

# 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, Northumberland TD15 2LQ

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

**E-mail address**  
grahammilne001@btinterbnet.com

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

**name**  
n/a

**address**

**Telephone no.** **Fax no.**

**E-mail address**

Claimant's Counsel's details

**name**  
n/a

**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, Morrgate 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**  
The Accountancy & Actuarial Discipline Board

**address**  
5th floor, Aldwych House, 71-91 Aldwych, London WC2B 4HN

**Telephone no.**  
020 7492 2451

**Fax no.**  
020 7492 2459

**E-mail address**

**name**  
n/a

**address**

**Telephone no.**

**Fax no.**

**E-mail address**

## SECTION 3 Details of the decision to be judicially reviewed

**Decision:**  
Failed to respond to a complaint in accordance with published procedures.

**Date of decision:**  
13/4/2011 (date of reply)

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, Morrgate Place, London EC2R 6EA

## 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 including properly explaining the reasons for their decision.

**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 n/a

Signed \_\_\_\_\_

Claimant ('s solicitor)

Position or office held n/a

(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 checked="" 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 (ICAEW)**

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

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# 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 (ICAEW)**

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

1. Note that this application relates to two complaints to the ICAEW; a complaint of 22/12/2010 concerning PricewaterhouseCoopers' (PwC) conduct as auditors of Lloyds Banking Group and their audit of the 2008 accounts of that company (para. 5) and a complaint of 30/3/2011 concerning PricewaterhouseCoopers' (PwC) conduct as auditors of Northern Rock and their audit of the 2006 accounts of that company (para. 7).
2. I am an Associate Member (ACA) of the Institute of Chartered Accountants in England & Wales (ICAEW).
3. 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](http://www.icaew.com/index.cfm/route/161861/icaew_ga/Home/Protecting_the_public/Publications/FAQs_on_the_disciplinary_process_Information_for_members/pdf)

4. 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.'*

also:

Section 11 omitted (deals with handling of complaints by firms themselves)

### **'Complaints laid before Investigation Committee**

*Initial consideration of complaints so laid*

*12(1) This bye-law applies where a complaint is laid before the Investigation Committee under bye-law 10.*

*(2) The Investigation Committee shall first of all decide whether it*

*considers that, having regard to all the circumstances of the matter, it is appropriate that the complaint is referred to the AADB to be dealt with under the AADB Scheme.*

*(3) If the Investigation Committee does not refer a complaint to the AADB under bye-law 12A(1), it shall either –*

*(a) refer the complaint back to the head of staff to be processed by him under paragraphs (2) to (5) of bye-law 10 as if he had not laid it before the Investigation Committee under paragraph (1) of that bye-law; or*

*(b) proceed to deal with it under bye-law 15.*

### **Referral of complaints to or from the AADB**

*12A(1) If the Investigation Committee decides, in accordance with byelaw 12(2), that it is appropriate for a complaint to be referred to the AADB, it shall make a written referral of the complaint to the AADB.*

*(2) If the AADB declines a referral of a fact or matter to it under the AADB Scheme, the Investigation Committee shall either –*

*(a) refer the fact or matter back to the head of staff to be processed by him under paragraphs (2) to (5) of bye-law 10; or*

*(b) proceed to deal with the fact or matter under bye-law 15.*

*(3) If following an enquiry under the AADB Scheme, the AADB refers the fact or matter back to the Institute, the Investigation Committee shall either –*

*(a) refer the fact or matter back to the head of staff to be processed by him under paragraphs (2) to (5) of bye-law 10; or*

*(b) proceed to deal with the fact or matter under bye-law 15.*

#### **Assumption of matters by the AADB**

*12B If the head of staff receives notice in writing from the AADB requiring that a fact or matter be dealt with under the AADB Scheme, then with immediate effect –*

*(a) the AADB shall become responsible for the investigation of the fact or matter as if it had been referred under bye-law 12A(1); and*

*(b) the head of staff and the Investigation Committee (or if, at the relevant time, a formal complaint has been preferred under bye-law 15(2)(a), the Disciplinary Committee) shall cease to have any responsibility for it.*

Section 13 omitted (deals with power of Investigation Committee to call for information)

Section 14 omitted (deals with power of Investigation Committee to require advice to be obtained and followed)

### **Complaints not referred to or referred back from AADB Scheme**

*15(1) Where a complaint laid before the Investigation Committee is –*

*(a) not referred to the AADB under bye-law 12(A)(1) and not referred back to the head of staff under bye-law 12(3)(a); or*

