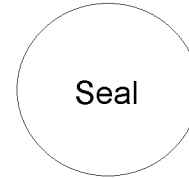


Judicial Review Claim Form

In the High Court of Justice
Administrative Court

Notes for guidance are available which explain how to complete the judicial review claim form. Please read them carefully before you complete the form.

<i>For Court use only</i>	
Administrative Court Reference No.	
Date filed	



SECTION 1 Details of the claimant(s) and defendant(s)

Claimant(s) name and address(es)

name
GRAHAM NASSAU GORDON SENIOR-MILNE

address
39 CASTLE ST
NORHAM
TD15 2LQ

Telephone no. 01289 382415 **Fax no.**

E-mail address
grahammilne001@btinternet.com

Claimant's or claimant's solicitors' address to which documents should be sent.

name
NONE

address

Telephone no. **Fax no.**

E-mail address

Claimant's Counsel's details

name
NONE

address

Telephone no. **Fax no.**

E-mail address

1st Defendant

name
Institute of Chartered Accountants in England & Wales

Defendant's or (where known) Defendant's solicitors' address to which documents should be sent.

name
Institute of Chartered Accountants in England & Wales

address
Chartered Accountants' Hall
Moorgate Place
London EC2R 6EA

Telephone no. 020 7920 8100 **Fax no.** 020 7920 0547

E-mail address

2nd Defendant

name

Defendant's or (where known) Defendant's solicitors' address to which documents should be sent.

name

address

Telephone no. **Fax no.**

E-mail address

SECTION 2 Details of other interested parties

Include name and address and, if appropriate, details of DX, telephone or fax numbers and e-mail

name		name	
address		address	
Telephone no.		Telephone no.	
Fax no.		Fax no.	
E-mail address		E-mail address	

SECTION 3 Details of the decision to be judicially reviewed

Decision:
FAILURE TO RESPOND TO A COMPLAINT

Date of decision:
26/7/2010 (DATE OF COMPLAINT)

Name and address of the court, tribunal, person or body who made the decision to be reviewed.

name Institute of Chartered Accountants in England & Wales	address Chartered Accountants' Hall Moorgate Place London EC2R 6EA
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SECTION 4 Permission to proceed with a claim for judicial review

I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of Section 18 Practice Direction 54 (Challenging removal)? Yes No

Are you making any other applications? If Yes, complete Section 7. Yes No

Is the claimant in receipt of a Community Legal Service Fund (CLSF) certificate? Yes No

Are you claiming exceptional urgency, or do you need this application determined within a certain time scale? If Yes, complete Form N463 and file this with your application. Yes No

Have you complied with the pre-action protocol? If No, give reasons for non-compliance in the box below. Yes No

Have you issued this claim in the region with which you have the closest connection? (Give any additional reasons for wanting it to be dealt with in this region in the box below). If No, give reasons in the box below. Yes No

Does the claim include any issues arising from the Human Rights Act 1998?

If Yes, state the articles which you contend have been breached in the box below.

Yes

No

SECTION 5 Detailed statement of grounds

set out below

attached

SECTION 6 Details of remedy (including any interim remedy) being sought

THAT THE DEFENDANT BE ORDERED TO ASSESS MY COMPLAINT IN ACCORDANCE WITH THEIR OWN PUBLISHED PROCEDURES AND REGULATIONS.

SECTION 7 Other applications

I wish to make an application for:-
NONE

SECTION 8 Statement of facts relied on

SEE ATTACHED

Statement of Truth

I believe (The claimant believes) that the facts stated in this claim form are true.

Full name GRAHAM NASSAU GORDON SENIOR-MILNE

Name of claimant's solicitor's firm NONE

Signed _____ Position or office held N/A
Claimant ('s solicitor) (if signing on behalf of firm or company)

SECTION 9 Supporting documents

If you do not have a document that you intend to use to support your claim, identify it, give the date when you expect it to be available and give reasons why it is not currently available in the box below.

Please tick the papers you are filing with this claim form and any you will be filing later.

- | | | |
|---|-----------------------------------|--|
| <input checked="" type="checkbox"/> Statement of grounds | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input checked="" type="checkbox"/> Statement of the facts relied on | <input type="checkbox"/> included | <input checked="" type="checkbox"/> attached |
| <input type="checkbox"/> Application to extend the time limit for filing the claim form | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> Application for directions | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> Any written evidence in support of the claim or application to extend time | | |
| <input type="checkbox"/> Where the claim for judicial review relates to a decision of a court or tribunal, an approved copy of the reasons for reaching that decision | | |
| <input type="checkbox"/> Copies of any documents on which the claimant proposes to rely | | |
| <input type="checkbox"/> A copy of the legal aid or CSLF certificate <i>(if legally represented)</i> | | |
| <input type="checkbox"/> Copies of any relevant statutory material | | |
| <input type="checkbox"/> A list of essential documents for advance reading by the court <i>(with page references to the passages relied upon)</i> | | |

