

DISCIPLINARY COMMITTEE TRIBUNAL OF THE INSOLVENCY PRACTITIONERS' ASSOCIATION

IN THE MATTER OF MARK ALLEN (A FORMER MEMBER OF THE INSOLVENCY PRACTITIONERS' ASSOCIATION)

AND IN THE MATTER OF A COMPLAINT DATED 31 MARCH 2020

BETWEEN:

THE INVESTIGATION COMMITTEE OF THE INSOLVENCY PRACTITIONERS' ASSOCIATION

Applicant

and

MARK ALLEN

Respondent

Before

Mr Nicholas Pike (Chairman)

Mr. Laurence Pagden (IPA Member)

Mr Peter Susman QC (Lay Member)

Neither the R&CC nor the Respondent were present or represented.

The Tribunal considered the matter on the papers with the agreement of both parties.

Background

This matter arises as result of a complaint made to the IPA by Mr. A, a creditor of Mr. E, whose IVA was supervised by the Respondent, Mr. Allen. Mr. A's complaint was that Mr. Allen had failed repeatedly in the course of the IVA to deal appropriately with a claim by Mr. A against Mr. E in the latter's capacity as a Guarantor of a lease granted by Mr. A.

Decision on Complaint/ Misconduct

1. This is the decision of the Tribunal to which all members have contributed.
2. We had regard to the Summary of the Complaint together with the Bundle of supporting documents and the Rule 9 response form completed by Mr. Allen on 26<sup>th</sup> October 2021. We heard and accepted the advice of the Legal Assessor. We took note of the fact that the burden of proving the Complaint lies with the Regulation & Conduct Committee (R&CC) and that the standard of proof is the civil standard, namely on the balance of probabilities.
3. We noted that Mr. Allen admitted the facts of the Complaint in the response form. We noted that there was clear evidence that the creditor, Mr. A, had submitted his initial

claim in relation to Mr. E's IVA, of which Mr. Allen was the supervisor, in July 2008. Mr. Allen failed to take any material steps in relation to the claim until August 2014, when he first requested documentation in support of the claim and did not admit the claim, in the sum of £65,184.48, until around May 2015. This constituted a breach by Mr. Allen of Rule 11.3 of the Insolvency Rules 1986, which had been incorporated into the terms of the IVA proposal. Notwithstanding the initial notification of the claim, Mr. Allen paid dividends to the other creditors, excluding Mr. A and making no provision in relation to Mr. A's claim, save for the amount recorded in the Statement of Affairs by Mr. E. We were satisfied to the appropriate standard that the facts of the Complaint are made out and that Mr. Allen's failure to deal with Mr. A's claim amounted to a breach of the Fundamental Principle of professional competence and care.

4. We found the Complaint proved.
5. We then moved on to consider whether the facts found proved amounted to misconduct. We recognised that Article 66.1.1 provides that a breach of any Code, guidance etc. is capable of amounting to misconduct but that, in accordance with Art.66.1.3, it is a matter of the Tribunal's judgement whether it does. We noted that the failure to deal with Mr. A's claim extended over a long period of time and that he has suffered financially as a result of the failure to include him in dividend payments made prior to November 2014. We considered Mr. Allen's explanation for the failures as set out in his Response but concluded that these did not address the issues or provide any reasonable explanation for his failure to deal properly with Mr A's claim over a prolonged period of time.
6. In all the circumstances we are satisfied that Mr. Allen's failures as set out in the Complaint amounted to misconduct.

#### Previous Adverse Findings

7. Following our findings in relation to the Complaint and misconduct, in accordance with r. 34 of the Disciplinary Rules, we were advised of a number of previous adverse findings against Mr Allen as follows:

[REDACTED]

[REDACTED]

[REDACTED]

- ii) 28.7.15 – Investigation Committee. Reprimand, fine of £19,500 and costs of £14,500 for failing to effectively manage systems and communications with debtors on a number of IVAs;

[REDACTED]

[REDACTED]

[REDACTED]

- iv) 20.6.17 – Investigation Committee. Reprimand, fine of £500 and costs of £2,057 for failing to administer terms of an IVA in a timely manner and communicate with debtor.

## Decision on Sanction

8. This is the decision of the Tribunal to which all members have contributed.
9. We had regard to the written submissions of the R&CC and Mr Allen. We also had regard to, and applied the principles set out in, the current Common Sanctions Guidance. We heard and accepted the advice of the legal assessor.
10. We reminded ourselves that, under the provisions of Rule 36 of the Disciplinary Committee Rules (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 relevant”. We further reminded ourselves that any sanction or sanctions we impose should be proportionate, balancing the public interest together with the interests of the Association, with those of the Respondent.
11. We first considered the appropriate category of seriousness in which to place the misconduct we have found. We concluded that Mr. Allen’s misconduct, in failing over an extended period of time to deal appropriately with Mr. A’s claim resulting in him suffering a financial loss, could not be properly regarded as mere inadvertence. It indicated a sustained and significant lack of competence and care on the part of Mr. Allen. As such we concluded that the misconduct fell into the serious category for the purposes of the Common Sanctions Guidance.
12. In reaching our conclusion as to the appropriate and proportionate sanction, we considered the various aggravating and mitigating factors set out in the Common Sanctions Guidance and the matters put forward by Mr. Allen. We identified the following aggravating features:
  - i) There was actual financial loss to Mr. A in that he did not share *pari passu* in the sums paid out to other unsecured creditors and received £6,685 less than he otherwise should have done;
  - ii) Mr. Allen has had a number of adverse findings (as set out above) made against him. While we noted that these findings post-dated the misconduct currently under consideration, they were for broadly similar failings and indicated a persistent failure on Mr. Allen’s part to conduct himself according to the standards of the profession;
  - iii) The misconduct occurred over a significant period of time;
  - iv) While Mr. Allen has accepted to some degree his wrongdoing, his explanations for why he acted as he did seek to minimise the effect of his actions and deflect responsibility.

We also considered any mitigating features as set out by Mr. Allen in his response. As noted above, we did not find his explanation for why he acted as he did afforded him

much credit but we have taken into account that he made no financial gain from his misconduct.

13. We determined that the case was too serious to take no further action against the Respondent.
14. We then considered whether the Respondent should be the subject of a reprimand or a serious reprimand. We determined, by reason of our finding that the category of seriousness which applied in this case was that of serious and that it would not be appropriate or proportionate for us to impose a simple reprimand. Consequently, by reason of the seriousness of the matters found proved, and as we feel that the conduct has fallen well below the standard expected of a member of the Insolvency Profession, we were satisfied that a serious reprimand is both appropriate and proportionate.
15. We went on to consider whether we should impose a further sanction. We determined that the imposition of a severe reprimand, on its own, was not a sufficient sanction and concluded we should also impose a fine. We determined that the imposition of a fine together with a severe reprimand would protect the public interest, maintain confidence in the profession and would deter others from engaging in similar misconduct.
16. Having regard to the Common Sanctions Guidance, the circumstances of the case and the lack of any information from Mr. Allen as to his financial circumstances, we determined that an appropriate fine is one of £5,000.
17. We are invited by R&CC to order Mr. Allen to pay the costs of this matter in the sum of £3,425 under r.38. We have considered the costs claimed and consider them to be reasonable and proportionate. Mr. Allen has not provided any information as to his financial circumstances. We have therefore decided to order that he should pay the costs of the proceedings in the sum of £3,425.