*(b) declined by the AADB under bye-law 12A(2) and not referred back to the head of staff under bye-law 12A(2)(a); or*  
*(c) referred back by the AADB to the Institute under bye-law 12A(3) and not referred back to the head of staff under bye-law 12A(3)(a), the Investigation Committee shall consider whether or not the complaint discloses a prima facie case and, if it finds that it does not, shall dismiss the complaint.*

*(2) If the Investigation Committee finds that the complaint discloses a prima facie case it may –*

*(a) prefer the whole or part of the complaint to the Disciplinary Committee as a formal complaint; or*

*(b) deal with the whole or part of it under bye-law 16 (consent orders); or*

*(bb) deal with the whole or part of it under bye-law 16A (cautions); or*

*(c) order that further consideration of the whole or part of the complaint be deferred, on such terms and conditions as it considers appropriate, for either or both of the following purposes, namely –*

*(i) to enable the Investigation Committee to obtain such information, such explanations and such books, records and documents as it considers necessary to perform its functions under this bye-law; or*

*(ii) if the subject of the complaint is the existence of any of the circumstances set out in sub-paragraphs (b) to (f) of bye-law 4(2), to enable the Committee to monitor developments arising out of those circumstances; or*

*(d) order that no further action be taken on the complaint or on any specified part of it.*

*(3) The conditions on which an order under paragraph (2)(c) may be made include the giving of written undertakings for the protection of client interests.*

*(4) Before taking any decision under the preceding provisions of this bye-law the Investigation Committee –*

*(a) unless satisfied that the member, member firm, regulated firm or provisional member concerned has been given an opportunity to make written representations to the Committee, shall give him such an opportunity; and*

*(b) may, if it thinks fit, give him or his representative an opportunity of being heard before the Committee (but shall not be under a duty to do so).*

*(5) In deciding whether to prefer a complaint (“the current complaint”) to the Disciplinary Committee, the Investigation Committee may take into account any facts or matters –*

*(a) which were the subject matter of any complaint considered by the Investigation Committee on any previous occasion in relation to the member, member firm, regulated firm or provisional member concerned;*

*(b) in respect of which the Committee on that occasion found that a*

*prima facie case was disclosed; but  
(c) in respect of which no formal complaint was preferred to the  
Disciplinary Committee and no order was made under bye-law  
16(2) (consent orders) or bye-law 16A (cautions);  
and if the Investigation Committee decides to prefer the whole or part  
of the current complaint to the Disciplinary Committee as a formal  
complaint, it may also prefer to that Committee any formal complaint  
which it could have preferred to it on that previous occasion against  
the member, member firm, regulated firm or provisional member in  
question and, if there were two or more such previous occasions, may  
prefer a separate formal complaint against him in respect of each of  
some or all of them.*

*(6) If the Investigation Committee prefers a formal complaint to the  
Disciplinary Committee, it shall send to the Disciplinary Committee  
and to the defendant a summary of the material facts and matters  
which were considered by the Investigation Committee together  
with –*

*(a) a summary or copy of any written representations made to it by  
the defendant, and*

*(b) if the defendant has appeared before it in person or by a  
representative, a summary of any oral representations made to it.*

*(7) If the Investigation Committee finds that a complaint discloses a  
prima facie case but orders that no further action be taken on it, it  
shall serve a notice to that effect on the member, member firm,  
regulated firm or provisional member concerned; and if within the  
period of 28 days beginning with the date of service of that notice the  
member, member firm, regulated firm or provisional member concerned  
serves notice on the head of staff that he is unwilling to accept the  
finding that a prima facie case exists, then, unless on reconsideration  
the Committee finds that no prima facie case exists, it shall prefer the  
whole or part of the complaint to the Disciplinary Committee under  
paragraph (2)(a).'*

See:

[http://www.icaew.com/index.cfm/route/162782/icaew\\_ga/Members/Member\\_support/Professional\\_conduct/Members\\_handbook/2\\_1\\_Members\\_handbook\\_2009/pdf](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.

5. On 22/12/2010 I made a complaint to the ICAEW by E-Mail as follows:

*'I wish to make a formal complaint against PricewaterhouseCoopers (PwC) and any relevant partners or staff of that firm, on the following basis:*

- 1. I am a shareholder of Lloyds TSB [now Lloyds Banking Group];*
- 2. PwC acted as auditors of Lloyds TSB for the year ended 31 Dec 2008;*
- 3. PwC failed to qualify the accounts of Lloyds TSB for that year on a going concern basis and/or failed to ensure that adequate disclosure was made of the fact that the continued existence of the bank as a going concern was or was likely to be dependent on government support.*
- 4. PwC therefore failed in its duty to shareholders.*

*I would refer you in this context to the following article at:*

<http://retheauditors.com/2010/11/28/big-4-bombshell-we-didnt-fail-banks-because-they-were-getting-a-bailout/>

which, in my view, indicates that PwC may be liable to disciplinary action.