If Section 18 Practice Direction 54 applies, please tick the relevant box(es) below to indicate which papers you are filing with this claim form:

- | | | |
|--|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> a copy of the removal directions and the decision to which the application relates | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a copy of the documents served with the removal directions including any documents which contains the Immigration and Nationality Directorate's factual summary of the case | <input type="checkbox"/> included | <input type="checkbox"/> attached |
| <input type="checkbox"/> a detailed statement of the grounds | <input type="checkbox"/> included | <input type="checkbox"/> attached |

Reasons why you have not supplied a document and date when you expect it to be available:-

Signed _____ Claimant ('s Solicitor) _____

In the High Court of Justice, Administrative Court

R (on the application of Graham Senior-Mine)

v

The Institute of Chartered Accountants in England & Wales

Judicial Review Claim Form – Section 5 (Detailed statement of grounds)

Contents

Is the Institute of Chartered Accountants in England & Wales subject to judicial review?	3
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Statement of truth	3

Is the Institute of Chartered Accountants in England & Wales subject to judicial review?

1. On the general question of whether private bodies are subject to judicial review I refer to R (Datafin plc) v Panel for Takeovers and Mergers [1987] QB 815 where it was held that that the High Court had supervisory jurisdiction over any body performing public law duties, supported by public law sanctions, and under a duty to act judicially, whose power was not simply by consent of those over whom it was exercised.
2. With respect to the Institute of Chartered Accountants in England & Wales (ICAEW) in particular I refer to Coke-Wallis, R (on the application of) v The Institute of Chartered Accountants of England & Wales [2008] EWHC 2690 (Admin) and Gorlov, R (on the application of) v The Institute Of Chartered Accountants In England And Wales [2001] EWHC Admin 220.

Grounds for review

3. My grounds for review are that the ICAEW's refusal to investigate my complaint in accordance with their own Bye-Laws, as described in section 8 of this form:
 - a. is a breach of natural justice (implied fairness of process in all administrative decisions). See R. v Secretary of State for the Home Department Ex p. Doody [1994] 1 A.C. 531;
 - b. is a breach of natural justice (right to a fair hearing). See Lloyd v. MacMahon [1987] 1 All ER 1118;
 - c. constitutes procedural impropriety on the part of the ICAEW;
 - d. is manifestly unreasonable in that it is so unreasonable that no reasonable person would agree with it.

Statement of truth

4. I believe that the facts stated above are true.

In the High Court of Justice, Administrative Court

R (on the application of Graham Senior-Mine)

v

The Institute of Chartered Accountants in England & Wales

Judicial Review Claim Form – Section 8 (Detailed statement of grounds)

1. I am an Associate Member (ACA) of the Institute of Chartered Accountants in England & Wales (ICAEW). I tendered my resignation in 2010 but this has never been accepted by the Council in accordance with the ICAEW's rules*, so I continue to be a member. I have, in any event, now withdrawn my resignation.

*Principal Bye-Law 6 states that:

'A member may tender his resignation by notice to the Institute and on its acceptance by the Council, but not until then, he shall cease to be a member.'

2. The Frequently Asked Questions (FAQ) on the ICAEW's disciplinary process states:

'FAQs ON THE INSTITUTE'S DISCIPLINARY PROCESS

Information for members

1 Why do you investigate complaints which are without basis?

*When the Institute first receives information about a member's conduct, the first thing we do is assess whether there **may** [my emphasis] be grounds for a complaint under the Institute's bye-laws. **This means there is information which, if it can be supported by evidence, indicates the member may have to be disciplined. If we don't think there are grounds for a complaint, staff in the assessment team take great care to explain to the complainant why they have come to this view** [my emphasis]. However, they don't have the final say in turning a matter away; complainants can ask for their case to be considered by the Investigation Committee. Once the Investigation Committee has decided there are no grounds for a complaint, the case can be closed down because there is no right of appeal. This procedure helps us to close complaints without merit and turn away complainants who do not have grounds; but we do have to go through a proper process.'*

See:

http://www.icaew.com/index.cfm/route/161861/icaew_ga/Home/Protecting_the_public/Publications/FAQs_on_the_disciplinary_process_Information_for_members/pdf

3. The Disciplinary Bye-Laws of the Institute of Chartered Accountants in England and Wales state:

'Complaints

*9(1) Any person may bring to the attention of the head of staff any facts or matters **indicating** [my emphasis] that a member, a firm or a provisional member **may** have become liable to disciplinary action under these bye-laws or the AADB Scheme or the JDS; and **it is the duty of every member, where it is in the public interest for him to do so, to report to the head of staff any such facts or matters of which he is aware.** [my emphasis]*

(2) In determining whether it is in the public interest for a member to report any such facts or matters under paragraph (1) regard shall be had

to such guidance as may from time to time be issued by the Council.

