

Type of Order: DISCIPLINARY CONSENT ORDER

Date of Order: 28 April 2022

Committee name: REGULATION AND CONDUCT COMMITTEE

Details of IP: Mr Gordon Simmonds of Simmonds & Company, an IPA Member and Licensed Insolvency Practitioner.

Summary of complaint: An Order has been made in relation to a complaint that, in his capacity as Trustee in Bankruptcy of the Estate of [a deceased], Mr Simmonds:

1. breached the Insolvency Code of Ethics Fundamental Principle of Objectivity, in or around March 2017 when he failed to properly consider and apply safeguards to reduce to an acceptable level the threat of a conflict of interest between himself and [a firm of solicitors]
2. breached the Insolvency Code of Ethics Fundamental Principle of Professional Competence and Due Care, from 5 May 2016 until his resignation, when;
 - a. he failed to properly pursue a claim against [a firm of solicitors] pursuant to s.284 Insolvency Act (IA) 1986 <https://www.legislation.gov.uk/ukpga/1986/45/section/284> (as amended by the Administration of Insolvent Estates of Deceased Persons Order 1986) for the recovery of circa £100,000 paid by the executor of the estate of [the deceased] to [the firm] in fees; and
 - b. he wrongly admitted for voting purposes a proof of debt submitted by an individual (in their capacity as a beneficiary of the estate of [a deceased] for the sum of £60,000; and
 - c. he wrongly admitted for voting purposes a proof of debt submitted by an individual for the sum of £120,000; and
 - d. he wrongly delayed the adjudication on a proof of debt for £36,752 submitted by an individual who was wrongly allowed to be a member of the creditors' committee and subsequently admitted it for voting purposes.

Accordingly, Mr Simmonds was found liable to disciplinary action under the IPA's Articles of Association.

Summary of sanctions:

Allegation 1: The Common Sanctions Guidance ('CSG') provides for a reprimand and a fine of £2,000 as a starting point, where there has been a 'less serious' failure to comply with the fundamental principle of objectivity.

Mr Simmonds' internal review process failed to identify the conflict of interest which was later identified by Legal Counsel. The Committee agreed that even though Mr Simmonds had immediately disengaged the solicitors this was insufficient to remove the threat to his independence due to his ongoing duty to adjudicate on the level of claim, pursue the solicitors and reach a settlement. It was noted that no other safeguards were implemented to protect creditors' interests going forward and his reasoning was not documented.

The Committee noted that Mr Simmonds had no adverse regulatory history. No aggravating or mitigating factors were identified. The Committee ordered that Mr Simmonds be reprimanded and fined £2,000.

Allegation 2: The CSG provides for a severe reprimand and a fine of £5,000 as a starting point, where there has been a "serious" failure to comply with the fundamental principle of competence and due care.

The Committee concluded that a proper understanding of the legal position would have offered no reason not to have pursued further the claim against the solicitors. Moreover, GS had failed to deal adequately with the proofs of debt. There had been a failure to take legal advice despite the complexity of the issues.

Taking all four parts of the allegation into account the Committee agreed that the conduct was 'serious' with reference to the CSG. The Committee noted that Mr Simmonds has no adverse regulatory History. No aggravating or mitigating factors were identified. The Committee ordered that Mr Simmonds be severely reprimanded, fined £5,000 and pay £3,838 towards the IPA's costs.