of its standards by a member unless the matter is or has been the subject of an investigation under Section 934 relating to that member.
14. IAASA is given various powers for the purposes of an inquiry, including obtaining copies of all documents in the possession of the PAB and requiring the PAB to explain why it reached a decision or conducted its investigation.
15. If at any time before completing an inquiry IAASA forms the opinion that it is appropriate or in the public interest that the matter be investigated under Section 934, IAASA may apply to the court for permission to investigate the matter under that section. There is an unusual aspect to this section. Where an issue arises in relation to how an issue has been dealt with by a PAB, one might assume the first port of call for IAASA (given that it is not primarily the immediate regulator of accountants/auditors) would be to consider whether PAB has acted correctly. However, if IAASA does that, and then forms the view that it requires to investigate the matter directly under Section 934, it is required to seek the leave of the Court. If on the other hand IAASA decides it wishes to investigate a possible breach of a PAB's standards by a member without first considering how the PAB has acted, then the leave of the Court is not required. One view of this is that it encourages IAASA to pursue members directly without first investigating how the issue has been addressed by the PAB. That may

not necessarily be the best way for IAASA to decide whether or not to pursue a Section 934 procedure.

16. If IAASA is not satisfied that the PAB complied with its investigation and disciplinary procedures, under Section 933(5) it may advise or admonish the prescribed accountancy body or may censure it by:
 - i. annulling all or part of a decision of the PAB relating to the matter the subject of the inquiry;
 - ii. directing that body to conduct an investigation or a fresh investigation into the matter;
 - iii. requiring the PAB to pay IAASA an amount not greater than 125,000 or a different amount as prescribed by the Minister.
17. Where IAASA annuls all or part of the decision or direct the body to conduct a fresh investigation or require the payment of an amount, that decision must be confirmed by the Court. The matter may come before the Court either by an appeal or by application by IAASA.
18. Under Section 933(6) PAB may also has to pay the costs of IAASA in conducting the inquiry.
19. Under Section 933(7) if IAASA seeks to investigate itself under Section 934, or directs an investigation or a fresh investigation, any decision of the body relating to the matter is suspended (in certain circumstances once the Court confirms same).
20. Under Section 933(8) IAASA may publish decisions under sub section 5 or 6 together with the reasons for the decision after giving the PAB and the member concerned not less than 3 months notice in writing. This provision is in my view unsatisfactory as it does not establish a consistent practice in relation to transparency and also arguably is overly deferential towards the PAB and member in relation to the amount of time that is provided before publication. This section should be read in conjunction with Section 940 which provides that an agent or professional or advisor to IAASA shall not disclose information that comes into the possession of IAASA by virtue of the performance by it or any of its functions under the Act. There is an exception to that rule where the person in question or a director of IAASA considers that the communication was appropriate for the performance of the function concerned. However given that one of the core principles of regulation is transparency, it is in my view regrettable that the Act starts from a premise of non transparency.

Regulation 96/2012

21. Statutory Instrument 96 of 2012: Companies (Auditing and Accounting) Act, 2003 (Procedures Governing the Conduct of Section 23 Enquiries) Regulations, 2012 was published in March 2012. I understand those Regulations still apply notwithstanding the adoption of the Companies Act 2014.
22. The Regulations are based on the premise that the exercise of enquiry and enforcement powers must be performed in a manner that accords with applicable principles of procedural fairness, natural and constitutional justice, the requirements of administrative law and applicable human rights legislation. To that end, the Regulations provide that, once initiated, enquiries under Section 933 are split into two discrete phases.
23. The first phase is conducted by a Preliminary Enquiry Committee, and where applicable, the second phase is conducted by an Enquiry Committee. The Regulations further provide that such Committees (known generically as Section 933 Committees) shall have among their membership either directors of the Authority, external appointees, or a combination of both and, moreover that no person may serve on both the Preliminary Enquiry Committee and Enquiry Committee in any given matter. The Regulations further provide that members of the PABs may not constitute a majority of any Section 933 Committee. Set out below are some of the key features of the Regulations.

