

Complaint against Brian Harris acting as Independent Examiner of the Institute of Chartered Accountants of Scotland.

1. My name is Graham Senior Milne, of Norham, Northumberland. I was born in 1955 and I am a Chartered Accountant, being an Associate Member (ACA) of the Institute of Chartered Accountants in England & Wales (ICAEW);
2. Between January 1998 and December 2003 I was employed as an IT Audit Manager, that is an Internal Auditor, by Lloyds TSB, initially in London.
3. In January 2002 I was transferred to Scottish Widows in Edinburgh (which had become a subsidiary of Lloyds TSB in 2000 in a process known as the 'Scottish Widows Demutualisation', whereby the policyholders of Scottish Widows had sold that company to Lloyds TSB).
4. On 11 November 2002, and on the advice of the Ethics Advisory Service of the ICAEW, I became a whistleblower with respect to a matter relating to the demutualisation of Scottish Widows, which I had initially reported to my line management but which they had refused to investigate. This matter concerned what appeared to be (were quite clearly in my opinion) inadequate disclosures and misleading statements made by the Directors of Scottish Widows to the Court of Session and the policyholders of Scottish Widows in relation to a contingent liability of £1.5 billion in respect of Guaranteed Annuity Rate (GAR) policies and an associated balance of that amount retained in a so-called 'Additional Account'. The two documents which had put me on enquiry were the 'Scheme', approved by the Court of Session in February 2000, and a circular ('The Demutualisation and Transfer Policyholder Circular') sent to policyholders and dated 19 November 1999. Both of these documents are public documents.
5. I later found out that, as I had suspected, making a false statement in a statement prepared under section 49 of the Life Insurance Companies Act 1982, namely the 'Scheme' approved by the Court of Session in February 2000, was under section 71 of that Act a criminal offence punishable by imprisonment.
6. On 12 December 2002 I was suspended by my line management on the basis of a list of allegations, ranging from the whistleblowing matter referred to (and this in spite of the fact that they knew that I had acted on the advice of the ICAEW) to a number of allegations which were patently absurd and which did not constitute a breach of company rules (including 'amending the holiday spreadsheet', 'being unwilling to go on a course' and 'criticising a report template'). Although my suspension took place a month after I became a whistleblower, it will be appreciated that it took time for my line manager to prepare the detailed allegations against me once he had been instructed to do so.
7. On the basis that a). the allegations made against me were either false or did not constitute a breach of company rules, b). that the company's own internal disciplinary procedures had not been followed, c). that the people who were making the allegations against me were the same people who had refused to

investigate my concerns relating to the demutualisation and d). that I had been suspended so shortly after raising those concerns, it was my view that my suspension amounted to clear victimisation of a whistleblower by my line management. It was also my view that my suspension must have been authorised by the Director of Group Audit himself, who I knew was aware of my whistleblowing.

8. On 15 December 2002 I referred the matter to Professor Ewan Brown, Chairman of the Audit Committee of Lloyds TSB (who is CA, that is a member of the Institute of Chartered Accountants of Scotland), amongst others. I explained to Professor Brown the nature of the allegations made against me as detailed above. I referred three further matters to him as well, as detailed in my letter to Mr. Harris of 21st October 2005 (**copy enclosed**).
9. In a letter to me dated 17th December 2002 Professor Brown refused to take any action on the basis a). that there was an on-going investigation into the allegations against me and b). that I 'could offer **no evidence** to substantiate my claims'.
10. I replied in a letter dated 19th January 2003 that it was not inappropriate for him to intervene where there was prima facie evidence that the bank's procedures were being used to victimize a whistleblower (as demonstrated inter alia by the nature of the allegations against me – see above). Professor Brown's claim that I had not provided any evidence referred to a single telephone conversation that had taken place between myself and a John Troon. Although I had of course explained my concerns to my management when I originally reported the matter (as Professor Brown would have found had he asked them) I had not provided any evidence to John Troon during that telephone conversation because I was not sure that it was appropriate to do so at that juncture; I actually thought he was 'fishing' when I spoke to him and was suspicious of his motives. Had they really been interested in finding out what evidence I had they should have arranged a meeting and it is significant that they did not do so. The question is how can it be adequate to assess the evidence in relation to such a serious matter on the basis of a single off-the-cuff telephone call? The answer is clear. In my letter of 19th January I included a copy of my letter of 19th January 2003 to the FSA which made it clear to Professor Brown that my concerns were based on solid facts, namely:
 - the **FACT** that a contingent liability of £1.5 billion had existed at the time of the Scottish Widows demutualization;
 - the **FACT** that this contingent liability later crystallized;
 - the **FACT** that the Directors of both Lloyds TSB and Scottish Widows knew about this contingent liability;
 - the **FACT** that the existence of this contingent liability of £1.5 billion was not disclosed to Scottish Widows policyholders at the time of the demutualisation [which is a criminal offence under section 71 of the Life Insurance Companies Act 1982];
 - the **FACT** therefore that the Directors of Lloyds TSB and Scottish Widows knowingly failed to disclose the existence of this contingent liability to Scottish Widows policyholders at the time of the demutualisation and had actually led the