*Big 4 Bombshell: "We Didn't Fail Banks Because They Were Getting A Bailout"*

*Leaders of the four largest global accounting firms – Ian Powell, chairman of PwC UK, John Connolly, Senior Partner and Chief Executive of Deloitte's UK firm and Global MD of its international firm, John Griffith-Jones, Chairman of KPMG's Europe, Middle East and Africa region and Chairman of KPMG UK, and Scott Halliday, UK & Ireland Managing Partner for Ernst & Young – appeared before the UK's House of Lords Economic Affairs Committee yesterday to discuss competition and their role in the financial crisis.*

*The discussion moved past the topic of competition when the same old recommendations were raised and the same old excuses for the status quo were given.*

*Reuters, November 23, 2010: The House of Lords committee was taking evidence on concentration in the auditing market and the role of auditors.*

*Nearly all the world's blue chip companies are audited by the Big Four, creating concerns among policymakers of growing systemic risks, particularly if one of them fails.*

*"I don't see that is on the horizon at all," Connolly said.*

*The European Union's executive European Commission has also opened a public consultation into ways to boost competition in the sector, such as by having smaller firms working jointly with one of the Big Four so there is a "substitute on the bench."*

*"Having a single auditor results in the best communication with the board and with management and results in the highest quality audit," said Scott Halliday, an E&Y managing partner.*

*The Lord's Committee was more interested in questioning the auditors about the issue of "going concern" opinions and, in particular, why there were none for the banks that failed, were bailed out, or were nationalized.*

*The answer the Lord's received was, in one word, "Astonishing!"*

*Accountancy Age, November 23, 2010: Debate focused on the use of "going concern" guidance, issued by auditors if they believe a company will survive the next year. Auditors said they did not change their going concern guidance because they were told the government would bail out the banks.*

*"Going concern [means] that a business can pay its debts as they fall due. You meant something thing quite different, you meant that the government would dip into its pockets and give the company money and then it can pay its debts and you gave an unqualified report on that basis," Lipsey said.*

*Lord Lawson said there was a "threat to solvency" for UK banks which was not reflected in the auditors' reports.*

*"I find that absolutely astonishing, absolutely astonishing. It seems to me that you are saying that you noticed they were on very thin ice but you were completely relaxed about it because you knew there would be support, in other words, the taxpayer would support them," he said.*



*The leadership of the Big 4 audit firms in the UK has admitted that they did not issue “going concern” opinions because they were told by government officials, confidentially, that the banks would be bailed out.*

*The Herald of Scotland, November 24, 2010: John Connolly, chief executive of Deloitte auditor to Royal Bank of Scotland, said the UK’s big four accountancy firms initiated “detailed discussions” with then City minister Lord Paul Myners in late 2008 soon after the collapse of Lehman Brothers prompted money markets to gum up.*

*Ian Powell, chairman of PricewaterhouseCoopers, said there had been talks the previous year.*

*Debate centred on whether the banks’ accounts could be signed off as “going concerns”. All banks got a clean bill of health even though they ended up needing vast amounts of taxpayer support.*

*Mr. Connolly said: “In the circumstances we were in, it was recognised that the banks would only be ‘going concerns’ if there was support forthcoming.”*

*“The consequences of reaching the conclusion that a bank was actually going to go belly up were huge.” John Connolly, Deloitte*

*He said that the firms held meetings in December 2008 and January 2009 with Lord Myners, a former director of NatWest who was appointed Financial Services Secretary to the Treasury in October 2008.*

*I’ve asked the question many times why there were no “going concern” opinions for the banks and other institutions that were bailed out, failed or essentially nationalized here in the US. I’ve never received a good answer until now. In fact, I had the impression the auditors were not there. There has been no mention of their presence or their role in any accounts of the crisis. There has been no similar admission that meetings in took place between the auditors and the Federal Reserve or the Treasury leading to Lehman’s failure and afterwards. No one has asked them.*

*How could I been so naive?*

*If it happened in the UK, why not in the US?*

*Does Andrew Ross Sorkin have any notes about this that didn’t make it to his book?*

*Will Ted Kaufman call the auditors to account now that he is Chairman of the Congressional Oversight Panel?*

*Is there still time to call the four US leaders to testify in front of the Financial Crisis Inquiry Commission?*

*What is the recourse for shareholders and other stakeholders who lost everything if the government was the one who prevented them from hearing any warning?*