Preliminary Enquiry Committees

The purpose of a Preliminary Enquiry Committee is to determine whether the Authority should initiate a full Enquiry under Section 933. Under the Regulations, a full Enquiry will be initiated where:

- a Preliminary Enquiry Committee determines that there is a prima facie case that a PAB has failed to comply with its approved investigation and disciplinary procedures; and
 - the circumstances of the matter are such as to warrant the initiation of a full Enquiry.
24. Where a Preliminary Enquiry Committee forms the view that the matter under investigation is better, or more appropriately, dealt with by way of supervisory action rather than through the initiation of a full Enquiry, it will report its view to the Authority and the Authority may, if it considers it appropriate to do so, direct that the

Preliminary Enquiry Committee report such facts and circumstances to the Chief Executive (who may not, under the Regulations, be a member of a Section 933 Committee) and to the Head of Regulatory & Monitoring Supervision.

25. As a consequence of the foregoing approach, the second phase of an Enquiry (i.e. that element conducted by an Enquiry Committee) only becomes relevant in circumstances where a Preliminary Enquiry Committee has first determined that there is a prima facie case that a PAB has failed to comply with its approved investigation and disciplinary procedures and that the circumstances of the matter are such as to warrant the initiation of a full Enquiry.
26. The role of an Enquiry Committee is to conduct a full Enquiry into whether a PAB has failed to comply with its approved investigation and disciplinary procedures and, in the event that this is found to be the case, to determine what sanctions, if any, should be imposed on the PAB concerned.
27. In conducting its Enquiry, an Enquiry Committee may:
 - inspect and take copies of all relevant documents in the possession or control of the PAB concerned;
 - require the PAB to explain why it reached a decision not to undertake an investigation into a possible breach of its standards by a member, or any decision of that PAB relating to a possible breach of its standards by a member;
 - if the PAB conducted an investigation, require it to explain how it conducted its investigation; and
 - conduct oral hearings.
28. In arriving at a determination, the standard of proof on which an Enquiry Committee shall make its findings is on the balance of probabilities.
29. The Regulations provide that, having completed its Enquiry, an Enquiry Committee shall, in respect of each alleged failure to comply with approved investigation and disciplinary procedures, make a finding as to whether the allegation has been established.
30. Where an allegation is determined as not having been established, the Regulations provide that the Authority shall provide a statement to that effect to both the PAB and the member(s) of the PAB who was/were the subject of the original PAB decision. Conversely, where an allegation is determined as having been established, the Regulations provide that the Enquiry Committee shall decide as to which, if any, sanctions shall be imposed on the PAB concerned.

Sanctions

31. Where an Enquiry Committee makes a determination to the effect that a PAB has failed to comply with its approved investigation and disciplinary procedures, it can impose sanctions referred to above.
32. The Regulations further provide that, in determining the level of sanctions that should apply, an Enquiry Committee will have regard to all of the circumstances of the matter, which may include, inter alia, the following factors:
 - · whether the failure to comply was deliberate, dishonest, reckless or negligent;
 - · the duration/frequency of the failure to comply; and
 - · the extent to which the failure to comply deviated from the required procedure.

Appeal

33. Where an Enquiry Committee makes a determination to the effect that a PAB has failed to comply with its approved investigation and disciplinary procedures, the PAB or the member concerned has a right of appeal to the High Court. An appeal must be made within 3 months of the date of Notice being given by the Authority.

Investigation of possible breaches of standards of prescribed accountancy bodies under Section 934

34. Section 934(2) of the Act provides that if, in IAASA's opinion, it is appropriate or in the public interest to undertake an investigation into a possible breach of a PAB's standards by a member, the Authority may undertake such an investigation, either following a complaint, or on its own initiative but that no investigation may be undertaken into a matter that has been or is the subject of an inquiry under Section 933 unless with the permission of the Court under Section 933(4) as referred to above.
35. IAASA has more extensive powers under this process than under the Section 933 process. In particular, it may require from a relevant person (such person being defined as a member of the PAB, a client or former client, an employee or agent of the former client, the PAB itself or officer, employee or agent of same, any person who IAASA believes has information or documents relating to the investigation) to

produce all relevant documents, attend before it, give such other assistance as that person is reasonably able to give. IAASA may examine on oath a relevant person and may certify refusals by the relevant persons to provide documents, attend or answer a question.

