

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mrs Nicola Lesley Francis

Heard on: 9-13 January 2017

Location: ACCA Head Offices, Adelphi Building, 1-11 John Adam Street, London WC2N 6AU

Committee: Mr Mike Cann (Chairman), Mr Trevor Faulkner (Accountant),
Mr Joseph Comyn (Lay)

Legal Adviser: Mr Andrew Granville Stafford

Persons present

and capacity: Mrs Nicola Francis (Member)
Ms Amanda Savage (Counsel for Ms Francis)
Mr Robert Crossingham (on 9.1.17 and 13.1.17),
Ms Charlotte Traff (except 13.1.17) and (on 13.1.17 only)
Miss Stephanie Bell (of Weightmans LLP, Solicitors for Mrs Francis)
Mr Paul Ozin QC (Counsel, ACCA Case Presenter)
Ms Poonam Patel (Hearings Officer)

Observers: On 9.1.17: Ms Judith Marsden (Insolvency Service)

INTRODUCTION

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Mrs Nicola Francis.
2. The Committee had before it a bundle of documents (pages A to WWW and 1 to 471), an additional bundle (pages 472 to 497), tabled further additional bundles (pages 498 to 581; 582 to 706; 707 to 708, 709 to 720, 721 to 738) and two service bundles (pages 1 to 21 and 22 to 51).

ALLEGATIONS AND BRIEF BACKGROUND

3. The allegations faced by Mrs Francis were as follows:

Allegation 1

As Nominee and Supervisor of D Ltd, appointed on 7 March 2013, failed to:

- (a) verify the cashflow forecasts on which the monthly contributions stated in the Proposal were based;
- (b) issue a notice of breach of the Proposal in a timely manner;
- (c) consult the creditors about presenting a winding up petition against D Ltd;
- (d) finalise creditors' claims and distribute the funds in hand.

Allegation 2

As Creditors' Voluntary Liquidator of E Ltd, appointed on 5 April 2013, failed to:

- (a) ensure that any or adequate records of meetings with directors and advice given by her or her staff were maintained;
- (b) investigate a distraint levied over the company's property by HMRC;
- (c) issue a progress report to creditors by 4 June 2014.

Allegation 3

As Creditors' Voluntary Liquidator of F Ltd, appointed on 20 June 2013, failed to:

- (a) carry out initial investigations to identify the circumstances of the disposal of the company's assets detailed in the last accounts;
- (b) obtain all the company's records;
- (c) issue a progress report to creditors by 20 August 2014.
- (d) prepare a deficiency account for presentation to creditors at the meeting convened on 20 June 2013 pursuant to s98 IA 86.
- (e) obtain agent's valuations of the principal assets shown on the Statement of Affairs.

- (f) carry out internal progress reviews of the case.

Allegation 4

As Creditors' Voluntary Liquidator of G Ltd, appointed on 3 December 2008, failed to

- (a) convene annual meetings of creditors for the years ending 3 December 2011, 2012 and 2013 or file receipts and payments accounts.
- (b) conclude the liquidation in a timely manner after 2008.

Allegation 5

As Creditors' Voluntary Liquidator of H Ltd, appointed on 6 August 2014, failed to:

- (a) ensure that any or adequate records of meetings with directors of H Ltd and advice given by her or her staff were maintained;
- (b) investigate the director's loan account for the period prior to her appointment;
- (c) investigate the company's bank account for the period prior to her appointment.

Allegation 6

As Nominee and Supervisor of Person D, appointed on 12 August 2013, failed to:

- (a) protect the creditors' interest in two properties included in Person D's IVA as she had failed to register a restriction at HM Land Registry and the debtor had retained the proceeds following a sale of his flat;
- (b) ensure the debtor, Person D, had agreed all the modifications to the Proposal put forward by creditors.
- (c) follow the default procedure set out in Person D's Proposal;
- (d) obtain the joint owner's consent to a sale of a property which was included in the IVA.
- (e) adequately bond the case as either Nominee or Supervisor.

Allegation 7

As Nominee and Supervisor of Person E, appointed on 3 July and 21 August 2012 respectively, failed to:

- (a) follow the default procedure set out in Person E's Proposal;
- (b) review the debtor's income and expenditure to establish the level of voluntary contributions to be paid as required by the proposal;
- (c) obtain any evidence regarding the sale of an asset included in the IVA which had been sold by the debtor;
- (d) record in the receipts and payments account of the estate that the debtor had made two voluntary contributions of £750 in August and September 2014;
- (e) finalise creditors' claims and distribute the funds held as required by the terms of the proposal.

Allegation 8 (a)

As Nominee and Supervisor of Person F, appointed on 13 September and 14 October 2013 respectively, failed to:

- (i) ensure the debtor had agreed all the modifications to the Proposals put forward by creditors;
- (ii) follow the default procedure set out in the Proposal;
- (iii) review the debtor's income and expenditure to establish the level of voluntary contributions to be paid as required by the proposal;
- (iv) keep an up to date record of all receipts and payments in the estate and reconcile her records for the estate to the bank statements;
- (v) finalise creditors' claims and distribute the funds held.

Allegation 8 (b)

As Trustee in Bankruptcy of Person F failed to:

- (i) provide creditors with sufficient information about the assets in the estate to enable an informed assessment of the basis of her remuneration;
- (ii) distribute the funds held in a timely manner;
- (iii) properly report realisations and the costs of realisation on her Summary of Receipts and Payments to 16 September 2014.

Allegation 9

As Supervisor of Person G's IVA:

- (a) failed to maintain time cost records as required;
- (b) drew remuneration as a percentage of realisations although only authorised to draw them on a time costs basis;
- (c) failed to properly report realisations and the costs of realisation on her Summary of Receipts and Payments to 15 September 2014.

Allegation 10

As Trustee in Bankruptcy of Person H failed to distribute funds in a timely manner.

Allegation 11

As Trustee in Bankruptcy of Person I failed to:

- (a) maintain time cost records;
- (b) provide creditors with an analysis of her time costs;
- (c) properly record her receipts and payments.