*Certainly the auditors are now more inside the room than outside. I never take them for toadies, just standing in the corner waiting for their orders after the big boys talk, even though others have said I give them too much credit for being strategic. Their complacency is calculated. They are much too tied into the work, and the millions in fees, that have been generated by the aftermath of the crisis. Are the millions in fees for supporting the Treasury and the Fed’s cleanup of the crisis their reward for going along? Is this the same acquiescence that doesn’t seem to bother their UK colleagues one bit?*

*Reuters: John Griffith-Jones, chairman of KPMG in Europe, said the banking industry is built on confidence and that full disclosure is absolutely fine in a stable environment.*

*“Come a crisis, the government of the day and Bank of England of the day may prefer the public not to know... to control events in those circumstances,” Griffith-Jones said.*

*And so the government has controlled information about the auditors' role in the US.*

*No one knows whether similar meetings were held between audit leadership and the Federal Reserve Bank and US Treasury. No one has asked them to testify before a Congressional Committee. When their presence in meetings at Goldman Sachs and AIG, for example, was exposed via emails and correspondence subpoenaed by Congressional investigators, the names were redacted at their request.*

*Contracts with the Treasury and the New York Federal Reserve Bank are similarly redacted. We can't trace whether the audit firm professionals working for the government now are the same ones working for their clients who failed. We can't check that those who looked the other way when balance sheets were manipulated and assets valued unrealistically are the same ones now advising how to optimize the value of those same assets for the taxpayer. We are unable to verify if the same partners who failed us at the banks, at AIG, at Lehman, and at Bear Stearns are now managing their assets for the taxpayer.*

*I look forward to hearing from you.'*

6. On 22/12/2010 I wrote to the ICAEW further as follows:

*'With reference to my earlier E-Mail I would also like to refer you to:*

*<http://www.ianfraser.org/connolly-i-do-believe-that-auditors-performed-well/>*

*'Big Four' admit deliberately misled markets about bank solvency pre-crisis*

*November 27th, 2010*

*I was shocked by the testimony given by the heads of the "big four" accountancy firms — PricewaterhouseCoopers, Deloitte, KPMG and Ernst & Young — to the House of Lords economic affairs committee last Tuesday (see video clip above).*

*One of the "big four" accountants' more startling admissions was that they thought it was perfectly acceptable to dupe investors about banking clients' solvency (via what with the benefit of hindsight were wholly misleading "going concern" statements), after a quiet 'fireside chat' with the UK government about the possibility of future bailouts.*

*The "big four" audit firms seem to have decided that, simply because the government told them it might bail out the banks if such a thing became necessary, they should give the banks unqualified audits and pretend they had sufficient working capital to survive unaided for the next 12 months.*

*If the admissions made by these auditors to the House of Lords committee prove anything, it is that the "big four" accountancy firms can no longer have any credibility. By their behaviour ahead of the crisis, it's clear they were more interested in seeking to give insolvent institutions a veneer of solvency (and to preserve the status quo, including their own, presumably transient, ability to command high fees) than in conveying timely, accurate and reliable information to investors and financial markets.*

*In my view, their astonishing admission to the House of Lords committee removes any vestige of credibility that the 'Big Four' auditors may once have had. It presumably also leaves them wide open to multi-billion pound law suits from the thousands of investors who they misled. It might hammer the final nail in the coffin of the fundamentally flawed system of corporate governance and audit we have in the UK.*

*The former Chancellor of the Exchequer Lord Lawson summed up the auditors' admissions by saying: "You noticed that they were on very thin ice, but you were completely relaxed, as you knew that they would be supported by the taxpayer."*

*The people grilled about their audit firms' lack of integrity were John Connolly, chief executive of Deloitte; John Griffith-Jones, chairman of KPMG; Ian Powell, chairman of PwC; and Scott Halliday managing partner of Ernst & Young.*

*I can't quite decide who was the smuggest of this extraordinarily smug bunch, but the one who springs to mind is John Connolly.*

*Remember Connolly was one of several auditors who was officially censured by self-regulatory body the Joint Disciplinary Scheme over their role in the 1988 Barlow Clowes fraud. Barlow Clowes cost the UK government £150m in compensation to thousands of mainly elderly savers after the fraudulent investment group collapsed in 1988. In 1995 the JDS said that it had found:*

*"the professional efficiency, conduct and competence of Mr Connolly fell below the standard which should be displayed by, and may be properly expected of, a chartered accountant who is the second partner on work done and services provided as reporting accountants."*

*Bizarrely the firm for which Connolly then worked, Touche Ross (which later became Deloitte), did not fire Connolly or invite him to resign following the JDS ruling. No. They elected him managing partner of the firm. "That horrified me", said a person familiar with the matter. "At the time other firms like Coopers & Lybrand displayed greater moral backbone when partners were censured."*

