Type of Order:	LICENCE REMOVAL ORDER
Date of Order:	1 June 2016
Committee name:	REVIEW COMMITTEE
Details of IP:	Philip Andrew Nuttall
Summary:	Background and the grounds of application for review

The Applicant is a Member of ICAEW and, since March 2003, has been a director and the manager of a limited liability company called 'A' Ltd (now in administration) through which he practised. The Applicant has practised insolvency since 1986 and obtained his ICAEW insolvency licence in 1990. 'A' Ltd is owned by 'B' Ltd, of which Mr Nuttall is a director and (with his wife) a shareholder. 'A' Ltd provided Individual Voluntary Arrangement (IVA) services in respect of a large number of individuals. At all material times it employed a person called Mr 'E' who is a member of ACCA (not the ICAEW). In late 2015 'A' Ltd was handling 3,260 open cases of which 96% were IVAs and 4% were Protected Trust Deeds. Mr Nuttall was handling 2,363 IVAs at this time. These cases had been transferred to Mr Nuttall in December 2014 when another Insolvency Practitioner left 'A' Ltd. By November 2015 these numbers had seemingly reduced: the bank reconciliation summary showed 2,737 cases, with 1,617 being handled by Mr Nuttall.

'A' Ltd used a global bank account for the client trust funds and, for each individual case, individual so-called "virtual" sub-accounts, with their own bank statements. As a matter of accounting, the total balances of the virtual sub accounts should equal the balance on the global bank account. At all material times (from about 2013), 'A' Ltd used an automated internet banking arrangement with Barclays Bank which, schematically,

provided a single global control account for client funds with subsidiary virtual accounts. In fact, the global control account comprised three, numbered, accounts:

- the account numbered 'FFF' was the default account which was used for receipts and payments across the caseload, and was also used for old cases managed by the Applicant;

- the account numbered 'GGG' was used for cases handled by a member of staff called Ms 'C'; and

- account 'HHH' was used for cases handled by Ms 'D'.

Mr 'E', who had been employed within the 'B' Ltd, understood the Barclays system and the Applicant delegated the task of performing weekly bank reconciliations to him once the Barclays system had been put in place. (Before that, the Applicant had performed that task himself.) The Applicant, who had no prior experience of the Barclays system, also delegated its daily operation to Mr 'E' as well and Mr 'E' became the System Administrator with control over it.

Although there are three numbered accounts, account 'FFF' is the default account and where funds are received into the 'FFF' account which relate to cases covered by the other two, appropriate funds are then transferred to either of them, as the case might be. Ms 'C' and Ms 'D' were employees and also Insolvency Practitioners. They expressed concerns with regards to the operations of the bank accounts (see paragraph 6 below). It was agreed that these two employees should liaise with Mr 'E' about their concerns who would, in turn, liaise with the Applicant.

The system of accounting ought to have run along the following lines:

daily, staff at 'A' Ltd download a net movement report from the 'FFF' account which would show a total of receipts and payments of the previous day. Those staff then prepare a daily transaction spreadsheet which allocates those transactions to individual clients. The transactions are then allocated to one of three Client Relationship Management systems ("CRM systems") and the daily cash book is updated as well. The CRM systems update the receipts and payments account for each client. The transaction spreadsheet described above is then used to update allocations in the virtual sub-accounts.

The upshot of all this should be that:

- the balance on the physical ‘FFF’ account;
- the balance in the cash book; and
- the aggregate of the balances of the virtual sub-accounts should show the same amounts.

However, no reconciliation reports were made before 28 August 2015. ‘A’ Ltd handled a large number of cases; regular payments were made by individuals undergoing IVAs to ‘A’ Ltd. Fees were charged by ‘A’ Ltd and net amounts would be paid out to creditors in respect of the IVAs. Due to the volumes of transactions involved, it was clearly very important that these systems operated efficiently.

In March 2015, Ms ‘C’ and Ms ‘D’ raised concerns about:

- their access to estate accounts;
- the fact that funds were paid into a global account before being allocated to the virtual accounts;
- the fact that estate accounts should be interest bearing and
- fees paid to a company in the ‘B’ Ltd were wrongly treated as a category 1 disbursement.

However, both staff members subsequently complained that Mr ‘E’ did not provide them with the information they sought.

In May 2015, Mr ‘E’ handed in his six months notice to terminate his employment. Since August 2015, Mr ‘E’ became absent from work due to stress.

The investigation into the matters raised by the two staff members put the Applicant on a train of enquiry leading up to a discovery which gave rise to the decision which is currently under review.

