

# DISCIPLINARY COMMITTEE - RECORD OF DECISION

**Mr Gerard Keith Rooney (a Member of the Insolvency Practitioners Association)**

**A tribunal of the Disciplinary Committee made the decision recorded below having heard formal complaints on 19 April 2016**

## **Terms of complaint**

### **Complaint 1**

1. Between 25 June 2014 and 4 February 2015 Gerard Keith Rooney failed to cooperate with the Insolvency Practitioners Association in the conduct of an investigation in that he:
  - a. took over five months to provide a response to a letter dated 6 May 2014; and
  - b. on 3 September stated a full response to a letter dated 6 May 2014 would be provided within 24 hours but failed to provide that response; and
  - c. on 4 September 2014 stated a reply would follow within 48 hours but failed to provide that response; and
  - d. failed to respond to a letter dated 11 December by 15 January 2015; and
  - e. failed to respond to a letter dated 20 January 2015

in breach of the Fundamental Principle of professional behaviour.

### **Complaint 2**

2. Gerard Keith Rooney failed to submit annual progress reports to Companies House following appointment as liquidator of DGA Builders Limited on 21 October 2011, in breach of the Fundamental Principle of professional competence and due care and section 104A of the Insolvency Act 1986

## **Hearing date**

19 April 2016

## **Previous hearing date(s)**

None

**Pre-hearing review or final hearing** Final Hearing

**Complaint found proved** Yes

**All heads of complaint proven** Yes

**Sentencing order** Complaint 1: Fine of £10,000 and severe reprimand; Complaint 2: Fine of £4,000 and severe reprimand; ordered to pay the costs of and incidental to the application of £13,257.50.

## **Procedural matters and findings**

### **Parties present**

On behalf of the Respondent:

Gerard Keith Rooney, represented by Martin Malone, Partner of Canter, Levin and Berg Solicitors.

On behalf of the Investigation Committee:  
Tracey Owen, Counsel assisted by Alex Elizondo, Regulation Officer of the IPA

**Hearing in public or private**

The hearing was in public

**Documents considered by the tribunal**

The tribunal considered the documents contained in the Investigation Committee's bundle including the Form 10 submitted in respect of each complaint by Mr Rooney and accompanying documents.

## **Background**

1. Mr Rooney, who practised under the style "Rooney Associates" first became a member of IPA in 1983 and has been licensed since 1986.
2. The Disciplinary Committee, with the agreement of both parties resolved that it would deal with the first Complaint up to the point of its decision on sanction. It would then proceed to hear the second Complaint to the same point and would then, if necessary, hear from the parties on sanction and costs before deciding the sanction to be applied.

## **The First Complaint**

3. The first Complaint related to the investigation by IPA of another matter first notified to the Insolvency Service by letter in 17 February 2014, the details of which were irrelevant to the instant matter.
4. A Regulation Officer of the IPA first wrote to Mr Rooney on 6 May 2014 seeking information in pursuit of her investigation. Mr Rooney did not respond to that letter or to letters dated 3 and 25 June 2014. IPA wrote again to Mr Rooney on 15 August 2014 to inform him that a complaint had been opened against him for his failure to respond to a formal request for information under Rule 4.1 of the Investigation Committee Rules. IPA wrote again on 29 August 2014 to inform him that the matter was to be considered by the Investigation Committee of the IPA on 3 September 2014. Mr Rooney first wrote to the IPA on 1 September to say that he had not received the 15 August 2014 letter and that (in respect of the underlying complaint) he had been advised not to respond.
5. On 2 September 2014, the Regulation Officer wrote again to Mr Rooney asking him to respond to the Rule 4.1 complaint and providing copy correspondence.
6. Mr Rooney wrote on 3 September 2014 to the effect that he had not until that point seen the IPA letters of 6 May and 25 June, but that "...a full response in respect of the original complaint will be sent to you within 24 hours". He wrote again on 4 September 2014 to say that the 15 August 2014 letter from the IPA had arrived and "...a response to your correspondence will follow within 48 hours." No response in respect of either matter was received. The IPA wrote again to Mr Rooney on 23 October 2014 giving another deadline for his response of 31 October 2014. Mr Rooney finally provided a response on 31 October 2014.
7. That letter contained a file copy of a letter dated 5 September 2014 from Mr Rooney to the IPA (though that letter had not apparently arrived at IPA) which apparently answered the original request for information dated 6 May 2014.
8. The IPA wrote again to Mr Rooney on 11 December 2014 seeking further information about the underlying complaint. The letter gave a deadline of 15 January 2015 for a response. No response was received by that date and a chaser was sent on 20 January 2015. That gave a further deadline of 4 February 2015. Again, Mr Rooney did not reply.
9. The complaint of a failure to respond to a formal notice under Rule 4.1 of the Investigation Committee Rules was withdrawn by the Investigation Committee on 14 April 2015. The IPA notified Mr Rooney of this complaint by a letter of 11 June 2015 enclosing copies of all the relevant correspondence. Mr Rooney did not respond to this complaint at all.

## **The Second Complaint**

10. On 1 May 2015, an insolvency practitioner, Mr R, complained through the Insolvency Services Gateway about Mr Rooney's conduct. Mr R had been appointed liquidator to a successor company to DG Builders Limited. Mr Rooney had been appointed as liquidator of the latter company on 2 November 2011. Mr R needed to establish whether the liquidation of DG Builders Limited would have any effect on the successor company.
11. Having inquired of Companies House, Mr R discovered that Mr Rooney had not filed any annual reports for DG Builders Limited since his appointment as liquidator. The only information available to Mr R was the statement of affairs of the company dated 21 October 2014. IPA alleged that in failing to submit annual progress reports Mr Rooney had breached the Fundamental Principle of professional competence and due care and section 104A of the Insolvency Act 1986.