*The questioning in the House of Lords session, especially when compared to what we've seen at some of the Congressional hearings in the US, was almost shockingly tame. However one of the Lords on the committee, Lord Levene did ask a reasonably good one when he asked:*

*"Would you agree that by about the middle of 2007 – we're talking about the banks now — the writing was sufficiently on the wall about global financial crisis for auditors to have sounded serious notes of caution when they reported on the 2008 financial statements? Was this a failure of the audit? And, if there are lessons to be learned from that, what changes are going to be made in the future?"*

*In response, the auditors sought to persuade their noble lords that there had been no audit failure (!) and that no changes were required (!!).*

*Connolly, who earned £5.2m in 2008 prefaced his remarks by saying that: "I do believe auditors performed well in the highly complex circumstances of the financial crisis. Er, we did draw the attention of regulators and government to 'going concern' issues on high impact clients." Connolly added:*

*"I don't think there was [a failure of audit]. The environment was such that the complexity of the financial environment at that time caused there to be a hugely intensive effort from auditors, recognizing the onerous nature of their role, and as a consequence of that we dealt with very significant complex audits and had very important decisions to make around our audits."*

*The trouble is they didn't make the right ones!*

*It's worth remembering that Connolly was behind what appears to have been the "whitewash" investigation of the theft of £1.5m from Ritz Design Group PLC by its own chairman (Michael Bancroft) and finance director (Tony Cartwright) in 1991, an apparently negligent act which played a part in enabling Bancroft and Cartwright to go on to participate in a later heist of circa £1 billion from Halifax Bank of Scotland. (presumably if the Ritz Design Group investigation had been tougher Bancroft and Cartwright would have been struck-off as directors and Bank of Scotland might possibly have thought twice before imposing them as directors on its own SME clients!)*

*During the House of Lords session, Connolly insisted that "independent" inspectors had found UK bank audits of 2007 and 2008 to have been "of a high quality". I find it astonishing that Connolly had the effrontery to repeat this farcical claim. Remember that many of the banks concerned went bust a few months later!*

*Connolly claimed there had been no cases where financial statements had to be restated "which would have been required if the financial statements had been incorrect." This may be true, but then one has to remember that self-regulation has failed in the UK market, that "regulatory capture" continues to exist here and that even supposedly "independent" regulators have been largely infiltrated by the accountancy profession and remain unusually craven even after the worst financial crisis since 1929.*

Connolly went on to say:-

*"The management of the banks, first of all, who make the initial decision as to whether they conclude they are still a going concern, had to take into account all circumstances and we had to take into account all circumstances, including the likely availability of support, in concluding that they were a going concern. And we had to take into account all the available evidence in reaching that conclusion.*

*"One of the vitally important issues we all faced was 'how did we deal with the 'going concern' question?' And all four of the people here had detailed discussions, instigated by the 'big four', with Lord Myners — because of the circumstances we were in, it was recognized that the banks would only be 'going concerns' if there was support forthcoming.*

*[Editorial note: Connolly uses the word "support" frequently in his testimony. By "support" I think he means the expectation that the taxpayer would pick up the tab for the utter recklessness and criminal activities of the bankers, i.e. that horrendous losses caused by their greed-fueled binge could be "socialised" while they continued to award themselves obscene pay and bonuses and continued to allow incompetent and corrupt auditors to live in the style to which they had grown accustomed]*

*"I think it was a proper and appropriate act from the four firms to seek to understand the likelihood of support being forthcoming and I can only say that had we concluded — and that management of the banks had concluded — that there was not going to be support then a different audit opinion would have been given."*

*To this Lord Lawson, the former chancellor of the exchequer, exclaimed:*

*"That is absolutely astonishing. Absolutely astonishing. It seems to me that you're saying that you noticed they were on very thin ice, but that you were completely relaxed about it, because you knew they would be supported, in other words that the taxpayer would support them. So there was no problem."*

*Lawson also accused Connolly of being "extraordinarily self-satisfied ... You were the auditor of RBS, which went belly up within a few months of [you] giving it a clean bill of health."*

*The Labour peer, Lord David Lipsey reminded the auditors that their duty is to provide a "true and fair view" of the state of a bank's balance sheet, not to become a patsy to governments nor to "mislead markets and investors".*

*"Your duty is to report to investors the true state of the company. You were giving a statement that was deliberately timed to mislead the company and mislead markets and investors about the true state of those banks and that seems to be a very strange thing for an auditor to do."*

*But Connolly continued to spout disingenuous bullshit including this:-*

*"What we were very aware of [was that] the consequences of reaching the conclusion that a bank was actually going to go belly up were huge, the impact that could have had, and the requirement of the auditor is to satisfy itself first of all starts with management that that will not occur."*