Allegation 12

As Supervisor of any or all of the voluntary arrangements as set out in Schedule 1 failed to:

- (a) properly control contributions received from debtors in to the general client account which was being controlled by a third party, A Ltd, contrary to part B, sections 270.7 and 270.33 of ACCA's Code of Ethics and Conduct;
- (b) record in writing the terms of the agreement (if any) between her and A Ltd regarding the funds which ensured protection for the arrangement creditors;
- (c) take steps and/or record any steps she took to satisfy herself that the funds held by the third party were safe, secure and insured;
- (d) take immediate and effective steps to safeguard and recover the funds, some of which remained in the hands of A Ltd as at 25 September 2014 once she became aware that A Ltd was refusing to pay over the funds to her or provide

details of funds received and anticipated.

Allegation 13

As Nominee and Supervisor of Complainant A failed to control the IVA contributions as they were paid to a third party A Ltd contrary to part B, sections 270.4 and 270.33 of ACCA's Code of Ethics and Conduct.

Allegation 14

As Supervisor of Complainant B appointed on 15 February 2011 failed to carry out periodic reviews of the debtor's income and expenditure.

In light of any or all of allegations 1 - 14, set out above, Nicola Lesley Francis is:

(i) Guilty of misconduct pursuant to bye-law 8(a)(i);

Or

(ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii) in that she breached;

a) The Fundamental Principle of Competence and Due Care: and/or

b) Paragraph 6(c) of The Insolvency Code of Ethics; and/or

c) Regulation 18(3) of Global Practising Regulations Annex 1.

4. Mrs Francis was licensed by ACCA to practice as an insolvency practitioner between 9 August 2011 and 9 March 2015. She is not a member of ACCA but by virtue of her insolvency licence agreed to be bound by ACCA's bye-laws.
5. At the relevant times Mrs Francis was in sole practice as N Francis & Associates Ltd. She had a business relationship with Person A and Person B, a married couple. Mrs Francis was a director of B Ltd along with Person A.
6. Person A, and subsequently Person B, directors of A Ltd. This was a company that provided insolvency cases to Mrs Francis' practice. Person B would have initial contact with insolvency clients and would then pass them to Mrs Francis in return for a share of the fees.
7. Mrs Francis' relationship with Person A and Person B broke down acrimoniously in or around the latter part of 2013. That resulted in disputes and complaints which took

time and resources to deal with. Mrs Francis also lost two key members of staff in 2013 as well as experiencing a number of personal issues.

8. In September 2014 an ACCA Senior Compliance Officer (SCO) visited Mrs Francis' practice to conduct a monitoring visit. The SCO reviewed 13 files and on 12 of them found matters which were considered to be of concern.
9. In light of these concerns, ACCA commenced a disciplinary investigation. As a result of the SCO's report 12 allegations have been referred to the Committee. The allegations relate to Mrs Francis' appointments, variously, as a Nominee or Supervisor of companies or individuals subject to voluntary arrangements, as a Liquidator and as a Trustee in Bankruptcy.
10. The SCO alleged that there were a number of significant shortcomings by Mrs Francis in the way she carried out her duties. These include failings in respect of:
 - timeously issuing notices of breach or implementing default procedures;
 - consulting with or reporting to creditors;
 - maintaining adequate or proper records;
 - obtaining information or carrying out appropriate investigations;
 - timeously finalising claims and distributing funds;
 - protecting creditor's interests and safeguarding estate assets;
 - obtaining agreement to modifications to IVA Proposals;
 - maintaining time cost records.
11. The SCO's view was that Mrs Francis was unable to manage her caseload as she was significantly under-resourced, with only two members of staff. As a result matters were not being progressed in a proper or timely manner.
12. The SCO also found that Mrs Francis had agreed to voluntary contributions being paid in to an account controlled not by her but by a third party, namely A Ltd. There was no written agreement in place concerning this arrangement and no provisions to safeguard the monies collected. Following the breakdown of the relationship with Persons A and B, this caused difficulties for Mrs Francis due to A Ltd retaining contributions paid to it.
13. Prior to the SCO's visit, Complainant A and Complainant B independently made complaints about Mrs Francis' supervision of their respective IVAs. These are the subject matter of Allegations 13 and 14.

14. Allegation 13 alleges that Mrs Francis whilst acting as Nominee and Supervisor of Complainant A, failed to control IVA contributions in that she allowed them to be paid to A Ltd.
15. Allegation 14 alleges that Mrs Francis failed to carry out periodic reviews of the debtor's income and expenditure whilst acting as Supervisor of Complainant B's IVA.

DECISIONS ON ALLEGATIONS AND REASONS

16. The Committee considered the documents before it, the oral evidence of Ms F, the submissions of both parties and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard to be applied is proof on the balance of probabilities.
17. At the outset of the hearing Ms Francis admitted the following Allegations:
 - 1(b), 1(d), 2(a), 2(c), 3(b), 3(c), 3(d), 3(e), 3(f), 4(a), 4(b), 5(a), 5(b), 5(c), 6(a), 6(c), 6(e), 7(a), 7(c), 7(d), 7(e), 8(a)(i), 8(a)(ii), 8(a)(iii), 8(a)(v), 8(b)(ii), 8(b)(iii), 9(a), 9(b), 9(c), 10, 11(a), 11(b), 11(c) and 14.

Accordingly, pursuant to Regulation 12(3)(c) of the Complaints and Disciplinary Regulations ('CDR'), the Committee found the facts in those allegations proved by admission. The remainder of the allegations in Allegations 1 to 14 were either denied or admitted only in part and accordingly ACCA was put to proof of those allegations.

18. The Committee determined, pursuant to CDR 12(1), that it would first hear evidence and submissions in relation to the factual allegations set out in Allegations 1 to 14 and then make findings in respect of those facts. It would then go on to consider whether such facts as were found proved amounted to misconduct under bye-law 8(a)(i) or rendered Ms Francis liable to disciplinary action under bye-law 8(a)(iii).

Findings of fact

Allegation 1(a): Not admitted; found proved

19. Mrs Francis was appointed as Nominee and Supervisor of D Ltd on 7 March 2013. Allegation 1(a) alleges that she failed to verify the cashflow forecasts on which the monthly contributions in the Proposal were based. This was based on the fact, which was not disputed, that the SCO was unable to locate on file any correspondence with

the company or other documentary evidence regarding the cash flow statements attached to the Proposal.