policyholders into an expectation that the £1.5 billion balance on the Additional Account would be paid to them (see page 23 of the Demutualisation and Transfer Policyholder Circular of 19 November 1999).

11. Professor Brown replied in a letter dated 4th February 2003 repeating his assertion that the investigation into my conduct was continuing and that it was therefore inappropriate for him to get involved. With regard to the Scottish Widows demutualisation he said that I needed to 'provide further evidence'.
12. I did not pursue the matter with Professor Brown after this until I made a complaint about him to ICAS on 10th October 2005. The basis of my complaint was that I had provided Professor Brown with **sufficient prima facie evidence** to warrant his investigating the matters further (both the Scottish Widows demutualisation and the victimisation by my management) but that he had refused to do this. He was therefore acting in bad faith and this was a breach of his ethical duty under ICAS rules to act with integrity. This complaint process eventually resulted in the referral of the case to Mr. Harris as Independent Examiner, leading to his review dated 28 December 2005 (**copy enclosed**), which is the basis of this complaint against Mr. Harris.
13. **Before proceeding further it is important to establish certain facts, as follows:**

- **THAT IT IS NOT THE RESPONSIBILITY OF A WHISTLEBLOWER TO CARRY OUT ANY FORM OF INVESTIGATION and that they rarely have the authority to do so. In fact, Audit Scotland specifically states in its guidance notes on whistleblowing 'Don't investigate the matter. You may make matters worse if you do. It's your job to raise the concern, not prove it.'**
- **THAT A WHISTLEBLOWER CANNOT BE EXPECTED TO PROVE THAT HIS CONCERNS ARE TRUE BUT ONLY TO DEMONSTRATE THAT HE HAS PRIMA FACIE REASONS FOR BEING 'PUT ON ENQUIRY' (see 10 above); this must always be sufficient to justify an investigation into his concerns. The most important thing is that the whistleblower should act in good faith and, when he does so, that his concerns should be received (and acted upon) in good faith. It is quite possible for a whistleblower to report his concerns in good faith and for it to be later established that those concerns were unfounded but of course this can only be established by investigation. If a whistleblower only has to provide prima facie evidence to warrant an investigation then it follows that it must be unethical for someone to refuse to investigate a whistleblower's claims if such evidence is provided, particularly where the person who refuses to investigate the claims has a specific responsibility in this area (e.g. the Chairman of an Audit Committee) and the whistleblower has good reason for reporting the matter to that person.**

- **THAT IT IS THE DUTY OF A COMPANY TO ENSURE THAT ALL COMPLAINTS OF VICTIMISATION ARE THOROUGHLY AND INDEPENDENTLY INVESTIGATED and this is what company rules generally say, including those of Lloyds TSB which make it clear that complaints of harassment will be investigated without exception (Staff Manual 1.10). If someone believes that they are being victimized it is unreasonable (indeed patently ridiculous) to expect them to prove it before the matter is investigated; this is putting the cart before the horse. Clearly, if investigation proves that the complaint was not made in good faith then appropriate steps must be taken. In this context I would draw your attention to the ICAEW's booklet on 'Guidance for Audit Committees - Whistleblowing arrangements' which states (page 6) that an Audit Committee's review of the effectiveness of whistleblowing procedures might include consideration of whether 'any events have come to the committee's or the board's attention that might indicate that a staff member has not been fairly treated as a result of raising their concerns'.**

14. In his letter to me dated 4th February 2003 and in relation to the whistleblowing issue, Professor Brown stated that 'in the first instance you should comply with the LTSB internal procedures relating to whistleblowing' (Staff Manual 1.34 states ' You should report the matter as soon as possible to your line manager or senior manager within your area' – which is exactly what I did). It was, however, precisely because I had followed these internal procedures by reporting the matter to my management and because following these procedures had not worked (that is my management has refused to investigate my concerns) that I had referred the matter to the external auditors (on the advice of the ICAEW) and then to Professor Brown. It will be appreciated therefore that not only did I follow company procedures but that I also provided prima facie evidence of the strongest possible kind (clear and undeniable facts) and that Professor Brown had still refused to act in any way.