*Quizzed by Lord Forsyth, formerly Michael Forsyth, on the nature of the talks that the auditors had with the government, Connolly said: "We had conversations that sought to understand the likelihood of 'support' being forthcoming."*

*Connolly, prompted by PwC's Iain Powell, told the Lords that initial discussions with the UK government took place in December 2008, and that these were followed by further talks in January 2009.*

*But the auditors were as confused about dates as they were about personages. By December 2008, pretty much everyone in the UK, unless they were living under a stone, was aware that the government of Gordon Brown had bailed out failed banks including HBOS, Lloyds TSB and Royal Bank of Scotland. (They were presumably also aware that Barclays and HSBC only survived thanks to the Bank of England's special liquidity scheme and that the likes of Northern Rock and Bradford & Bingley had been nationalised.)*

*Soon after Connolly's bizarre claim, PwC's Powell sought to 'row back' on the date Connolly had provided, saying that talks between the auditors and the government about possible bail outs had, erm, in fact, commenced in December 2007 (i.e. ten months before Lord Myners had become a minister and a year before he had earlier claimed).*

Powell went on to provide his version of what had happened. He claimed that the wholesale funding markets had closed in the "second half of 2007" and that, after that, the audit firms were actively assessing the availability of liquidity, during the latter half of 2007:-

"Personally I wasn't at that meetings although my firm was represented. Erm, the reason the banks got into real difficulty was the closure of the wholesale money markets and the closure of the wholesale money markets in the second half of 2007 created real difficulty for many banks.

"As the auditors, one of the things that we have to do, we have to look forward and it's the same whether it's a bank or any other type of firm, we have to look at the liquidity that's available. And one of the key questions around the banks in signing off the audit opinion at the year end 31 December 2007 was, is there adequate liquidity available to this bank to enable us to form a view that the bank is a going concern and we can sign off a going concern audit?

"And the .. em.. discussions that have been referred to were around, is there adequate liquidity or is there likely to be liquidity provided to these banks to survive? And that was the depth of the discussion as I understand it at the end of – er – in December 2007 and in 2008 based on the assessment that we took as the four large audit firms.

"Based on the assessment of the availability of liquidity we then had to go away and form a view, and our audit partners had to form a view as to whether or not we could sign off a clean going concern on those banks. And that is the process we went through in order to form that opinion.

*It does seem very, very strange that these leading auditors are unable to agree on when the government first tapped them on the shoulder and indicated it would bail out bust banks (causing them to come to conclusion it would be acceptable to sign off going concern statements which were known to be untrue).*

*I'd like to conclude by saying that, with the possible exception of UKFI's Robin Budenberg's extraordinary performance in front of the House of Commons economic affairs committee in March 2010, I never witnessed a less persuasive group of platitudinous bullshitters attempting to post-rationalise past failures than these auditors.'*

7. On 30/3/2011 I made a complaint to the ICAEW by E-Mail as follows:

*'As a member of the ICAEW I consider it my duty to make a complaint against PricewaterhouseCoopers in relation to its audit of Northern Rock and its failure to qualify the accounts of that company for 2006. **My complaint is based on the report of the Economic Affairs Committee of the House of Lords titled 'Auditors: Market concentration and their role'** [my emphasis] at:*

<http://www.publications.parliament.uk/pa/ld201011/ldselect/ldeconaf/119/11902.htm>

*and, in particular, para 145 at:*

<http://www.publications.parliament.uk/pa/ld201011/ldselect/ldeconaf/119/11909.htm>

*which states:*

*'It could be argued that, until 2006, confidence remained generally high in the British and global economy and financial system. The role of bank audits was not then in question. Even at Northern Rock, when PwC concluded its audit for 2006 in January 2007 the company "had a history of profitable operations and had a track record of ready access to funds ... none of the information available to us indicated anything that would constitute a 'material uncertainty' ... we concluded that in our opinion there were no matters relating to the going concern basis of accounting that were required to be reported to shareholders." [181] We find this complacency disturbing. In 2006 Northern Rock was already operating a dangerously risky business model. The FSA said: "Northern Rock, relative to its peers, [had] a high public target for asset growth (15-25% year-on-year) and for profit growth; a low net interest margin; a low cost:income ratio; and relatively high reliance on wholesale funding and securitisation." [182] As a result of this business model it was able to increase its share of the UK mortgage market at an extraordinary rate. Northern Rock's market share of net residential lending [183] jumped from 11.2% in 2004 to 18.9% in the first half of 2007. [184] **We are astonished that PwC appeared not to recognize an amber light that flashed so brightly.** [my emphasis]'*