36. If IAASA finds that the member committed a breach of the PAB's standards, IAASA may impose on the member any sanction to which the member is liable under the PAB's rules.
37. The fact of a sanction having been imposed shall be disclosed to the public and that disclosure shall include the fact of an appeal being made and "if IAASA considers it appropriate, such further particulars with respect to the matter as it thinks fit". (Section 934(7). The manner of a disclosure under subsection 7 and the time at which it is made shall such as IAASA determines to be appropriate.
38. My comments above in respect of transparency apply equally here: there is no presumption of transparency apart from in respect of the bare fact of a sanction being imposed. In relation to the important dissuasive effect of a regulatory regime on other members of the profession, particularly where they may be an information asymetry because of the number of PAB's, it is desirable that other members of the profession understand what sanction was imposed and why. The mere fact of a sanction alone being disclosed is of relatively small value in this context. Equally the absence of any time scale within which even this relatively limited disclosure must be made is in my view regrettable.
39. The Court must confirm the sanction under Section 941(4).
40. Interestingly, the position in relation to costs is different to that under a Section 933 procedure. There, as noted above, the PAB is liable for the costs of conducting the inquiry where IAATA is not satisfied that it has complied with its investigation and disciplinary procedures. Here the costs incurred by IAATA shall be defrayed by the PAB whose member has been the subject of investigation. In other words, there is no requirement that the inquiry have a particular outcome in order for the costs to be payable by PAB. The Regulations referred to below have made provision, as provided for in Section 934(9)(a), for specified procedures and methods of calculation in the determination of the amount of costs defrayed by PAB.
41. Specifically they provide that where an allegation is determined to have been proved, the Regulations provide that the Investigation Committee will make a decision as to which, if any, sanctions shall apply and the amount, if any, that the member is liable

to pay to IAASA towards its costs in investigating and determining the case. The Investigation Committee may impose on the member any sanction to which the member is liable under the approved constitution and bye-laws of the PAB (including a monetary sanction). The Investigation Committee may not impose a sanction on a member unless the relevant PAB could, if finding the member guilty of the breach in question, have imposed that sanction upon him.

42. There is an appeal against the decisions of IAATA.

Regulation 97/12

43. 2012: Companies (Auditing and Accounting) Act, 2003 (Procedures Governing the Conduct of Section 24 Investigations) Regulations, 2012 ('the Regulations) was published in March 2012. The Regulations are based on the premise that the exercise of investigative and enforcement powers must be performed in a manner that accords with applicable principles of procedural fairness, natural and constitutional justice, the requirements of administrative law and applicable human rights legislation.

44. To that end, the Regulations provide that, once initiated, Investigations under Section 934 are split into two discrete phases. The first phase is conducted by a Preliminary Investigation Committee, and where applicable, the second phase is conducted by an Investigation Committee. The Regulations further provide that such Committees (known generically as Section 934 Committees) shall have among their membership either directors of IAASA, external appointees, or a combination of both. Moreover, no person may serve on both the Preliminary Investigation Committee and Investigation Committee in relation to the same matter.

45. The Regulations further provide that members of the PABs may not constitute a majority of any Section 934 Committee.

Preliminary Investigation Committees

46. The purpose of a Preliminary Investigation Committee is to determine whether the Authority should initiate a full investigation under Section 934. Under the Regulations, a full investigation will be initiated where:

- a Preliminary Investigation Committee determines that there is a prima facie case that a member has breached a PAB's standards; and