(3) In these bye-laws any facts or matters which –

(a) have come to the attention of the head of staff under paragraph (1) or otherwise; and

(b) indicate that a member, a firm or a provisional member may have become liable to disciplinary action under these bye-laws or the AADB Scheme or the JDS, are referred to as a “complaint”.

(4) Any dispute relating to –

(a) a decision of the head of staff as to whether any facts or matters fall within paragraph (3)(b); or

(b) an opinion formed by him as mentioned in paragraph (1), (2),

(3)(a) or 3(b) of bye-law 10,

shall be referred to and determined by the Investigation Committee.

Processing of complaints by head of staff

10(1) If, as regards any complaint, the head of staff is of the opinion that it is to be dealt with by the AADB, he shall lay it before the Investigation Committee.

(2) If, in the case of any complaint not laid before the Investigation Committee under paragraph (1), the head of staff is of the opinion that it is appropriate to do so, he shall attempt to resolve the complaint by conciliation or in some other way not involving disciplinary action under these bye-laws; and if the attempt is successful, he shall take no further action with respect to the complaint.

(3) Where an attempt under paragraph (2) is made but fails, the head of staff shall review the complaint in the light of any further relevant facts or matters which have come to his attention since he initiated the attempt; and –

(a) if as a result of that review he remains of the opinion that the member, the firm, or the provisional member concerned may have become liable to disciplinary action under these bye-laws, he shall proceed to investigate the complaint;

(b) if as a result of that review he is no longer of that opinion, he shall take no further action with respect to the complaint.

(4) If, as regards any complaint not laid before the Investigation Committee under paragraph (1), the head of staff does not think it appropriate to make an attempt under paragraph (2), he shall proceed to investigate the complaint.

(5) If, having investigated a complaint under paragraph (3) or (4), the head of staff is no longer of the opinion that the member, the firm or the provisional member concerned may have become liable to disciplinary action under these bye-laws, he shall take no further action with respect to the complaint unless the complainant insists on its being laid before

the Investigation Committee [my emphasis]; but if the head of staff remains of that opinion or the complainant so insists, the head of staff shall lay the complaint before the Investigation Committee.'*

See:

http://www.icaew.com/index.cfm/route/162782/icaew_ga/Members/Member_support/Professional_conduct/Members_handbook/2_1_Members_handbook_2009/pdf

*This means that a complainant can insist that a complaint should be referred to the Investigation Committee.

4. On 26/7/2010 I made a complaint to the ICAEW by E-Mail as follows:

'1. The report by Sir Jonathan Parker dated 2/6/2010 [Supplementary Appeal Report' under the Joint Disciplinary Scheme] concerning complaints against Ernst & Young's in relation to their conduct as auditors of Equitable Life found (paragraph 57**) that the firm **should have qualified the accounts of Equitable Life in respect of GAR liabilities in the absence of specific legal advice to the contrary** [my emphasis].*

2. It is clear from the Parliamentary Ombudsman's report into the Equitable Life crisis (Equitable Life: a decade of regulatory failure - Part One: main report, para. 74) that at this time 8 other life companies had such significant GAR liabilities that they 'gave general cause for concern' and that one company other than Equitable Life was 'of particular concern'.

3. There are reasonable grounds for believing, on this basis, that the accounts of these other 9 companies should have been qualified on the basis of their GAR liabilities in the absence of specific legal advice to the contrary.

*4. I wish to make a complaint against the auditors of these companies on this basis. I am not aware of the companies concerned or the names of their auditors because I do not have access to the relevant documents but there are sufficient indications that member firms*** may be liable to disciplinary action to justify the Investigation Committee exercising its powers under bye-law 13(1) of the Disciplinary Bye-Laws**** or otherwise as the case may be.'*

*The Joint Disciplinary Scheme investigates complaints referred to it by the ICAEW and the Institute of Chartered Accountants of Scotland (ICAS).

**Paragraph 57 says that Ernst & Young were '*seriously at fault in sanctioning non-disclosure [of the GAR liability] in the absence of specific and unambiguous legal advice that such a course was justified within the meaning and for the purposes of FRS 12.*'

***The auditors of the 9 companies must be member firms of the ICAEW or of ICAS because if they were not they would be legally barred from acting as auditors of the companies concerned.