15. **In his letter to me dated 4th February 2003 and in relation to the whistleblowing issue, Professor Brown also stated that I should 'provide further evidence'. He is effectively claiming that I had not provided sufficient prima facie evidence to warrant his taking action. So the key question is whether I provided sufficient prima facie evidence. The evidence that I gave him consisted of certain facts in the public domain which made it quite clear that the directors of Scottish Widows had known about the existence of the contingent liability and had not disclosed this fact to the policyholders as required by law. Now the critical point is that I provided all the relevant information that was in the public domain. I could not provide any further information because such information would of necessity have been private (i.e. internal) company information which of course I had no authority to obtain. Therefore, in asking me to provide further information Professor Brown was asking me to obtain information which he knew or ought to have known I had no authority to obtain. On this basis Professor Brown's demand for further information was not only unreasonable but in fact impossible to meet.**

Such a demand is so manifestly unjust and unreasonable that to make it is a clear demonstration of bad faith.

16. In relation to my claim of victimisation Professor Brown declined to intervene on the basis that an investigation into allegations against me was in progress. He stated that no action would be taken until this fact-finding process was complete and that if disciplinary action be taken against me that an appeal process is built into the bank's procedures. Professor Brown appears to have entirely discounted the possibility that allegations can be made against an employee and an investigation carried out into those allegations specifically in order to victimise that employee (that is the investigation process itself can be used as a form of victimisation). This is probably one of the most common methods of victimisation used by unscrupulous managers and it is hard to believe that someone in Professor Brown's position can be so naïve as to be unaware of this fact. Furthermore, Professor Brown apparently also entirely discounted the possibility that at the end of the investigation my management might actually dismiss me without taking any disciplinary action, which is a clear breach of company rules. This is what actually happened*. The fact that I was suspended so shortly after becoming a whistleblower and the absurd nature of the allegations against me should have sounded the loudest possible alarm bells to Professor Brown – but he remained resolutely deaf. Why did he do this? I believe one only needs to look at the nature of the concerns that I reported to him, which were of the most serious possible kind, involving a massive deception of the Scottish Widows policyholders that made the directors of that company liable to criminal prosecution and the bank itself liable to claims for compensation in the region of £1.5 billion or more. The consequences for the bank itself were (and are) potentially disastrous.

*Section 1.3 of the Lloyds TSB Staff Manual states, against the question 'Could I be dismissed?', that 'Breaches of conduct will be dealt with in accordance with the prescribed stages of this policy, with dismissal only resulting from the final stage [i.e. a formal disciplinary hearing - which is subject to an appeal hearing, neither of which happened in my case] or as a possible consequence of an act of Gross Misconduct [of which I was not accused].'

17. Mr. Harris claims (4.03) that Professor Brown followed company procedures. What he actually did was refuse to investigate two very serious breaches of company procedures by my management, namely:

- the refusal of my management to investigate my concerns relating to the demutualisation;
- the misuse of company procedures by the same management in order to victimise me for raising those concerns (i.e. whistleblowing).

18. Mr. Harris claims (4.03) that I needed to show 'some breach of law or ethics before Professor Brown's conduct could be described as unethical or improper and thus subject to disciplinary proceedings'. This appears to be a reference to the Investigation Committee's statement that 'in the absence of evidence of

breach of legal or professional duty on his [Professor Brown's] part, there was no case to answer.' The use of the phrase 'absence of evidence' amounts to a claim that I offered **no evidence** of professional misconduct on Professor Brown's part. This is manifestly false, that is a lie (see all the evidence above), and yet Mr. Harris simply repeats this lie. This claim is not just bizarre, it is truly Byzantine:

- I submit evidence (explain the basis of my concerns) to my management. They refuse to investigate it;
- I refer the matter to Professor Brown. He says 'You have offered no evidence' (without finding out what evidence I had already submitted to my management).
- I provide evidence to Professor Brown. He says 'Show me further evidence', knowing that I have no authority or in fact responsibility to obtain such evidence;
- I complain to ICAS about Professor Brown, submitting the evidence again and the evidence of Professor Brown's misconduct (his refusal to look at the evidence). ICAS respond that I have offered no evidence of Professor Brown's misconduct (see the reference to 'absence of evidence' above);
- I refer the matter to Mr. Harris as Independent Examiner. He says I need to show 'some [i.e. any] breach of law or ethics' or, in other words, 'You have offered no evidence'.

