DISCIPLINARY COMMITTEE TRIBUNAL OF THE INSOLVENCY PRACTITIONERS' ASSOCIATION

IN THE MATTER OF NICHOLAS WOOD (A MEMBER OF THE INSOLVENCY PRACTITIONERS' ASSOCIATION)

AND IN THE MATTER OF A COMPLAINT DATED 15 NOVEMBER 2022

BETWEEN:

THE REGULATION AND CONDUCT COMMITTEE

OF THE INSOLVENCY PRACTITIONERS' ASSOCIATION

Applicant

and

NICHOLAS WOOD

Respondent

Before

Ms Raquel Agnello KC (chair)

Mr Ted Wetton

Ms Clare Lindley

RECORD OF DECISION

1. This is the decision of the Tribunal to which all members have contributed.

Formal Complaint

2. The Formal Complaint referred to the Disciplinary Committee by the Regulation and Conduct Committee is:

> That according to Article 66 of the Articles of Association the Member is liable to disciplinary action in that he has committed acts or defaults which are misconduct under Article 66.1.1 and 66.2 of the Articles of Association, namely:
>
> 1: That Nicholas Wood, prior to being appointed as Trustee in bankruptcy of the relevant cases*, breached the Insolvency Code of Ethics paragraphs 4(c) and (e) Fundamental Principles of Professional Competence and Due care and Professional Behaviour when he failed to ensure that adequate systems were in place to seek to prevent submission to the Official Receiver of votes which were invalid.

2: That Nicholas Wood, prior to being appointed as Trustee in bankruptcy of the relevant cases* breached the Insolvency Code of Ethics paragraphs 4(c) and (e) Fundamental Principles of Professional Competence and Due care and Professional Behaviour when on various occasions after 25 October 2018 he failed to ensure that adequate systems were in place which would seek to ensure that invalid votes were not submitted to the Official Receiver, notwithstanding that he had represented to the Official Receiver that adequate safeguards had been put in place for this purpose.

* The relevant cases are those referred to in the agreed statement of facts. (They are summarised below.)

Background

3. The Complaint arises from a number of cases between 2017 and 2019 where there were questions regarding the validity of proxies relied on in the appointment of the Respondent and his colleague Mr X as trustees in bankruptcy.

4. Concerns were first raised by the Insolvency Service's Official Receiver's Directorate in December 2017 regarding the case of A (in Bankruptcy). Mr Z was an employee of the firm of which the Respondent and Mr X were members. Mr Z had amended an email from solicitors representing a creditor of A to say that the creditor supported the appointment of the Respondent and Mr X, when those solicitors had in fact said that they were not instructed in the matter. Mr Z then forwarded that amended email directly to the Official Receiver. As a result of the invalidity of that proxy the Respondent did not have the majority consent needed for appointment and was removed from office.

5. Following this incident the Respondent confirmed that Mr Z had been subject to a disciplinary process and that processes had been put in place to ensure that there would be no repeat of this behaviour. He emailed the Official Receiver's Directorate saying in relation to Mr Z's conduct in the case of A, "I can assure you that nothing of this nature will ever happen again." In further correspondence Mr W, the head of the firm's Creditor Services Department, informed the Senior Official Receiver that the following steps had been taken:

> access to Mr Z's email account had been given to management personnel responsible for him, in order that future actions were monitored;
> signing authority on behalf of clients had been restricted to specific personnel within the firm and Mr Z's authority had been revoked until further notice;
> all clients and staff had been reminded of the importance of providing accurate information to the Official Receiver.

Mr W also provided a response concerning other cases about which the Official Receiver had asked and confirmed that no cause for concern had been found. No complaint arises from those cases.

6. In May 2019 the Insolvency Service wrote again concerning the appointment of the Respondent and Mr X in other cases involving Mr Z which had arisen since. They were cases where: the same debt was double-counted because votes were submitted both from the creditor and from a collecting agent; the debt had already been paid; the debt

was secured; or the debt had been assigned to someone else and no longer belonged to the voting creditor. In two cases (including the original case of A) the appointments were made but later revoked when the invalidity of the proxy came to light. In all other cases the Official Receiver disallowed the proxy and either the appointment was not made for want of a majority, or the appointment was made as, without the disallowed proxy, there was still a majority.