****'Power of Investigation Committee to call for information, etc.

13(1) The Investigation Committee shall have power by notice served on any member, member firm, regulated firm or provisional member to call for such information, such explanations and such books, records and documents as the Committee considers necessary to enable it or the head of staff to perform its or his functions under these bye-laws.'

5. I made this complaint as a member of the ICAEW as required by Disciplinary Bye-Law 9(1) as quoted above, as a member of the public and as a policyholder/trustee of policies which could be with any of the life companies concerned and who may have suffered loss as a result.
6. I sent a reminder by E-Mail on 4/8/2010.
7. The ICAEW has not responded to my complaint of 26/7/2010 or to the reminder of 4/8/2010 or to a letter of 5/10/2010 sent by E-Mail in accordance with the pre-action protocol.
8. It is important to note that my complaint is based on a finding in the report by Sir Jonathan Parker into the conduct of Ernst & Young as auditors of Equitable Life. This report was dated 2/6/2010 so that I cannot have made my complaint before that date.
9. It is important to note that the duty of a complainant is only to report facts or matters which indicate that a member may be liable to disciplinary action. Complainants generally do not have either the means or the authority to carry out a full investigation into the matter; the ICAEW do have the means and the authority – and is their job to carry out investigations.
10. Further, Audit Scotland's (the government auditors in Scotland) guidance note on whistleblowing (ISBN 1 904651 14 3), prepared in association with Public Concern at Work, states '*Don't investigate the matter - You may make matters worse if you do. It's your job to raise the concern* [my emphasis], *not prove it.*' I submit that the same logic applies to complainants, who may also be whistleblowers of course.
11. What is going on here is, in essence, quite simple. The ICAEW started its investigation into Ernst & Young's conduct as auditors of Equitable Life in January 2001. It has taken them over 10 years to complete that investigation. Many people appear to have formed the view that the ICAEW have dragged this matter out for so long in order to protect the reputation of Ernst & Young (and hence 'the profession') and to ensure that any adverse findings would be 'old hat' by the time they were published (see 'Private Eye', issue 1264, for example). I agree with this view. But the financial problem that brought Equitable Life to its knees in 2000 was an '*industry-wide issue*' by November 1997, as stated in the Penrose Report (Part 4, Ch. 12, para. 8, p. 380). The question therefore arises: '*If these other 9 life companies had similar GAR problems to Equitable Life and if Ernst & Young were at fault in not ensuring that Equitable Life's GAR problem was disclosed in the accounts of that company in the absence of specific legal advice to the contrary, then, surely, the auditors of the other 9 companies must be equally at fault? They also should have qualified the accounts of the companies concerned in the absence of specific legal advice to the contrary.*' I submit that any reasonable person would agree that these facts justify further investigation because they indicate that the auditors concerned may be subject to disciplinary action. I believe that the ICAEW is refusing to assess my complaint properly for a very simple reason, and that is that they do not want to open a can of worms that is 10 times the size, in financial terms, of the Equitable Life crisis (over £14 billion as opposed to £1.5 billion) and which could possibly expose all the major firms of auditors to findings of misconduct and subsequent financial penalties, and cause immense reputational damage not only to the firms themselves but to the profession as well. This, I believe, is the matter in a nutshell.
12. In November 2007 I made a complaint to the ICAEW against PricewaterhouseCoopers on the grounds that, as auditors of Scottish Widows, they had, inter alia, failed to qualify the 1998 accounts of that company in respect of a £1.5 billion GAR liability which existed at that time. My argument was that since Ernst & Young were aware of a £1.5 billion GAR liability on the part of Equitable Life at that time, PricewaterhouseCoopers should (indeed, must) also have been aware of a similar liability on the part of Scottish Widows at that time. In fact, as we know from the Penrose Report cited above, the GAR issue was an '*industry-wide issue*' by November 1997 and there is no doubt that PricewaterhouseCoopers knew of the existence of Scottish Widows' £1.5 billion GAR liability in 1998. In October 2009 the ICAEW rejected my complaint on the basis that it was not a complaint; in other words that, in their view,

there was no indication that PricewaterhouseCoopers may be liable to disciplinary action (see Bye-Law 9(1)(3) above). I believe that they did this to prevent me from asking for my complaint to be referred to the independent reviewer of complaints (because if your complaint is not a complaint then it cannot be referred to the independent reviewer of complaints).

13. My 2007 complaint against PricewaterhouseCoopers is to be distinguished from the complaint which forms the basis of this application because the latter complaint is against the 9 auditors of the life companies referred to in the Parliamentary Ombudsman's report, as referred to above, which does not necessarily include PricewaterhouseCoopers, and also because the latter complaint is based on the critical finding in the report of Sir Jonathan Parker dated 2/6/2010 referred to above and so could not have been made before that date.
14. I believe that the facts stated above are true.

Graham Senior-Milne