20. Mrs Francis' case was that, as a matter of normal practice, this information would have been located in the 'brown file'. However she no longer had access to this because it was under the control of Person B. She would, however, normally have had something to substantiate the forecast, such as management accounts or evidence in relation to future trading.
21. ACCA's case was that, in the absence of a record that the cashflow forecasts were verified, the reasonable inference to draw is that they were not.
22. There was no dispute that Mrs Francis was under a duty to verify the forecasts. In the Committee's view, it was reasonable to expect that some sort of record evidencing the verification would be prepared and retained. Here there was no evidence that Mrs Francis had had any sort of discussion with the directors or, if she had relied on work done by others, that she had satisfied herself it was appropriate to do so. The Committee accepted that the appropriate inference to draw was that, on the balance of probabilities, Mrs Francis had not taken adequate steps to verify these cashflow forecasts. Therefore Allegation 1(a) was found proved.

Allegation 1(b): Admitted and found proved by admission

23. Under the CVA, D Ltd was required to make monthly contributions of £300 to Mrs Francis as Supervisor. Contributions falling two months in arrears constituted a breach. The last contribution was paid on 27 March 2013. However, Mrs Francis did not issue a notice of breach until 23 January 2014. By her admission to the allegation, Mrs Francis accepted that this constituted a failure to issue notice of breach in a timely manner.

Allegation 1(c): Not admitted; found not proved

24. The Proposal for D Ltd stated that Ms F, as Supervisor, would petition for the company's winding up if required to do so by the creditors. This allegation alleges that, having terminated the CVA, she failed to consult the creditors about winding up.
25. This CVA was terminated on 7 April 2014. At the time of the monitoring visit in September 2014 Mrs Francis admitted she had not consulted the creditors about the presentation of a winding-up petition. She told the SCO that she was intending to seek their views.

26. Paragraph 20.4 of the Proposal required Mrs Francis to 'petition for the company's winding up 'if required to do so by creditors and if in receipt of sufficient funds.' ACCA's case is that a requirement to consult the creditors about whether they wanted her to present a petition was implicit from these words. Mrs Francis' case was that this provision did not put her under a positive obligation to consult; further that she could only be required to petition if there were sufficient funds to do so.
27. Mrs Francis' evidence to the Committee was that, as best she could recall, there were insufficient funds to cover the cost of the petition. She accepted that she did not make this point to the SCO at the monitoring visit. However she said she was being bombarded with questions and was answering under duress. The whole process was done at speed and she was on the back foot from the beginning of it. The notes of the visit show that £3,234.72 was being held by Mrs Francis but her evidence was that this would be insufficient to fund the winding up. This assertion was not challenged by ACCA. However Mr Ozin QC on behalf of ACCA submitted that the contemporaneous notes do not bear out Mrs Francis' account that her concern at the relevant time was sufficiency of funds.
28. The Committee found this allegation not proved. The Committee does not agree that the words of paragraph 20.4 placed Mrs Francis under a positive duty to consult the creditors. It did not accept that it was implicit from the wording that there was such a duty: it could be equally said it was implicit from the wording that there was no such duty.
29. Further the evidence does not establish that there were sufficient funds to wind the company up. In the absence of such evidence, she could not in any event have been under the duty alleged by ACCA.
30. ACCA therefore failed to prove this allegation.

Allegation 1(d): Admitted and found proved by admission

31. At the time of the monitoring visit in September 2014 Ms Francis held £2,234.72 funds in the case. She had not issued a Notice of Intended Dividend. By her admission to this allegation, Mrs Francis accepted that she had failed to finalise the creditors' claims and distribute the funds in hand.

Allegation 2(a): Admitted and found proved by admission

32. Allegation 2 relates to Mrs Francis' appointment on 5 April 2013 as Creditor's Voluntary Liquidator of E Ltd. Allegation 2(a) was based on the SCO being unable to find at the monitoring visit any records of meetings with the directors or advice given by Mrs Francis or her staff. Mrs Francis admitted this allegation.

Allegation 2(b): Not admitted; found proved

33. This allegation alleges that Mrs Francis failed to investigate a distraint levied by HMRC over E Ltd's property. ACCA's case is that the creditors might have been entitled to some benefit from the distraint. Therefore questions should have been asked about the value of HMRC's claim, the value of the assets distrained upon and whether there might be a surplus.
34. Mrs Francis produced standard template letters addressed to 'All known creditors'. Her evidence was that such a letter would have been sent to HMRC. Therefore she would have been able to rely on the Revenue informing her about any assets it was holding. HMRC would also have been aware of the liquidation because it would have been advertised in the London Gazette. She did however accept that she did not believe she made specific enquiries of the Revenue about the distraint.
35. It was clear, in the Committee's view, that there was a duty to make specific enquiries and they were not made. Further the Committee was satisfied that either Mrs Francis did not appreciate the need to investigate the distraint or, quite simply, she failed to do so. The Committee does not accept that passively waiting for HMRC to volunteer information satisfies her obligations. The Committee found this allegation proved.

Allegation 2(c): Admitted and found proved by admission

36. Mrs Francis admitted that she had failed to issue a progress report to the creditors of E Ltd for the period up to 4 April 2014 by the due date of 4 June 2014.

Allegation 3(a): Not admitted; found proved

37. Allegation 3 relates to Mrs Francis' appointment as Creditors' Voluntary Liquidator of F Ltd on 20 June 2013. Allegation 3(a) alleges that Mrs Francis failed to carry out initial investigations into disposal of the company's assets.
38. According to the notes of the monitoring visit, F Ltd's balance sheet at 31 March 2012 showed intangible assets of £30,000. However no assets were recorded on the

statement of affairs. The bundle did not contain a copy of either of these documents, but these basic facts were not disputed.