Decision of the Tribunal

7. In relation to each of the matters which we have to decide we took account of all the documentation before us, including the agreed statement of facts provided by the parties and the representations on behalf of the Applicant and those of the Respondent. We also took account of, and applied the principles set out in, the Disciplinary Committee Rules (the Rules), in particular Rules 35 and 38, and the current Common Sanctions Guidance. We accepted the advice of the legal assessor.

Findings on the Complaint

8. The Respondent admitted the Complaint. We accordingly found the Complaint proved in its entirety.

Decision on sanction

9. We reminded ourselves that, under the provisions of Rule 35 of the Rules, we may impose more than one sanction, "as it (the Tribunal) considers appropriate having regard to all the relevant circumstances surrounding the Complaint, including the Tribunal's view as to the nature and seriousness of the Complaint in so far as found proved, the circumstances of the Respondent both financial and personal and any matter the Tribunal considers to be relevant". We bore in mind that the purpose of any sanction is not punitve, though it may have a punitive effect. We further reminded ourselves that any sanction or sanctions we impose should be proportionate, balancing the interests of the public and of the Association, with those of the Respondent.

10. We had regard to the Common Sanctions Guidance while bearing in mind that the decision as to what sanction, if any, is appropriate and proportionate is one for us. The guidance invites us to consider the following factors:

    protecting and promoting the public interest;

    maintaining the reputation of the profession;

    upholding the proper standards of conduct in the profession; and

    correcting and deterring breaches of those standards.

11. We first considered the appropriate category of seriousness in which to place the course of conduct which made up the factual background to the Complaint. We concluded that the matters found proved were serious.

12. In his mitigation the respondent submitted that his conduct was not reckless in the sense that this is understood in the tort of deceit, and it is therefore inadvertent and less serious. We do not find this approach to the question of seriousness helpful. It is not

suggested that the Respondent's assurance to the Official Receiver was deceitful or reckless as a statement: the complaints are that adequate measures were not in place. In addition, while the Common Sanctions Guidance says that "serious" will generally mean that the practitioner's conduct was reckless, it does not define "serious" as "reckless" and it also says that "less serious" will generally mean that the conduct amounts to an inadvertent breach.

13. In reaching our decision as to the category of seriousness in which to place the Respondent's conduct, we took the view that if adequate systems had been in place, they would have included rigorous training in the submitting of proxy votes. We have taken account of the fact that Mr Z's later errors were different from those in the case of A. In our judgment, however, measures should have been in place which would have included ensuring that subordinate staff were comprehensively trained in the submission of proxies to the Official Receiver. We note that the Respondent has admitted both complaints that he failed to ensure that adequate systems were in place. That this remained the case even after Mr Z's original misconduct in submitting a doctored email had come to light serves to emphasise the fact that the systems were not adequate in the first place and that they remained inadequate.

14. We do not therefore regard a narrow focus on the non-repetition of the particular features of Mr Z's original misconduct as appropriate. The Respondent's email to the Official Receiver did not state what measures were then put in place, but more detail was given in the correspondence from Mr W: that Mr Z's email activity was monitored, that his signing authority was revoked, and that staff and clients were reminded of the importance of accuracy in dealings with the Official Receiver. We find that this was not enough. In addition, if the measures stated in the correspondence had been properly in place then in our view Mr Z's later errors ought to have been identified. For example, the fact that votes in the same sum were being submitted in the names of both a creditor and a collecting agent should have been picked up by those monitoring Mr Z and by those with signing authority.

15. In the light of the circumstances as a whole we do not accept that these admitted breaches amounted to an inadvertent breach. We regard them as grossly negligent and a significant failure in acceptable standards of practice. We are satisfied that they are serious.

16. In reaching our decision as to the appropriate and proportionate sanction, we had regard to the aggravating and mitigating factors set out in the Common Sanctions Guidance. We regard the recurrence of the failure to put adequate safeguards in place after the first incident as a significant aggravating feature. As we have already observed, after that matter came to light, and particularly when assurances had been given to the Official Receiver, there should have been comprehensive training in all aspects of the submission of proxies, not merely monitoring and the withdrawal of signing authority (which seem to have been ineffective) and reminders to staff. The material provided by the Respondent for this hearing does not demonstrate that, even now, there are safeguards in place beyond those which he admits were inadequate.

