



...Strength in Numbers

# The Society of Professional Accountants

## PETER MITCHELL'S ADDRESS TO COUNCIL WEDNESDAY 2 MAY 2007

### ON OPENING DISCIPLINARY TRIBUNALS TO THE PRESS AND PUBLIC

The issue of public hearings is an enormously difficult and sensitive subject – which we need to get right, as it potentially affects every member of this institute – it could be me or you.

It may be politically correct in this day and age to hold disciplinary hearings in public if those cases raise or appear to raise important issues affecting the public interest – but surely not all cases do – and there is no discernable public pressure that they should all be publicly heard.

My considered request, which I will endeavour to explain, is that this paper, which seeks an implementation date for such a process, should be withdrawn as matters stated in it may not be understood, appear incomplete or seek to limit further consultation. Looking first at para 4 we are informed, without reference to the date or previous minute, that other than fixing the starting date, this process has been agreed in principal by Council.

According to my memory and research, Council made that statement in February 1996 – but Council last discussed this matter in May 1999 when the chairman of the Professional Standards Board, Clifford Bygrave, with whom I have spoken in recent days, also sought an introductory date. The outcome of that request being minuted as follows:

#### ***“Open disciplinary Hearings***

*The Chairman, Professional Standards Office (Mr C Bygrave) introduced the report (copy in minute book) which recommended that Council fix the date for opening its Disciplinary Tribunals and Appeals Panels to the public as 1 July 2000, regardless of any decision by the Joint Disciplinary Scheme or Investigation and Discipline Board concerning public interest cases.*

*A debate then followed during which a number of Members of Council raised concerns about the arrangement for open hearings and the principle of holding hearings relating to private matters in the open when no similar arrangement existed in respect of hearings on matters of public interest.*

*The Chairman then put the recommendation in the report to the vote. 17 members of Council voted in favour of the recommendation with a much larger number voting against. The chairman thereupon declared the recommendation to be not carried.”*

Hence, it isn't just a date that remains to be chosen, it is all the unresolved issues brought up in 1999 that saw the request voted out. As none of the arguments are recorded in the minutes it seems to me we may need to review them again.

We are a member organisation and Council is tasked with determining policy, but I have some difficulty remembering when it was this Council approved the policy statement made to POBA – as outlined in para 7 – about being ready to decide in 2007 – I apologise if I missed the decision - perhaps I can be reminded what was said by us on that occasion.

More pertinently, how can Council be asked today to set an implementation date when Council awaits the first presentation to it of the ongoing review of our disciplinary process?

Until Council has had the opportunity to debate what is in – or not in – the report scheduled for June, it seems premature, to say the least, to decide on one significant item in the absence of others. There appears, as my colleague Nigel Hughes would say, the absence of joined up thinking.

At para 11 we are told there is no class of case that should inevitably be held in private, however, I am confident many practitioners would take the contrary view, that there are various good reasons why some cases should not be heard in public – to quote the Franks Report of 1957 on Administrative Tribunals and Enquiries:

“There are occasions in which justice may be better done and the interest of the citizen better served by privacy”

If we propose to adopt this route to justice we must surely draw clear distinction between matters affecting public interest – fraud, theft, wilful misrepresentation or wide reaching negligence – and those of a minor offence causing no public harm or loss, but where a public hearing and potential tabloid reporting might cause far wider damage or hurt than intended to the defendant member’s personal esteem and public standing in his or her community. Remember this could be you.

This brings me finally to paragraph 17 where I believe I have outlined a case for wider debate and consultation rather than stopping it now, both to ensure we have a disciplinary scheme we all believe meets the needs and laws of today – but also more importantly a scheme each of our members would have no hesitation in approving as fair to all.

Chairman, I thank you and Council for its patience and repeat my request that this paper be withdrawn for further consideration and amendment.

**Peter J D Mitchell – exchange of emails with Les Smith with copies to:**

Richard Dyson, President; Michael Izza, CEO; Vernon Soare, Executive Director Professional Standards Board

**From:** Les Smith, Head of Executive Office, ICAEW  
**To:** Peter Mitchell, Chairman, SPA  
**Date:** 02 May 2007  
**Re:** Open disciplinary hearings

Peter, I am writing to follow up the exchange in Council this morning concerning the Council Minute.

Just to be clear, the report to the May 1999 meeting and the Minute to which you referred, proposed only that a date of 1 July 2000 be fixed for the opening of hearings to the public and it was this recommendation that that meeting of Council rejected. Council had previously resolved in principle on 7 February 1996 to hold hearings in public but this was not the subject of the 1999 decision. Whilst I agree that the report to today's Council meeting appears unhelpfully to have conflated two separate Council decisions, I do believe that my recollection was indeed correct.

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**From:** Peter Mitchell, Chairman SPA  
**To:** Les Smith, Head of Executive Office, ICAEW  
**Date:** 3 May 2007  
**Re:** Open disciplinary hearings

Thanks for your note. As mentioned I did discuss this with Clifford Bygrave whom I know also mentioned to Michael Izza at the BBH AGM on 30 April that he thought note 4 was wrong.

Our recollection was that through the wider discussion in May 1999 Council concluded that the principle earlier agreed in February 1996 should not proceed until Council was satisfied that all arrangements for holding such meetings were agreed. To my knowledge, until Item 3 appeared on the agenda this May, this deferred concern has not been addressed by our staff or discussed further by Council - hence my comment about including this within the current review.

There is little virtue in continuing this particular exchange as clearly you and I choose to disagree and a decision has been made. I hope that within the review some guidelines will be provided to tribunal chairmen what is or isn't in the public interest and on SPA's part we will continue to advise our members how best to avoid becoming embroiled in the disciplinary process. Going forward we will monitor those cases where members are not treated with the degree of privacy or dignity requested to determine whether any 'fine tuning' may be required.