39. The notes indicate that the SCO queried what had happened to these assets. Mrs Francis said they comprised a small quantity of stock and an old van. This appeared to the Committee to be a confusing response, as those would be classed as tangible rather than intangible assets.
40. Mrs Francis told the Committee the stock consisted of tiles which were located in Swansea and which the debtor told of her were end-of-line stock. Mrs Francis said she attempted to get a valuation from an agent but he considered the cost of his visit to Swansea would outweigh their value. He also said the cost of uplift would exceed anything that could be realised for them in auction at his auction house. They were subsequently purchased by the director's daughter for £1,000.
41. Mrs Francis told the SCO that the van was untaxed and untested and she took the decision that the cost of collection would outweigh any benefit.
42. The Committee accepted Mrs Francis' evidence in relation to these assets, and in particular it accepted that the tiles were of little if any value. However, that did not address the issue as to what had happened to the intangible assets.
43. There was no dispute that there was an obligation on Mrs Francis to investigate movements in relation to assets of the company. This is particularly so given the sum in issue, namely £30,000. There was no evidence of any enquiries being made by Mrs Francis in relation to this.
44. An Insolvency Practitioner is required to compare the statement of affairs with the most recent accounts. If there are movements in fixed assets between the two, as here, the liquidator should satisfy himself or herself that these can be explained. Mrs Francis did not do so in this case. Therefore the Committee finds this allegation proved.

Allegation 3(b): Admitted and found proved by admission

45. The SCO found no evidence that Mrs Francis had obtained F Ltd's bank statements for the period from December 2012 up to its liquidation in June 2013. The SCO was concerned that, without the bank statements, Mrs Francis would not have been able to investigate F Ltd's affairs. Mrs Francis admitted that in the circumstances she had failed to obtain all the company's records.

Allegation 3(c): Admitted and found proved by admission

46. Mrs Francis admitted that she had failed to issue a progress report to F Ltd's creditors by 20 August 2014. She told the SCO that it had been partially drafted but not despatched.

Allegation 3(d): Admitted and found proved by admission

47. The SCO found that the report to the first meeting of F Ltd's creditors in June 2013 did not include a deficiency account as required by section 98 of the Insolvency Act. Mrs Francis admitted this amounted to a failure.

Allegation 3(e): Admitted and found proved by admission

48. The principal assets on the Statement of Affairs were motor vehicles and stock. The directors estimated the value of these at, respectively, £500 and £5,000. By her admission to this allegation Mrs Francis admitted failing to obtain an agent's valuation of these assets.

Allegation 3(f): Admitted and found proved by admission

49. The SCO found no evidence of any internal progress reviews of the case. Mrs Francis admitted this amounted to a failure on her behalf.

Allegation 4(a): Admitted and found proved by admission

50. Mrs Francis was appointed Creditors' Voluntary Liquidator of G Ltd on 3 December 2008. She admitted that failed to convene annual meetings of the creditors for the years ending December 2011, 2012 and 2013 or file receipts and payments accounts with Companies House. Mrs Francis told the SCO that this was a consequence of the case having been mistakenly archived.

Allegation 4(b): Admitted and found proved by admission

51. Although funds were received from G Ltd's directors for the costs of the liquidation in 2008 there was no evidence of any further work on the case after 2009. Mrs Francis advised that this was due to the file being mistakenly archived. She admitted that she had failed to conclude the liquidation in a timely manner.

Allegation 5(a): Admitted and found proved by admission

52. Allegation 5 relates to Mrs Francis' appointment as Creditors' Voluntary Liquidator of H Ltd. The SCO was unable to find on file any notes of Mrs Francis' discussions with the directors concerning the financial position of the company or why liquidation was appropriate. By her admission to this allegation, Mrs Francis accepts that she failed to ensure adequate records of meetings with directors and advice given by her or her staff were maintained.

Allegation 5(b): Admitted and found proved by admission

53. The report to creditors of H Ltd indicated there was an outstanding loan to a director of £13,250. However this was not shown as an asset on the Statement of Affairs prepared by Mrs Francis. She agreed the repayment schedule proposed by the director without making any enquires or obtaining evidence of the loan account balance due. Mrs Francis admitted that she had failed to make proper enquiries into the director's loan account for the period prior to her appointment.

Allegation 5(c): Admitted and found proved by admission

54. H Ltd's bank statements showed a balance of £6,190.60 on 24 July 2014, shortly prior to Mrs Francis' appointment. Mrs Francis told the SCO that enquiries had been made of the bank. However, by her admission to this allegation Mrs Francis accepts that she failed to investigate the company's bank accounts for the period prior to her appointment.

Allegation 6(a): Admitted and found proved by admission

55. Allegation 6 relates to Mrs Francis' appointment on 12 August 2013 as Nominee and Supervisor of Person D. Person D's IVA Proposal stated that he had agreed to sign Land Registry restriction forms in respect of two properties he owned jointly with his wife and that she had consented to the sale of one of them. This sale would enable Mrs Francis to make a payment of 100p in the pound to creditors.

56. However, Mrs Francis failed to register a restriction on these properties at the Land Registry. Subsequently, on or before 16 November 2013, Person D sold one of these properties. He did not account to Mrs Francis for the profit.

Allegation 6(b): Not admitted; found not proved

57. Allegation 6(b) alleges that Mrs Francis had not ensured that modifications to the Proposal put forward by creditors had been agreed by Person D. The SCO did not

find any evidence that the modifications had been attached to the Chairman's report or otherwise provided to the debtor. The SCO noted that a letter dated 12 August 2013 referred to a telephone conversation during which Person D had agreed the modifications, but there was no note of the conversation or copy of the modifications signed by him on file.

58. Mrs Francis' case was that she did obtain Person D's agreement to the modifications verbally, if not in writing, and accordingly did not breach the relevant requirements.
59. Mrs Francis told the Committee that often they might not get all the modifications until the day of the meeting. The practice was that a member of her staff would then agree the modifications by telephone and this would then be confirmed by letter. The letter would usually be put on the IPS system and a copy should have been printed off. She accepted that she did not have a copy of the letter in this specific case although she has in other cases.
60. As a matter of law, for modifications to become binding the debtor must have consented to them. ACCA's case was that a proper written record would be required demonstrating consent. In the absence of such a record, it was alleged, Mrs Francis had failed to comply with her obligations. ACCA asserted that if there had have been such a record it would have been available at the date of the SCO's visit.
61. In the Committee's opinion, it was reasonable to draw the inference, from the letter of 12 August 2013, that agreement had been obtained verbally. The Committee accepted that it would have been good practice to have that confirmed in writing. However, in the circumstances, it was not satisfied that ACCA had proved that Mrs Francis failed to ensure the modifications had been agreed. Therefore this allegation was not proved.