17. We also bore in mind that loss to others is an aggravating factor. In one case an annulment was delayed as a result of the invalid proxy, apparently resulting in a loss to the bankrupt through additional statutory interest. More generally there is a cost to the

public in the time which the Official Receivers have had to devote to identifying and addressing these errors and in the resulting correspondence with the Respondent and his firm. We do not accept that this is no more than the Official Receiver's job. Insolvency practitioners are a responsible profession, the accuracy of the proxies they send to the Insolvency Service is their responsibility and the Official Receiver should be able to rely on them to discharge that responsibility.

18. We have considered whether there are any mitigating factors. We do not consider that there is a minimal risk of recurrence because "new procedures have been implemented and verified". We have not been provided with information as to what training of staff is being undertaken or whether any further safeguards are now in place.

19. We have considered the Respondent's disciplinary history. We note that in 2013 he received a warning in respect of overdrawn remuneration which was identified on an inspection visit, and in 2020 he was reprimanded and fined £1,500 for drawing unauthorised remuneration of £10,000 in breach of the Insolvency Code of Ethics.

20. We determined that the case was far too serious to take no action or to invite the Respondent to give written undertakings. Either course would be insufficient to protect the public, to maintain the reputation of the profession, to uphold standards and to deter breaches.

21. We then considered whether the non-financial sanction should be a reprimand. The Common Sanctions Guidance provides that for a serious failure to comply with the fundamental principle of professional competence and due care the indicative sanction is a severe reprimand, and/or a fine with a starting point of £5,000. For a serious failure to comply with the fundamental principle of professional behaviour the indicative sanction is a severe reprimand, and/or a fine with a starting point of £3,000.

22. As we found that the category of seriousness was that these breaches were serious, we considered anxiously whether a reprimand was sufficient or whether we should impose a severe reprimand as indicated by the guidance. We are just persuaded that a reprimand is the appropriate non-financial sanction. We make it clear however that we regarded this case as very close to the borderline between a reprimand and a severe reprimand.

23. We went on to consider whether we should impose a further sanction. We determined that the imposition of a reprimand, on its own, was not a sufficient sanction and concluded we should also impose a fine. We determined that a fine together with a reprimand would be sufficient to meet the objectives of protecting the public, maintaining the reputation of the profession, upholding standards and deterring breaches.

24. We have borne in mind that in fixing any fine we should have regard to the Respondent's means. We noted that the Respondent has not suggested that he would have difficulty in paying a fine.

25. In our judgment the appropriate fine in respect of the first complaint is £10,000 and in respect of the second complaint £7,500. The first incident involved the sending to the Official Receiver of a forged email apparently showing that the creditor had, through his solicitors, consented to the appointment when that was not the case. While we were

concerned about the continued failure to put adequate systems in place even after the assurances given to the Official Receiver, as we observed earlier in this decision the further incidents highlight the failure to have adequate systems in the first place. The difference in the level of fine in respect of the two complaints reflects our view of the inherently greater seriousness of that first incident.

26. In considering whether the sanctions are proportionate we have considered the totality of the sanctions. We are satisfied that a reprimand and fines totalling £17,500 are the appropriate and proportionate sanction.

Decision on costs

27. We reminded ourselves that Rule 38 of the Rules provides that where a Formal Complaint has been proved in whole or in part the Tribunal "may order the Respondent to pay to the Association by way of costs such sum as the Tribunal may determine".

28. We had regard to the Respondent's written submissions on sanction where he requests the Tribunal to order him to make a contribution towards the Association's costs of £6,000 plus VAT together with the costs of the Tribunal. We again bore in mind that the Respondent has not indicated that he would have difficulty paying the costs.

29. We received from the Administrator a costs summary showing the Tribunal costs as follows:

Legal assessor's fees	Attendance	£700 + VAT	
Pre-hearing reading		£300 + VAT	
			£1,000 + VAT
Lay member's fees			£ 300 + VAT
Total			£1,300 + £260 VAT

We regard those Tribunal costs as reasonable and proportionate.

30. We order that the Respondent pay the total sum of £8,760 (including VAT of £1,460) comprising the Tribunal costs of £1,560 together with the agreed figure of £7,200.

Final Order

31. It is ordered that:

1. the Formal Complaint of the Applicant against the Respondent is found proved;

2. in respect of the first complaint,
the Respondent be reprimanded and pay a fine of £10,000;

in respect of the second complaint,
the Respondent be reprimanded and pay a fine of £7,500;

3. the Respondent pay to the Association by way of costs the sum of £8,760 including Value Added Tax;

4. the Decision be formally recorded and the Record of Decision be delivered to the Respondent in accordance with the provisions of Rule 45 of the Rules.