*I look forward to hearing from you.'*

8. On 7/4/2011 I sent the ICAEW a letter before claim in relation to my complaint concerning Northern Rock in accordance with the pre-action protocol.
9. On 8/4/2011 I wrote to the ICAEW further as follows:

*'I will be grateful for a response to my complaint below [complaint of 22/12/2010 concerning Lloyds Banking Group above – not repeated here]. In this context I would refer you to:*

*<https://lloydsactionnow.com/newsletters/i%20-%20draft%20particulars%20of%20claim%20state%20aid%20and%20misrepresentation.pdf>*

*page 27 where it quotes p. 33 of the circular of November 2008 as follows:*

*'The Lloyds TSB Group expects that the Enlarged Group will substantially rely for the foreseeable future on the continued availability of Bank of England liquidity facilities as well as HM Treasury's guarantee scheme for short and medium-term debt issuance. If the Bank of England liquidity facility, HM Treasury's guarantee scheme or other sources of short-term 28 funding are not available after that period, the Lloyds TSB Group, or the Enlarged Group, could face serious liquidity constraints, which could have a material adverse impact on its solvency.'*

*This risk of serious liquidity constraints was not properly disclosed in the 2008 accounts and PwC should have qualified those accounts accordingly. See:*

*[http://www.lloydsbankinggroup.com/media/pdfs/investors/2008/2008\\_LBG\\_R&A.pdf](http://www.lloydsbankinggroup.com/media/pdfs/investors/2008/2008_LBG_R&A.pdf)*

*I look forward to hearing from you.'*

10. In a letter dated 13/4/2011 Mr. John Weatherill, Head of Assessment and Conciliation Professional Conduct Department, replied as follows:

*'I refer to various items of correspondence received from you in recent weeks, either addressed or copied to different members of ICAEW staff but, in particular I refer to your email of 8 April [he means my E-Mail of 7/4/2011 above] addressed to "Information Centre" headed "letter before action for judicial review".*

*As you know we have previously received complaints from you concerning the conduct of the auditors of the major banks (your 8 April email refers to Northern Rock & Lloyds TSB) in respect of audits completed before and during the period of the banking crisis.*

*The investigation of the role of auditors, in instances where the public interest is affected, rests with the AADB which is an emanation of the FRC. The ICAEW has co-operated fully with AADB in various discussions relating to the banking crisis in which the need for investigation has been considered. The AADB has indicated that it is not minded to initiate investigations. If you wish to challenge that view you need to engage with MOB and not ICAEW.*

*Whilst you obviously feel very strongly about the role of auditors, it is apparent from your lengthy emails that you have no information to disclose beyond what is in the public domain as a result of, inter alia, press reporting of the events leading up to and following the banking crisis\*. In these circumstances, whilst I intend no discourtesy, I should make it clear that future correspondence from you will only be responded to at our discretion.'*

*\*Note that my complaint was actually based on a report by the Economic Affairs Committee of the House of Lords.*

11. On 17/4/2011 I wrote to the ICAEW as follows:

*'I am writing with reference to your letter dated 13/4/2011. You refer to various items of correspondence but the only one you actually deal with is my E-Mail of 8/4/2011 (actually 7/4/2011) below. I will therefore treat your letter as a response to that E-Mail only, which concerned my complaint against PwC in respect of their audit of the 2007 accounts of Northern Rock.*

*One of the items that you have not seen fit to reply to is my E-Mail of 8/4/2011 reproduced below which concerned my complaint to the ICAEW concerning PwC's failure to qualify the 2008 accounts of Lloyds Banking Group. In view of your failure to respond to that E-Mail you may regard this E-Mail as a letter before claim. If you do not reply to that E-Mail within 7 days I will proceed with an application for judicial review seeking an order from the High Court that you respond to my complaint in accordance with your own rules/published policies.*

*You make two main points in respect of my E-Mail of 7/4/2011 concerning the 2007 accounts of Northern Rock; (1) you say that you have decided, in consultation with the AADB, not to investigate this matter and (2) that my complaint is based only on information in the public domain and that you (apparently) regard such information as insufficient to allow you to make a decision as to whether you should conduct an investigation or not.*

*But if the AADB and the ICAEW have not carried out an investigation then, absent an investigation, the only information available to you both is information in the public domain - but if this information is insufficient to allow you to make a decision, as you say, on what basis did you decide not to carry out an investigation? If the information in the public domain is insufficient for me then it is also insufficient for both the AADB and the ICAEW.*