Allegation 6(c): Admitted and found proved by admission

62. The Proposal required Ms Francis to serve a default notice if Person D failed to pay more than three monthly contributions or if he did not comply with his obligations. Person D was in default by failing to pay monthly contributions and selling a property that he owned without accounting to Mrs Francis for the proceeds. In the event that the default was not remedied, Mrs Francis was required to petition for bankruptcy or advise the creditors of their power to do so. The Proposal also required her to retain a contingency for presenting a bankruptcy petition to protect the interests of the creditors.

63. Mrs Francis failed to follow the default procedure. She agreed with the SCO that the IVA should have been failed but said she had not received sufficient funds to petition for Person D's bankruptcy.

Allegation 6(d): Not admitted; found proved

64. Person D jointly owned a property with his wife. The property was included as an asset for the purposes of the IVA. However, there was no evidence on file that Person D's wife had agreed that the property could be sold. ACCA's case was that Ms F, without making such enquiries of the wife, would not be able to properly comment on whether the Proposal could be implemented.
65. Mrs Francis accepted in evidence that she was required to obtain independent consent from the spouse. Her evidence was that she would have sent the 'normal letter' to Person D's wife advising her as joint owner to seek independent advice; further, that Person D would have confirmed to the court that his wife's consent had been obtained. She accepted that such a letter would normally be retained on file however in this case she was not able to locate a copy of the letter sent to Person D's wife.
66. Mrs Francis also told the Committee that she recalled that the property was already up for sale when she was appointed, so clearly Person D's wife had obviously consented to it being marketed. It was sold a few months later and therefore, again, the wife must have consented to the sale.
67. ACCA alleged there was a contrast between Mrs Francis' evidence to the Committee and what she said to the SCO. She did not make any assertion to the SCO to the effect that consent had been obtained. There was, said ACCA, no reliable independent evidence of consent.
68. The Committee did not regard the fact that the property was on the market relieved Mrs Francis of her duty to obtain consent from the joint owner to a sale. In the absence of any evidence that Mrs Francis did obtain that consent from Person D's wife, the Committee considered the appropriate inference to draw was that she did not. Accordingly it found this allegation proved.

Allegation 6(e): Admitted and found proved by admission

69. As Supervisor of Person D, Mrs Francis was required by the Insolvency Practitioners Regulations to hold a security or caution, known as a bond, to provide insurance

cover for losses caused by Person D's fraud or dishonesty. The value of the bond must equal the value of the assets subject to the terms of the arrangement.

70. Person D's Proposal showed assets of £54,172. However Mrs Francis had set the bond for the case at £25,000. Mrs Francis admitted she failed to adequately bond the case as Nominee or Supervisor.

Allegation 7(a): Admitted and found proved by admission

71. Mrs Francis was appointed Nominee and Supervisor of Person E on, respectively, 3 July and 21 August 2012. The Proposal required Mrs Francis to implement the default procedures if Person F missed three consecutive monthly contributions or failed to comply with his obligations under the IVA.
72. At the date of the monitoring visit in September 2014 arrears in excess of £6,000 had arisen and Person E had been paying reduced contributions since October 2013. Mrs Francis admitted she had failed to follow the default procedures. She told the SCO that there were notes on the system to the effect that the debtor could not pay the contributions due and wanted a variation to the arrangement and a report to creditors had been drafted but had never been finalised or issued.

Allegation 7(b): Not admitted; found not proved

73. This allegation alleges that Mrs Francis failed to review Person E's income and expenditure to establish the level of voluntary contributions. A review was required because modifications were made to the IVA by letter dated 21 August 2012. ACCA's case is that the review, pursuant to these modifications, was required by 20 August 2013.
74. Mrs Francis' evidence was that a draft variation report had been prepared by a member of her staff. The variation could not have been prepared without such a review having been carried out. That member of staff left her employment in about September/October 2013, which was around the time the annual review would have been due.
75. There is therefore evidence from which it can be concluded that some form of review of income and expenditure had taken place. In these circumstances, ACCA had failed to prove its case and this allegation was found not proved.

Allegation 7(c): Admitted and found proved by admission

76. Person E's proposal provided, at paragraph 4.3, for the sale of a horse box which he estimated would provide a realisation of £30,000 for creditors. The SCO ascertained that the horse box had been sold but only £26,970 had been received by Mrs Francis. There was, however, no documentation on the file regarding the sale, or explanation for the lower than expected realisation. Mrs Francis admitted this amounted to a failure to obtain evidence regarding the sale of an asset in the IVA which had been sold by the debtor.

Allegation 7(d): Admitted and found proved by admission

77. Mrs Francis failed to record in the receipts and payments account for Person E the receipt of payments of £750 in August and September 2014.

Allegation 7(e): Admitted and found proved by admission

78. At the date of the monitoring visit Mrs Francis was holding circa £35,000 in Person E's IVA. However she had not issued any notice of intended dividend to the creditors as required by the Proposal. She told the SCO however that all creditors' claims had been agreed and a dividend would be paid as soon as possible.

Allegation 8(a)(i): Admitted and found proved by admission

79. Allegation 8(a) relates to Mrs Francis' appointment as Nominee and Supervisor of Person F appointed on, respectively, 13 September and 14 October 2013.
80. The SCO found no evidence on file that Person F had agreed to modifications to his voluntary arrangement. Mrs Francis admitted that she had failed to ensure Person F had agreed modifications proposed by the creditors.

Allegation 8(a)(ii): Admitted and found proved by admission

81. Person F's IVA required Mrs Francis to implement the default procedures if he failed to comply with his obligations under the arrangement.
82. In a letter to Mrs Francis dated 9 February 2014 Person F admitted he had sold a property during November 2011 but had not paid the proceeds into his IVA as required by the Proposal. Mrs Francis replied on 21 February 2014 saying that in consequence she would be failing the IVA and petitioning for his bankruptcy.

However, she admitted that she had failed to follow the default procedures set out in the arrangement.