- in its opinion, it is appropriate or in the public interest that there should be a full investigation by the Authority into such possible breach.
47. Alternatively, where the Preliminary Investigation Committee forms the view that a matter before it ought to be referred to a PAB or another supervisory body for investigation, it will refer the matter to that PAB or other supervisory body. However, the Authority shall subsequently be entitled to refer the same matter once again to the Preliminary Investigation Committee for its consideration
 48. Where the Preliminary Investigation Committee forms the view that the matter before it is better dealt with by way of the exercise by the Authority of any of its other powers, or by way of recommendations and observations by the Authority, rather than through the initiation of a full investigation, it will report its view and the facts and circumstances of the matter to IAASA. The Authority may, if it considers it appropriate to do so, IAASA may direct that the Preliminary Investigation Committee report such facts and circumstances to the Chief Executive and the Head of Regulatory and Monitoring Supervision of the Authority.
 49. The Preliminary Investigation Committee reaches its determination on the basis of written material alone. In conducting its preliminary investigation, the Preliminary Investigation Committee may require any relevant person to do one or more of the following:
 - a. provide to the Preliminary Investigation Committee all books or documents relating to the preliminary investigation that are in the relevant person's possession or control; and
 - b. give the Preliminary Investigation Committee any other assistance in connection with the investigation that the relevant person is reasonably able to give.

Investigation Committees

50. The second phase of a section 934 investigation (i.e. that element conducted by an Investigation Committee) only becomes relevant in circumstances where a Preliminary Investigation Committee determines that there is a prima facie case that a member has breached a PAB's standards and in its opinion, it is appropriate or in the public interest that there should be a full investigation into such possible breach.

51. The role of an Investigation Committee is to conduct a full investigation into whether a PAB member has breached a PAB's standards and, in the event that this is found to be the case, to determine what sanctions, if any, should be imposed on the member concerned.
52. In addition to the powers outlined above in the context of Section 934, the Investigation Committee is entitled to:
- examine on oath, either by word of mouth or on written interrogatories, a relevant person;
 - administer oaths for the purposes of the examination; and
 - record in writing, the answers of a person so examined and require that person to sign them.
53. In arriving at a determination, the standard of proof on which an Investigation Committee shall make its findings is on the balance of probabilities.
54. The Regulations provide that, having completed its investigation, an Investigation Committee shall, in respect of each alleged breach of a standard of a PAB, make a finding as to whether the allegation has been proved or that the allegation is not proved.
55. The Regulations further provide that, in determining the level of sanctions that should apply, an Investigation Committee will have regard to all of the circumstances of the matter, which may include, among other things, the following factors:
- whether the failure to comply with the standard(s) was deliberate, dishonest, reckless or negligent;
 - the duration/frequency of the breach of standard; and
 - the gravity and nature of the breach of standard.
56. A member may appeal a decision of the Investigation Committee to the High Court within three months after the member has been notified by the Authority of the Investigation Committee's decision.

COMPARISON – PROFESSIONAL STANDARDS AUTHORITY

57. The PSA is in certain analogous to IAASA. It regulates nine health and care regulators including the Dental Council, the Medical Council, the Pharmaceutical Council, Nurses and Midwives and others. The PSA reviews every final decision and if they decide those decisions do not protect the public properly they refer them to

court to be considered by a judge under Section 29 of the NHS Reform and Health Care Professions Act 2002. If a S. 29 referral is made, the Court will decide whether or not to overturn the final fitness to practise panel's decision.

58. As of May 2016, the PSA have published the guidance used by the Authority to decide whether or not to make a S.29 referral to Court. Interestingly, it is noted that the insufficiency of the protection of the public usually relates to the insufficiency of the sanction or lack of sanction imposed by the Panel.
59. The guidance notes that the Authority aims to help the regulators to improve the quality of their fitness to practise process outcomes by disseminating learning identified to all regulators in respect of all fitness to practise decisions reviewed, not just those that result in referrals to Court.
60. They identify five principles of good regulation identified by the better regulation task force plus one additional one:
 - Proportionality:
 - Accountability: PSA accountable to patients, the public and the Parliament. It is notable that the professions are not included here. The PSA is aware of the costs incurred in referring decisions to court and their responsibility to spend resources cost effectively.
 - Consistency: PSA's first priority is the protection of the public and the consistent application of this principle underpins the S. 29 process.
 - Transparency: Detail of S. 29 work are on the website. Court process normally in public and decisions published.
 - Targeted: S. 29 referrals are made for the purposes of public protection. The PSA may decide not to proceed to a Court hearing where other effective mechanisms to protect the public are available.
 - Agility: Regulation must be able to look forward and adapt to anticipate change. In exercising jurisdiction, the PSA must take account of the changes to the legislative frameworks governing regulators fitness to practise work.