19. In relation to my claim of victimisation, Mr. Harris says (4.04) that Professor Brown was justified in refusing to act because I advanced no grounds for thinking that the alleged victimisation was 'relevant to' (i.e. caused by) my whistleblowing. This is wrong on two counts:

- In the first place a complaint of victimisation should be investigated whatever the alleged cause, that is the cause of the victimisation is irrelevant to the question of starting an investigation. On this basis an investigation should have been carried out whether or not it was related to the demutualisation issue and, given that my complaint was (inter alia) against the Director of Group Audit himself, it was clearly necessary to refer the matter to someone such as Professor Brown. It was not necessary for Professor Brown to carry out the investigation personally but he should have taken steps to ensure that my complaint was independently and thoroughly investigated. He did nothing.
- In the second place I did, in fact, produce sufficient evidence to provide strong grounds for believing that the victimisation might well be caused by my whistleblowing, as follows:
 - the FACT that the people who initiated the investigation were the same people who had refused to investigate my concerns over the demutualisation;

- the FACT that I was suspended so shortly after my whistleblowing (Question: If my management were so concerned about my alleged misconduct why hadn't they acted earlier?);
 - the FACT that many of the allegations against me were patently absurd;
 - the FACT that the investigation had been started without going through the proper procedures laid down in the Staff Manual.
 - In short, only a wilful, positive and determined act of myopia (I see no ships') can account for both Professor Brown's and Mr. Harris's attitude, which is, again, a clear demonstration of bad faith on the part of both of them, though for different reasons.
20. On the basis of the above it is my view that Mr. Harris's conclusion that Professor Brown was correct in acting as he did is manifestly false. Since the facts and arguments are so plain (as outlined above), it is my view that Mr. Harris is perfectly aware that his conclusion is manifestly false and that he is therefore consciously acting in bad faith. In doing this he is in breach of the fundamental ethical requirements of his profession; indeed he is unfit to be a member of that profession.
21. To support my claim that Mr. Harris has acted in bad faith I would like to state the following:
- In writing his report Mr. Harris clearly needed to provide background information relevant to the case. However, Mr. Harris has made a number of statements which are not only **unnecessary and irrelevant** but are either **unsubstantiated, misleading or just plain false** and which Mr. Harris either knew or ought to have known were **likely to prejudice** the reader against me, as follows:
 - The whole of section 3.01 is irrelevant to my complaint against Professor Brown and should not have been included.
 - In section 3.01 Mr. Harris states 'In pursuit of his quest to expose what he has described as 'the biggest scandal in the United Kingdom in living memory'...'. This statement is not only unnecessary but is not properly explained (in other words I am saying that since Mr. Harris has made the statement he should ensure that the reader is put in possession of the full facts). The total GAR liabilities of the life insurance industry in the UK (in other words my statement did not relate primarily to Scottish Widows at all – which makes it even more irrelevant to my complaint against Professor Brown) were estimated to be in excess of £14 billion in an article in the Daily Telegraph on 20th July 2000. I believe this to be an understatement. Having reviewed the available evidence it is my considered opinion that the policyholders of the companies concerned have never

been properly informed about the existence of these liabilities and have effectively been (in the colloquial phrase) left in the lurch to meet them (that the ordinary policyholders have had to meet these liabilities is an established historical fact). It is my view that this has been done with the full knowledge of the Financial Services Authority (unless we believe that the FSA have never heard of Equitable Life). This is what I meant by the words quoted by Mr. Harris – I meant what I said. Mr. Harris's failure to explain the matter properly demonstrates that he intended to infer that I am deluded or worse. Lastly, Mr. Harris's use of the word 'quest' implies that I am pursuing the matter for other than purely meretricious reasons. It is a word that Mr. Harris should have carefully avoided using, as he must well know. The fact that he chose to use it is illuminating.