Allegation 8(a)(iii): Admitted and found proved by admission

83. Mrs Francis failed to review Person F's income and expenditure as required by the Proposal.

Allegation 8(a)(iv): Not admitted; not proved

84. This allegation alleges Mrs Francis failed to keep an up-to-date record of payments in the estate of Person F. It is based on alleged failures, identified by the SCO at the monitoring visit, to:

- (i) reconcile her records for the estate with the bank statements received; and
- (ii) record various payments made from the case bank account, as the estate accounts showed a balance held of £12,778.92 but the bank statement showed a balance of only £10,003.35.

85. Mrs Francis' case was that, after she failed the IVA, the only movement of monies was for petition fees and those were recorded on her internal system. ACCA asserted that this in itself amounted to an admission that the record of payments was not up-to-date. Mrs Francis' position was that she was not under a duty to keep the record of payments up-to-date until the case was finalised.

86. In the Committee's view there was no evidence of an obligation to keep the records constantly reconciled. It may have been good practice to reconcile at regular intervals, but the Committee has not been pointed to any specific obligation to reconcile at certain intervals or specified periods. Therefore there was no evidence that the records need necessarily have been up-to-date at the date of the monitoring visit. The Committee was unable to conclude that the facts here amounted to a breach of Mrs Francis' obligations and therefore this allegation was found not proved.

Allegation 8(a)(v): Admitted and found proved by admission

87. Proceeds from the sale of Person F's property were received in December 2012 and should, on ACCA's case, have been paid out by October 2013. However the sum was still held by Mrs Francis at the date of the monitoring visit. Mrs Francis accepted that she had failed to finalise creditors' claims and distribute the funds held.

Allegation 8(b)(i): Admitted and found proved by admission

88. This allegation alleges that Ms F, as Trustee in Bankruptcy of Person F, failed to provide creditors with sufficient information about the estate's assets. This was necessary to enable an informed assessment of the basis of Mrs Francis' remuneration.
89. Mrs Francis accepted she did not provide information to creditors when convening the meeting, but says the relevant information was in her final report on the IVA and therefore already in their possession. ACCA's case was that provision of information to the IVA creditors does not meet the obligation to provide information to the bankruptcy creditors.
90. In her evidence to the Committee Mrs Francis accepted that, with hindsight, she should perhaps have provided further information in the new report although she felt that the creditors did in fact have sufficient information. In light of that evidence, though it had been initially denied, Mrs Francis admitted this allegation and accordingly the Committee found it proved.

Allegation 8(b)(ii): Admitted and found proved by admission

91. The notice of intended dividend was dated 5 June 2014 stating that claims had to be received before 4 January 2015. The rules require that the dividend is declared within two months of the expiry date of the notice. Mrs Francis accepted that she had in the circumstances failed to distribute funds in a timely manner. She attributed this to the time taken to receive creditors' claims and the difficulties she was then experiencing in managing her practice.

Allegation 8(b)(iii): Admitted and found proved by admission

92. Mrs Francis accepted that the summary of receipts and payments did not properly show the net realisation from the sale of Person F's property. This was because solicitors' fees were netted off the proceeds of sale when some of those fees did not relate to the sale.
93. Mrs Francis' case was that this was an error of presentation and did not make any difference to the overall funds available to the creditors. ACCA asserted that this was an important error of presentation as it gave misinformation to the creditors.

Allegation 9(a): Admitted and found proved by admission

94. Mrs Francis admitted that, as Supervisor of Person G's IVA, she failed to maintain the required time cost records relating to her work. She had initially, in her case management form, contended that such records were not required as her fees were capped at 15% of realisations. Notwithstanding the cap, there was still a need to keep time cost records.

Allegation 9(b): Admitted and found proved by admission

95. This allegation also relates to Mrs Francis' remuneration in respect of Person G's IVA. It was alleged, and accepted by Ms F, that she drew her remuneration as a percentage of realisations when she was only authorised to draw them on a time cost basis.

Allegation 9(c): Admitted and found proved by admission

96. The Abstract of the Supervisor's Receipts and Payments shows the realisation of the sale of a property as being £4,149.70. It did not show the gross realisation or the solicitors' fees that were incurred. Although Mrs Francis accepted this was a failing she contended that it was an error in presentation which made no difference to the overall funds available to creditors.

Allegation 10: Admitted and found proved by admission

97. This allegation alleges that Mrs Francis, as Trustee in Bankruptcy of Person H, failed to distribute the estate's funds in a timely manner. Mrs Francis admitted the allegation and attributed it to difficulties in managing her practice at the time. ACCA's case was that the delay was excessive in two respects. First, there was a delay of about a year in issuing the notice of intended dividend, during which over £50,000 remained undistributed. Second was that the notice gave a further period of four months from date of proving for the dividend to be paid.

Allegation 11(a): Admitted and found proved by admission

98. Mrs Francis accepted that she had not maintained time cost records in relation to her work as Trustee in Bankruptcy for Person I. Her case was that although these records were not up-to-date at the time of the monitoring visit they were subsequently provided.

Allegation 11(b): Admitted and found proved by admission

99. Mrs Francis also accepted that she had failed to provide creditors of Person I with time cost records.

Allegation 11(c): Admitted and found proved by admission

100. This allegation alleged that Mrs Francis had failed to make a proper record of receipts and payments in relation to Person I's bankruptcy. ACCA's case was that two receipts, totalling just under £10,000, and three payments, totalling just over £10,000, had not been included in the estate records.
101. Mrs Francis accepted that there had been a failure of proper record keeping but asserted that it was an error of presentation and did not affect the 'bottom line'.

Allegation 12(a): Not admitted; found proved

102. Allegation 12 relates to Mrs Francis' appointment as Supervisor of the IVAs of Persons D E, F, G, J, K, and L and Complainant A. It alleges that the contributions received from all or any of these debtors was paid into a bank account operated by A Ltd, and that amounted to a failure to properly control funds received.
103. Mrs Francis did not dispute that contributions from some of these debtors were paid into an account controlled by a third party, namely A Ltd. This, it was alleged, amounted to a failure to properly control contributions received from debtors contrary to sections 270.7 and 270.33 of the Code of Ethics and Conduct ('CEC').
104. When Mrs Francis applied for her insolvency licence she agreed to be bound by ACCA's bye-laws and regulations made pursuant to the bye-laws as if she was a member of ACCA. ACCA's case was that by virtue of this agreement the relevant sections of CEC applied to her. Ms Savage, on behalf of Mrs Francis, did not accept this. However she accepted that Mrs Francis was under a general obligation to control contributions which was breached by the arrangement with A Ltd.
105. The Committee did not find it necessary to resolve the question as to whether the provisions of section 270 of CEC applied to Mrs Francis. It was satisfied that, given her acceptance that there was a failing to comply with her obligation to control debtors' contributions, it could delete from this allegation the words citing those provisions without unfairness or prejudice to Mrs Francis. Further, on the basis both

of that concession and the information before it, the Committee was satisfied that this allegation was proved whether or not section 270 of CEC applied.