*But let us assume that you have had access to information not in the public domain. Presumably any such information can only have come from PwC because you have no more right to the confidential (i.e. non-public) information of Northern Rock than I do. So if you have made a decision not to carry out an investigation based on confidential (i.e. non-public) information from PwC this would mean that you have gone through a process of gathering information and assessing that information - but such a process is an investigation in itself. This would mean that you have, in fact, carried out an investigation but that that investigation was unofficial, secret (you haven't announced it or reported the result) and one-sided (being based on information from PwC only).*

*In other words, I can see only two alternatives; (1) either you have decided not to carry out an investigation and you made this decision based on public information which you yourself have said was insufficient or (2) you have carried out an investigation but that investigation was unofficial, secret and one-sided. Which is it to be?*

*With regard to your suggestion that I approach the AADB, the ICAEW's rules make it quite clear that it is the proper course of action for me to complain to you and for you to respond, one way or another, to that complaint. In particular I would refer you to your own FAQ on your disciplinary procedures ([http://www.icaew.com/index.cfm/route/161861/icaew\\_ga/Home/Protecting\\_the\\_public/Publications/FAQs\\_on\\_the\\_disciplinary\\_process\\_Information\\_for\\_members/pdf](http://www.icaew.com/index.cfm/route/161861/icaew_ga/Home/Protecting_the_public/Publications/FAQs_on_the_disciplinary_process_Information_for_members/pdf)) which says: '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.' It is clear on this basis that you have a duty to properly explain to me your reasons for deciding not to investigate my complaint.*

*In this context I would point out that since you say that the AADB and the ICAEW have made a decision not to investigate this matter (PwC's audit of the 2007 [recte 2006] accounts of Northern Rock) then you MUST have documented your reasons for making that decision. Since you have done this you are in a position to explain those reasons to me. The question is why you have failed to provide me with those reasons when you must be in possession of them and given that you have a clear and acknowledged duty to do so.*

*It is also relevant to note that because you referred the matter to the AADB you have effectively acknowledged that it is a matter of public interest (but it could hardly be otherwise), which makes it even more important that you should document (if not also publish) reasons for your decision not to investigate the matter.*

*It is clear therefore that if you make or have made a decision in discussion with the AADB that does not absolve you or your responsibility to respond to my complaint properly. Let me explain how this works.*

- 1. If you refuse to respond to my complaint at all I seek a judicial review to order you to respond.*
- 2. If you respond but do not give reasons I seek a judicial review to order you to give reasons.*
- 3. If you give reasons but I consider them to be unfounded or unreasonable then I seek a judicial review to order you to reconsider the matter.*

*It may of course be necessary to go through all three stages to satisfactorily resolve a complaint.*

*You have replied to my letter before claim by your letter of 13/4/2011 but you have failed to give proper reasons. This means that we are now at stage 2, which means that you can regard this letter as a letter before claim asking you to provide reasons for your decision (including, in the light of what I have said above, an explanation of how you managed to obtain sufficient evidence to make a decision when it appears that the only information available to you was public information which you yourself have said was insufficient). If you fail to reply then I shall proceed with an application for judicial review (this will be a third judicial review in addition to my current application in respect of GAR liabilities and the application that I will be making shortly in respect of PwC's audit of the 2008 accounts of Lloyds Banking Group). If you reply with reasons but I disagree with those reasons then I shall write a further letter before claim inviting you to reconsider your decision. If you do not do so then I will proceed with an application for judicial review to order you to reconsider your decision.*

*On a more general point you seem to discount information for no better reason than that it is in the public domain. But the accounts of public companies are in the public domain - so do you regard them as unreliable simply because they have been published? It would be odd if the ICAEW were to take such a view with respect to documents which they themselves, as regulators, are responsible for ensuring are trustworthy. But if this is the view you take then perhaps you could write to the Economic Affairs Committee of the House of Lords and inform them that you decline to give any weight to their report for the simple reason that they have published it.'*

12. On 30/4/2011 I wrote to the ICAEW as follows:

*'I am writing with reference to my E-Mail below. You will see from:*

*<http://www.rte.ie/news/2011/0415/anglo.html>*

*that the Institute of Chartered Accountants in Ireland has launched an investigation into Ernst & Young's conduct as auditors of Allied Irish Bank and that this investigation was based on 'media reports'. It is clear from this that the Institute of Chartered Accountants in Ireland clearly believes that public information of this type is sufficient to justify an enquiry, which is the exact opposite of what you have told me. I wish to give you 7 days to reconsider you position in this respect. If I do not hear from you within 7 days I shall proceed with the applications for judicial review. I will of course raise this matter in my applications.'*

13. I made these complaints either as a member of the ICAEW, as required by Disciplinary Bye-Law 9(1) quoted above, as a member of the public and/or as a shareholder of Lloyds Banking Group.
14. I believe that the facts stated above are true.