- Mr. Harris states (3.01) '(and no doubt in order to restore is stalled career – see below)'. This statement is not only irrelevant but it is absolutely unjustified. Mr. Harris has no grounds whatsoever for making this statement. It is quite simply a baseless assertion made quite clearly with the intention of calling my motives into question. There can be no other possible explanation or clearer demonstration of bad faith in imputing such a motive. Put simply, it is a blatant attempt to blacken my character.
- Sections 3.02, 3.03 and 3.04 are irrelevant to my complaint against Professor Brown; that is, they add nothing to that case one way or the other and should quite clearly not have been included.
- In relation to section 3.02 what Mr. Harris does not mention is that the FSA's response was (as he knows) actually made to my MP, that my MP regards this response as unsatisfactory and has subsequently referred the matter to the Chairman of the Treasury Select Committee; he has also agreed to present a petition to Parliament if this should prove necessary. The reader will appreciate that Mr. Harris's statement that 'Mr. Senior-Milne describes the FSA response as inadequate and does not accept their conclusion' is highly one-sided and misleading. It implies that I am isolated in my opinion; this is the exact opposite of the truth, which makes it a lie.
- In section 3.03 Mr. Harris states that '**As he tells it**, he was subjected to sustained campaign of harassment...'. What Mr. Harris does not mention is that (as he knows) I made a formal complaint of harassment under proper bank procedures which was upheld by an independent investigation. Mr. Harris's statement implies that it is merely my opinion that I was harassed and is clearly designed (taken together the other matters referred to by him – which he does not properly explain

either) to make the reader question both my judgement and my honesty, if not also my mental stability.

- Section 3.03 also contains a number of factual errors. I did not suffer a further two heart attacks (I was twice admitted to hospital with a suspected heart attack during the course of the investigation into the allegations against me) nor do I suffer from depression (there was a stage when I became depressed, which is hardly surprising in the circumstances but I declined to take medication).
- In short Mr. Harris has painted a highly selective and factually inaccurate picture in section 3.03 of his report (which is also irrelevant and unnecessary). The question **MUST** be asked 'Why did Mr. Harris include statements which he **KNEW** were irrelevant and unnecessary and which he also **KNEW** to be either false or misleading and likely to prejudice the reader against me.' There is only one answer, namely that Mr. Harris was acting in bad faith.
- In section 3.04 Mr. Harris states 'It would be tempting to regard someone with his history as one of life's awkward squad, a troublemaker whose suspicions of serious impropriety can be ignored. I am not in a position to judge. What I do know is his complaint has to be judged on its merits, not his.' The obvious point is that if he is not in a position to judge on this issue then why does he mention it at all? If Mr. Harris is not in a position to judge then how can the reader be in a position to judge either? If the reader cannot make a proper judgement then the matter should not be mentioned even if it is relevant to the case (which this clearly is not). Similarly, if my complaint should be judged on its merits, what on earth is he doing making a statement that is patently not relevant to making a judgement on the merits of the case and, in fact, is likely to prevent people from making a proper judgement on the merits of the case? Mr. Harris's function is not to be 'tempted', it is to come to an opinion on the basis of a fair and independent assessment of the relevant facts. It is nothing short of outrageous that a supposedly independent examiner should make such a statement. It is dereliction of his professional duty on an unparalleled scale, of truly breathless proportions.
- In section 5.01 Mr. Harris deals with what he calls 'ancillary matters'. In fact, each of the three matters that I raised relates to a serious breach of professional duty on behalf of my management (including deliberate falsification of audit reports) and Professor Brown's refusal to investigate these breaches. Mr. Harris simply states, in relation to one issue, that he 'can see nothing in this complaint' and, in relation to another, that he agrees that this 'does not warrant further examination'. In other words, Mr. Harris gives an opinion **WITHOUT PROVIDING**

ANY REASONS AT ALL. How can this be acceptable in a report by a supposedly independent examiner into instances of serious professional misconduct? The whole purpose of such a report is the explain the facts, to give an opinion and to explain the basis of that opinion; to fail to do so is a serious dereliction of professional duty on Mr. Harris's part.

- **In conclusion I would like to say that my complain against Mr. Harris needs to be assessed by looking at his report as a whole. When this is done it becomes clear that Mr. Harris has fallen very far short of the standards of professional conduct which I and others should reasonably be able to expect of him as a barrister. This is not a matter of simple negligence, it is a matter of deliberate bad faith, INCLUDING CLEAR ATTEMPTS AT CHARACTER ASSASSINATION. He has, in my view, demonstrated beyond any possible doubt that he is utterly unfit to be not just the independent examiner of ICAS but a barrister as well. In short, this is a breach of professional standards so serious that Mr. Harris cannot be trusted to act as a barrister again.**