106. The Committee noted and accepted Ms Savage's submission that the evidence before it only showed contributions being received into A Ltd's account from four of the individuals identified. Nonetheless, it was not in dispute that the arrangement with A Ltd applied generally to contributions received from debtors introduced to Ms Francis' practice by Person B or Person A.

Allegation 12(b): Not admitted; found proved

107. Allegation 12(b) alleges that Mrs Francis failed to record in writing the terms of her agreement (if any) with A Ltd pursuant to which contributions were paid to it rather than to her as Supervisor. ACCA's case was that this was necessary in order to ensure protection for the creditors of these debtors.
108. Mrs Francis accepted that there was no written record of any such arrangements with A Ltd. However her position was that she trusted Person A and Person B and this arrangement had existed successfully for a considerable period. They had transferred considerable sums of money to her in a timely manner and she had had no complaints from debtors suggesting there had been any failure to properly account for contributions.
109. Mrs Francis accepted that with hindsight she should have had better systems in place. She agreed that a written agreement should have been in place and she should not have been so trusting. The Committee was satisfied this allegation was proved on the basis of these admissions by Ms Francis. It was in the Committee's view simple common sense that Mrs Francis would have to put in place a proper written agreement reflecting an arrangement like this, not only to protect her clients but herself as well.

Allegation 12(c): Not admitted; found proved

110. This allegation also relates to the arrangement under which contributions were paid to A Ltd. It alleged that Mrs Francis failed to take or record the taking of steps to ensure that the funds held by A Ltd were safe, secure and insured.
111. Given the Committee's finding in respect of the preceding allegation, it follows that this allegation was also proved. In the Committee's view there was a clear

requirement for measures to be put in place to provide such safeguards. It was not disputed that this had not been done.

Allegation 12(d): Not admitted; found not proved

112. Following the breakdown of Mrs Francis' business relationship with Person A and Person B, A Ltd refused to pay over to Mrs Francis funds it had received from a number of debtors. It also refused to provide her with information about the funds it had received from debtors.
113. Allegation 12(d) alleged that Mrs Francis did not take immediate and effective steps, following 25 September 2014, to safeguard and recover funds paid to A Ltd by named debtors whose IVAs she was supervising.
114. Mrs Francis' case was that she did take appropriate steps to recover the funds, albeit that they were not ultimately successful. ACCA accepted that there was evidence that she took some steps, but said they were not adequate to address the problem.
115. Mrs Francis' evidence to the Committee was that A Ltd 'dumped' a sum of money in her account shortly prior to the monitoring visit in September 2014. However, she was given no details as to whose contributions this represented. She pursued this information, and enlisted her solicitor, who also acted for Person A and Person B, to assist in obtaining it. When she was eventually told who had made these payments she was then able to take further steps, which she did without delay, including contacting the debtors and their banks. She also consulted two solicitors in January 2015, but the advice she received was that she did not herself have the right to make a claim against A Ltd in respect of contributions it was holding onto.
116. The Committee was satisfied on the basis of Mrs Francis' evidence that she had taken reasonable steps to safeguard and recover the funds in question. In light of the fact that the steps were reasonable it would be wrong to criticise her for the fact they were not successful. It was noteworthy that ACCA did not identify any particular actions it said Mrs Francis should have taken but didn't.
117. The Committee found this allegation not proved.

Allegation 13: Not admitted; found proved

118. This allegation relates to Mrs Francis' appointment as Supervisor of the IVA of Complainant A on 23 November 2010. The SCO ascertained that Complainant A's

contributions were being paid into bank accounts operated by A Ltd. This continued until about March 2015.

119. The Committee found this allegation proved on the same basis and for the same reasons as set out in Allegation 12(a) above.

Allegation 14: Admitted and found proved by admission

120. Mrs Francis was appointed Supervisor of Complainant B's IVA on 15 February 2011. The terms of the IVA required Mrs Francis to review Complainant B's income and expenditure every 12 months. Mrs Francis admitted that she failed to carry out those reviews.

Findings on breach of bye-law 8(a)(i) or 8(a)(iii)

121. The Committee went on to consider whether all or any of the facts proved in Allegations 1 to 14 amounted to misconduct pursuant to bye-law 8(a)(i) or, if not, whether they rendered Mrs Francis liable to disciplinary action for breach of a rule or regulation pursuant to bye-law 8(a)(iii).
122. For these purposes the Committee received seven further tabled additional bundles (pages 739 to 821, 822 to 827, 828 to 960, 961 to 974, 975 to 989, 990 to 999 and 1000 to 1012).
123. Mr Ozin QC submitted that the facts found proved amounted to misconduct. He categorised the relevant failings as falling into the following categories:
- Failure to review matters – Allegations 3(f), 7(a), 8(a)(iii) and 14
 - Failure to record matters: Allegations 2(a), 5(a), 7(d), 9(a), 11(a), 11(c) and 12(b)
 - Not following default procedures: Allegations 6(c), 7(a), 8(a)(ii)
 - Failure to act in time: Allegation 1(b)
 - Failures to issue progress reports: Allegation 2(c) and 3(c)
 - Failures to distribute funds: Allegation 1(d), 7(e), 8(a)(v), 8(b)(ii) and 10
 - Acquiescing in the holding of client money by third parties: Allegations 12 and 13.