## **Admissions by Mr Rooney**

12. Mr Rooney admitted the first Complaint.
13. Mr Rooney admitted the second Complaint in part, in that in that he asserted that he had sent the progress reports for DG Builders Limited to Companies House on 5 November 2012 and 19 August 2013 respectively, but he accepted that he did not receive a receipt or follow up to ensure they were received. He therefore accepted he had breached the Fundamental Principle of professional competence and due care but denied that he had breached s.104A of the Insolvency Act 1986.
14. Mr Rooney accepted that his behaviour in respect of both Complaints amounted to misconduct.

## **Determination on facts**

15. Having considered the evidence and the submissions by both parties on the facts, the Committee announced its findings as follows:

"Mr Rooney, with regards to the first Formal Complaint of the Investigation Committee dated 23 September 2015 you have admitted misconduct in that you have failed to cooperate with your regulator in relation to the conduct of an investigation.

The Investigation Committee has rightly summarised that this complaint is about failure to cooperate with your regulator and failure to answer correspondence from it. In the light of your admission, we find the Formal Complaint proven.

The Second Formal Complaint against you is that you failed to submit annual progress reports to Companies House following appointment as liquidator of DGA Builders Limited on 21 October 2011, in breach of the Fundamental Principle of professional competence and due care and section 104A of the Insolvency Act 1986.

You admit that you failed to submit the annual progress report dated 5 November 2012 ("the first report") and the report dated 19 August 2013 ("the second report") in that although you state they were sent to Companies House on 5 November 2012 and 19 August 2013 respectively, you did not receive a receipt or follow up to ensure they were received. You therefore accept you breached the Fundamental Principle of professional competence and due care but deny that you breached s.104A of the Insolvency Act.

The Investigation Committee alleges that you failed to send the reports at all.

The Tribunal has carefully considered all the evidence in the case and has had the benefit of the submissions of Ms Owen on behalf of the Investigation Committee and Mr Malone on your behalf. It has received and accepted the advice of the legal assessor.

The burden of proof is on the Investigation Committee to prove the reports were not sent.

The first report has the correct company number on it but did not appear on the register at Companies House at the time of the complaint. As noted above, Mr Rooney states it was sent on 5 November 2012. It was resent on 9 March 2016 and received by Companies House on 14 March 2016. It now appears as filed. The Investigation Committee has not proved to the required standard that the report was not sent to Companies House as stated by you.

With regard to the second and final report, this is dated 19 August 2013 yet has the date of December 2015 on it which Mr Rooney cannot explain. It has the wrong company number on it and in the view of the two IP members of the Tribunal who have considerable experience in this field the report would have been returned by Companies House and Mr Rooney would have been alerted to resubmit it.

On the balance of probabilities we believe it was not sent and the Investigation Committee's Formal Complaint in respect of that report is proven."

## Determination on sanction

16. Ms Owen on behalf of the Investigation Committee reported that Mr Rooney had been subject to previous proceedings by the IPA which resulted in a Formal Warning. Mr Malone, on behalf of Mr Rooney, indicated that his client was in the process of winding down his practice and had secured a buyer. He had taken steps to redress the shortcomings in his systems, including the postal failures, and had attempted to put right the deficiencies that the Committee had heard about. Mr Rooney was prepared to pay the Investigation Committee's costs of bringing the proceedings against him, which he agreed in the claimed sum of £13,257.50. He apologised to the Committee for his appearance before it.
17. Having heard from Mr Malone on sanction and having received evidence in mitigation, the Committee announced its decision on sanction as follows:

"The complaints admitted and found proved today are firstly that you failed to cooperate with the Association in the investigation of a complaint against you over a protracted period. We have taken into account the mitigation offered on your behalf, including your admission of misconduct in both Complaints, your acceptance of financial responsibility for the Investigation Committee's costs and the steps you have taken to remedy the problems in your practice, as well as your intention to dispose of your business. We have noted your insight into your behaviour as demonstrated by those admissions, as well as by your apology to the Tribunal today. We have heard about a previous Formal Warning but we have not accorded any weight to that in deciding on sanction.

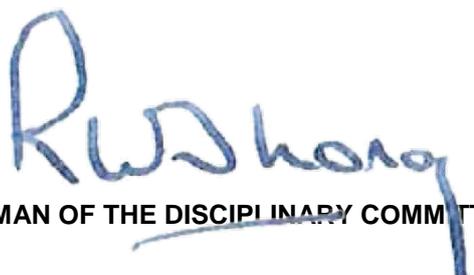
However the repeated failure to deal with correspondence from your regulator is in our view a serious breach of the fundamental principles of the Insolvency Code of Ethics and is behaviour that both undermines confidence in your regulator and in the profession as a whole.

As was said by Lord Bingham in the case of Bolton v Law Society: "A profession's most valuable asset is its collective reputation and the confidence which that inspires....The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits but that is a part of the price."

In respect of the first complaint we therefore impose a fine of £10,000 and issue a severe reprimand.

In respect of the second complaint we again find a material breach of the fundamental principles of the Insolvency Code of Ethics. It is incumbent on all insolvency practitioners to comply with relevant laws and regulations and best practice. Your behaviour in this respect was aggravated by your failure to deal with correspondence from your regulator. We impose a fine of £4,000 and a severe reprimand.

We also order you to pay the agreed costs in the sum of £13,257.50".

  
CHAIRMAN OF THE DISCIPLINARY COMMITTEE