INTRODUCTION

This is the third report of the ICAS Discipline Board. The Board was formed as part of a Regulatory Review commenced by ICAS in 2010 with an amended Royal Charter, revised Rules and new Regulations being presented to its members for approval in June 2012. The revised regulatory framework received royal assent in July 2012.

During 2013 Fergus Brown resigned as clerk to the Board due to pressure of other business and the conflict in his role as secretary to the Institute and sitting as a member of the Board becoming ever more apparent. Eric Cumming, the former sheriff clerk for The Sherifdom of Glasgow and Strathkelvin, replaced him. Apart from holding the post of sheriff clerk, Mr Cumming brought many years experience in the Scottish Court Service having clerked courts at all levels in Scotland. The members of the Discipline Board were:

- **James Taylor**, a retired Sheriff Principal who also chairs the Discipline Panel
- **Adrienne Airlie**, a chartered accountant and senior partner of Martin Aitken & Co
- **Jane Ryder**, a public interest member and former CEO of OSCR
- **Murray Shaw**, a solicitor and partner with Gillespie Macandrew LLP who also chairs the Appeal Panel
- **Fergus Brown**, ICAS staff member and secretary to the Board to 30 June 2013
- **Eric Cumming**, a retired Sheriff Clerk appointed as successor to Fergus Brown from 1 July 2013.

An independent Discipline Board and Tribunal system is a necessary component of self regulation and in terms of ICAS governance the Discipline Board and tribunals sit independently of the Institute. The Discipline Board appoints members to both the Discipline Board and the tribunals and last year undertook an openly advertised recruitment process.

The Board held 2 meetings during 2013.

Training

During 2014 the Board will be joining with ICAS to run a Public Interest Members’ training day where members of the ICAS Regulatory Committees, the Investigation Committee and the Discipline and Appeal Panels can meet to discuss common issues and processes. There will also be a training session for members of the Disciplinary and Appeal Tribunals in either October or November.

Discipline and Appeal Regulations

A review of the regulations was initiated by James Taylor at the end of 2013 and this is currently on-going. That process is almost completed.

The Public Interest Perspective

The Public Interest member of the Discipline Board contributes to the oversight role of the Discipline Board. The Public Interest member is not involved in individual cases but, together with other members of the Board, maintains an oversight role, bringing a different perspective. As the PIM, I endeavour to ensure that the system overall takes into account that difficult balance or mixture between being scrupulously fair in terms of due process and at the same time ensuring that appropriate weight is given to issues of public interest which impact on the reputation of the profession, including full public and professional confidence in any self-regulatory system.

As has been identified in the Chairs report, the Discipline Board and Tribunals sit independently from the Institute and form a necessary component of the profession’s self regulatory system. Another element within the Institutes own disciplinary process,
is investigation by the Investigation Committee and the possibility of consent orders: this lies outwith the jurisdiction of the Discipline Board but it is important for the profession and for the public to understand the operation of the system, which is an important factor in determining the relatively small number of which come before the Discipline Tribunals.

Transparency and consistency are important elements in maintaining public confidence in the integrity of any system of any self regulation and I therefore welcome the fact that publicity is now presumed in the case of consent orders. I also welcome the fact that the Discipline Board now sees the summary outcome of consent orders: all of this can contribute towards an assurance of public and professional confidence. The proposed joint PiMS training referred to in the Chair’s report will also be a valuable exercise in identifying common issues and maximising appropriate consistency.

Another element in maintaining public confidence and the reputation of any self regulatory system, both with the profession as well as the public, will be speed of process. Without commenting in any way on individual cases, whether at investigation stage or at the point of disciplinary intervention, it may be appropriate for the Institute to review whether there are any further lessons to be learnt and how these are implemented internally. Equally, from the perspective of the Discipline Board, I welcome the fact that the Institute proposes an independent review of the Discipline and Appeal processes, last undertaken in 2004. This should identify any issues and further improvements which could be made, including any necessary or desirable additional powers for Tribunal or Appeal Chairs. This would complement the review of Regulations, within existing powers, which has been undertaken this year.
SUMMARY OF CASES HEARD BY THE DISCIPLINE TRIBUNAL DURING 2013

Background

During 2013 the Discipline Tribunal heard 2 cases and summaries of the cases are set out below. This compared to 3 cases in 2012 and 3 cases in 2011. The number of cases coming before the Tribunal has reduced in recent years as a result of the Investigation Committee having the power to enter into consent orders with members who are the subject of an investigation. Consequently the Discipline Tribunal hears only a small number of cases.