124. Ms Savage, whilst accepting that some of the proven allegations amounted to a breach of a relevant rule or regulation or in some cases a failure to act with competence and due care, submitted that they neither individually nor collectively amounted to misconduct. She referred to the difficult and unusual situation Mrs Francis found herself in which resulted in mistakes being made. The failings in question were not of a serious nature, were in certain instances due to Mrs Francis having to make judgment calls and did not cause prejudice to the interests of clients or others.
125. The Committee accepted that there was no evidence of conscious impropriety, but nonetheless considered that the failings in question amounted to a serious falling short of acceptable standards. Whilst a number of the matters advanced on behalf of Mrs Francis might amount to mitigation they did not provide an excuse for what had gone on in her practice. As an Insolvency Practitioner she had a duty to comply with standards applicable to her role and it was not open to her to blame external factors for a failure to meet that duty.
126. The Committee accepted that the failings identified in the various allegations did not in all cases amount of themselves to misconduct. But it accepted Mr Ozin QC's analysis that these failings were widespread and taken as a whole constituted misconduct. The Committee was in no doubt that the conduct in question would properly be regarded as bringing discredit to Mrs Francis, the profession and the association.
127. Therefore, in accordance with bye-law 8(c), the Committee found that the facts found proved in Allegations 1 to 14 taken collectively amounted to misconduct.
128. The Committee noted that Ms Savage in her written and oral submissions contended that, at common law, misconduct carries an implication of moral blameworthiness. This was disputed by Mr Ozin QC. Having found that Mrs Francis' conduct was discreditable, the Committee considered it was not necessary to specifically address this contention other than to say it accepted the advice of the Legal Adviser.
129. Having found that Mrs Francis' conduct amounted to misconduct under bye-law 8(a)(i) it was not necessary to consider the alternative allegation that she was liable to disciplinary action under bye-law 8(a)(iii).

SANCTION AND REASONS

130. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour. It took into account the submissions of the parties and the advice of the legal adviser. In reaching its decision the Committee also had regard to Section H of the Insolvency Common Sanctions Guidance (including Part 2-Indicative sanctions for various breaches of the Insolvency Act 1986, other relevant legislation, the Statement of Insolvency Practice and the Insolvency Code of Ethics). The Committee noted that CDR 13(5) sets out the sanctions available to it in the case of a non-member of the ACCA who has agreed to be bound by the regulations and that CDR 13(8) provides that the Committee can require that any future applications for a licence issued by the Association be referred to the Admissions and Licensing Committee.
131. Having found that Mrs Francis' actions amounted to misconduct, taking no further action was clearly not appropriate. The Committee therefore considered the available sanctions in ascending order of seriousness.
132. The Committee took into account that no previous disciplinary findings had been made against Mrs Francis. It took into account a reference received on behalf of Mrs Francis as an additional tabled document (page 1012). She had co-operated with the disciplinary process and had made admissions to a large number of the factual allegations, although her denial that her actions amounted to misconduct had been maintained throughout.
133. The Committee accepted that Mrs Francis' faced difficulties borne out of an unusual combination of circumstances. However her failings were widespread and can properly be attributed to negligence or lack of competence rather than misfortune. The misconduct found showed a pattern of repeated and significant deficiencies which covered many of the basic functions of an insolvency practitioner. It is not without significance in the Committee's view that failings applied in 12 out of the 13 files reviewed by the SCO. Further, had there not been a monitoring visit, there is every chance that these problems would have continued unchecked.

134. The Committee considered that neither an admonishment nor a reprimand would appropriately mark the severity of the misconduct found in this case. Such orders would accordingly not be in the public interest. The Committee considered only a severe reprimand would be appropriate in this case.
135. The Committee considered whether to additionally impose a fine. It took into account the guidance in paragraph C6.3 of the GDS. There is evidence that Mrs Francis' actions put creditors at risk of financial loss. Further, though she may not have made large fees out of the cases she was dealing with, she was nonetheless earning money from her activities as an Insolvency Practitioner. The Committee considered that in principle a fine would be justified.
136. The Committee is however required to take into account Mrs Francis' means in assessing whether to impose a fine. It accepted that her ability to pay was limited if not non-existent. She had undoubtedly suffered significant financial detriment as a consequence of having her insolvency licence suspended. In light of her financial circumstances, the Committee determined it would not be appropriate to fine Mrs Francis.
137. The interim suspension imposed on Mrs Francis' insolvency licence must be rescinded at this hearing. The Committee was informed that, in consequence, Mrs Francis would be without an insolvency licence as her previous licence has lapsed without renewal. In light of the seriousness of the conduct in question and the potential future risk to the public, the Committee determined it was appropriate to exercise its discretion to refer any future application by Mrs Francis for an insolvency licence to the Admissions and Licensing Committee.

COSTS AND REASONS

138. ACCA applied for costs in the sum of £36,456.
139. The Committee considered that in principle, having found misconduct, a costs order should be made in favour of ACCA. Ms Savage accepted that, as the burden of a costs order would not fall on Mrs Francis' shoulders, it was not relevant for the Committee to take into account her personal means in assessing the appropriate amount. She did however contend that the amount should be reduced because there has been delays which have added to cost; that the hearing lasted five days rather than the scheduled seven; and that some of the factual allegations had not been proved.

140. Mr Ozin QC submitted that the costs claimed were in any event modest in light of the actual cost of the proceedings.
141. The Committee accepted it should make a reduction to reflect the reduced length of the hearing. The Committee determined that the appropriate order was that Mrs Francis pay ACCA's costs in the sum of £32,000.

ORDERS

142. Therefore the orders made by the Committee are as follows:
- (ii) Pursuant to CDR 13.5(a), Mrs Francis is severely reprimanded.
 - (iii) Pursuant to CDR 13.8(c), any future application by Mrs Francis for a certificate or licence issued by ACCA or to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee.
 - (iii) Pursuant to CDR 12(5)(b), the interim suspension order imposed by the Interim Orders Committee in respect of Mrs Francis' insolvency licence is rescinded.
 - (iv) Pursuant to CDR 15(1), Mrs Francis is ordered to pay costs to ACCA in the sum of £32,000.

EFFECTIVE DATE OF ORDER

143. The sanctions imposed by the Committee will come into effect from the date of expiry of the appeal period, namely after 21 days from service of this written statement of the Committee's reasons for its decision, unless Mrs Francis gives notice of appeal in accordance with the Appeal Regulations prior to that.

Mr Mike Cann
Chairman
13 January 2017