Case Study: Willis McLean Kabambe Decision of 4 May 2016

61. The first point to note is the transparency of the process. What appears on the website is the notes of the meeting of the PSA when deciding whether or not a decision should

be referred to court. It is stated that it is not a word for word record of the matters discussed by the Members but it is intended to help explain the PSA's decision.

62. The charges related to concern about the registrant failing to maintain appropriate standards of infection control (charge 1) and concern about the treatment of 16 patients, including failures in relation to carrying out examinations, prescribing antibiotics, completing consent forms and patient histories, taking radiographs etc. (charge 2).
63. Some admissions were made and other charges were withdrawn. Panel found that facts found proved in charge 1 were misconduct but not deficient professional performance. The note identifies the documents that were before the meeting which included the determination of the Panel, the transcripts of the hearing, the relevant standards for dental professionals and the bundles of document for each side.
64. The PSA first considered the issue of undue lenience and identified the test: that the Panel's decision was one that a disciplinary tribunal, having regard to the relevant facts and to the object of the disciplinary proceedings, could not reasonably have reached; or was otherwise manifestly inappropriate having regards to the safety of the public and the reputation of the profession.
65. PSA noted the Panel applied its approach consistently; that GDC expert witness did not consider that some of the facts alleged supported a finding of deficient professional performance; that the Panel could have amended the charges, acknowledged its ability to do this but chose not to do so.
66. The PSA were aware of the level of deference needed to be given to the Panel given that it heard live evidence from the Registrant and expert witnesses. They noted their primary failure was in relation to the way in which the GDC had decided to draft the charges which resulted in the Panel and GDC focusing on whether there was written guidance setting out the Registrant's duties.
67. They noted that they did not identify serious procedural errors regarding the charges brought by the GDC or fundamental failings in the Panel's decision on the facts that would have made a material difference to the outcome.
68. In relation to sanction, the PSA identified some concerns about the Panel's approach. The Panel had said that the sanction options open to it were limited having regard to his retirement and intention not to resume practice. The PSA noted this statement was factually incorrect and the Panel was not legally limited in terms of what sanction it could have imposed. They were concerned that their consideration of the Registrant's

intention to retire seemed to lead it to impose a less appropriate non-restrictive sanction.

69. In respect of their conclusions on undue lenience, they noted that given the risk to the public was met by the Registrant's intention to retire, the only outstanding issue was whether the wider public interest was satisfied by the imposition of a reprimand. They acknowledged the Panel was satisfied that a reprimand satisfied the wider public interest.
70. The PSA took into account the response provided by the GDC following notification of the case meeting.
71. In summary the PSA noted they had some concerns with the decision but that the individual concerns insufficient to render the decision manifestly wrong and therefore it did not cross the threshold of undue lenience. Having come to that conclusion they did not need to consider whether an appeal was in the public interest and whether to exercise the Authority's discretion to appeal. They noted there was several learning points that would be raised with the regulator.

Points to note:

- The review was done speedily: the Determination was made on 22 December 2015 being the fifth day of a hearing that had taken place over a number of months; the meeting by the PSA was held on 29 January 2016; and the decision was made on 4 May 2016.
- The transparency of the process: the notes of the meeting were up on the website, along with an identification of the people attending and the list of documents considered by them.
- The PSA's expertise and familiarity with the subject matter as demonstrated by its Decision;
- Their ability to identify failures from which lessons could be learned but to differentiate between material and non material failures and their respective impact on the validity of the decision;
- The manner in which they reviewed the Panel's awareness of relevant matters: i.e. their awareness that they could amend the charges but their decision not to; their lack of awareness in respect of the impact that his retirement and intention not to resume practice had.