A summary of the cases heard by the Discipline Tribunal is set out below.

Audit Matters

The Tribunal heard one case which concerned a member signing off Audit Reports when he had not been approved as a Responsible Individual and a failure to co-operate with the Institute’s investigation of the complaint.

When the case first called at a preliminary hearing before the Discipline Tribunal, the member was neither present nor represented. The Tribunal fixed a full hearing for a later date and advised the member that if he did not appear or be represented at that hearing the Tribunal may proceed to hear the complaint against him in his absence. At the full hearing the member again failed to appear or be represented and the tribunal allowed the complaint against him to proceed in his absence. After hearing submissions from the Investigation Committee, the Tribunal found the member guilty of professional misconduct. The member was held to have known that he was not a designated Responsible Individual when he signed Audit reports. In addition the member’s clear breach of his obligations under the Institute’s Rules to co-operate with the Institute’s investigation of his complaint amounted to professional misconduct. Accordingly the Tribunal determined that the member should be excluded from membership of ICAS. In addition the Tribunal ordered the member to pay a penalty of £1000 and costs of £5000.

Breach of section 210.7 of the ICAS Code of Ethics and failure to co-operate

The Tribunal heard one case which concerned a breach of section 210.7 of the ICAS Code of Ethics and a failure to co-operate with the ICAS Investigation Committee.

When the case first called before the Discipline Tribunal the member was neither present nor represented. The Tribunal fixed a full hearing for a later date and advised the member that if he did not appear or be represented at that hearing the Tribunal may proceed to hear the complaint against him in his absence. The day before the case was due to be heard the member wrote to the Secretary of the Institute raising a number of matters. The member did not attend the hearing the following day and the tribunal having considered the member’s letter discharged the hearing and directed the member to submit Answers to the complaint within one month, and continued the case to a full hearing at a later date. At this adjourned hearing the member again failed to appear or be represented and the Tribunal allowed the complaint against him to proceed in his absence. After hearing submissions from the Investigation Committee, the Tribunal found the member guilty of professional misconduct in that his failure to respond to a former client’s new accountant could prejudice his former client’s interests in breach of section 210.7 of the ICAS Code of Ethics. Additionally, the member was found guilty of professional misconduct in that he failed (i) to co-operate with the investigation into his conduct, and (ii) to respond to correspondence from ICAS. Accordingly the Tribunal determined that the member should be excluded from membership of ICAS. In addition the Tribunal ordered the member to pay a penalty of £1000 and costs of £6750.
SUMMARY OF CASES HEARD BY THE APPEAL TRIBUNAL DURING 2013.
The Tribunal heard one appeal from a decision of the Audit Registration Committee to withdraw a sole practitioner’s audit registration following an adverse Audit monitoring report. The tribunal allowed the appeal to the extent of quashing the proposed withdrawal of audit registration and remitted the matter back to the Registration Committee to be considered again.

DISCIPLINARY STATISTICS 1 JANUARY 2012 TO 31 DECEMBER 2013
Number of days on which the Tribunal met to hear complaints 2012 (7) 2013 (9)
Total number of complaints heard 2012 (3) 2013 (2)

Disciplinary Sanctions Imposed 2012 2013
Members expelled 1 2
Number of severe reprimand orders imposed 2 0
Other conditions imposed 1 0
Number of reprimand orders imposed 2 0
Penalties imposed 2 2
Costs imposed 2 2

Subject matter of complaints on which professional Misconduct was established.
Breaches of the CPD Regulations 1 0
Breaches of Practising Certificate Regulations 0 2
Breaches of the Professional Indemnity Regulations
Conviction of a criminal offence
Other conduct unbecoming of a member 3 0

Geographical Distribution of members by Electoral Area
England and Wales 1 1
Glasgow and West of Scotland 0 0
Grampian 1 0
Highland 0 1
Lothian and Borders
South West Scotland 1 0
Tayside
European Union
International

Penalties and Costs Orders £116,550 £13,750
Conclusion

The Board is satisfied that the work of the tribunals has been carried out in an appropriate and proportionate manner.