On 25 August 2015, the Applicant notified ICAEW that he had become aware of a significant difference of £6,643,839 between the total balances of the virtual sub accounts (which were £7,755,623) and the balance of the global control account number ‘FFF’ (which was (£1,111,784). In short, there was an extremely material accounting discrepancy. The Applicant was unable to explain the difference. [The Applicant has also since notified his professional indemnity insurers and the police.] Since reporting the matter to ICAEW, the Applicant continued to investigate what had happened: at that stage it was not

known if money had been wrongly extracted or if transactions had been made but not reflected in the virtual sub-accounts. In early September 2015 the Applicant engaged the services of an independent firm of Chartered Accountants to assist with that.

On 1 September 2015, the caseworker of ICAEW wrote to the Applicant about the forthcoming QAD visit; she said: "The results of the visit will then be provided to the Insolvency Licensing committee so that they are [sic] fully appraised on the situation. There are no regulatory implications for you, as you have identified the issue, are putting procedures in place and have taken action in respect of the employee, however, it is important that the committee are [sic] fully aware of what has taken place."

The August self-reporting prompted a visit by the Quality Assurance Department (QAD) of ICAEW to 'A' Ltd on 4 September 2015.

A second visit by QAD took place on 5 October 2015. However, by 23 December 2015, and in spite of the Applicant reporting regularly to ICAEW, the investigation into the accounting discrepancy had made slow progress. This caused the Insolvency Licensing Committee growing concern. A further QAD visit took place on 17 February and a final report into the matter was produced on 19 February 2016.

By the time of that report, it had been established that some £4,830,000 of estate money had been misappropriated, with a large proportion of that sum being paid to 'A' Ltd (about £4,000,000) and its holding company 'B' Ltd (about £751,000). These transactions appear to have been authorised and processed by Mr 'E'.

The Insolvency Licensing Committee met on 11 March 2016 to consider the QAD's report of 19 February 2016 and some written responses of the Applicant dated 9 March 2016. The Committee decided to withdraw the Applicant's Insolvency Licence with effect from 1 April 2016. The Applicant was informed of this decision by a letter dated 14 March 2016 and the Applicant exercised his right to a review of this decision on 8 April 2016, with reasons.

The reasons that the Insolvency Licensing Committee gave for withdrawing the Applicant's licence were under clauses 5.12d and/or 5.12f of the Insolvency Regulations and Guidance Notes. The Committee concluded that the Applicant had failed to maintain proper control over estate accounts for which he was responsible resulting in the inappropriate payment out of £5,000,000 of estate money, causing loss to creditors and

debtors. The funds in question were paid away to 'A' Ltd and 'B' Ltd, where the Applicant was a director of both and, in the case of 'B' Ltd, a shareholder (with his wife). This gave the Applicant a very significant benefit from the inappropriate payments. Furthermore, it appeared to the Committee at that time that the losses were, either in whole or in part, irrecoverable; the recipient companies had neither the resources nor the intention, either as companies or through their directors and shareholders, to make good the losses.

The Panel considered the matter afresh.

Findings and Reasons

There is no dispute that 'A' Ltd had in place an internal accounting system the operation of which the Applicant had delegated to Mr 'E'. Mr 'E', it would seem, authorised the payment of almost £5,000,000 to the bank accounts of two companies of which the Applicant was a director and, in the case of one company, a shareholder. Why he did this was unclear.

This matter involves no allegation of dishonesty against the Applicant, and the Panel has been informed that the matter was reported to the Police by the Applicant.

It is to the Applicant's credit that he self-reported this matter to ICAEW in August 2015 and that he has taken steps to try to understand what happened to cause this extraordinarily large misappropriation of funds to two companies over which he had direction. His actions include the instruction of a firm of independent chartered accountants. The Panel is also aware that the progress of the investigation of events has been slowed by the unavailability of Mr 'E' through stress-related illness.

Yet, it is still not completely clear what has happened, and the administrators of 'A' Ltd were only appointed on 24 March 2016 and have only relatively recently commenced their work.

The reality confronting the Panel is of the Applicant, who is an experienced insolvency practitioner, directing a company which handles large sums of estate money, with high transaction volumes, and delegating the daily responsibility of administering the bank accounts which received that money to an employee. That employee was given by the Applicant very high rights of access to the banking system. Having carried out that delegation, the Applicant appears to have adopted a very light, if non-existent, touch in terms of daily control and supervision of that employee. That decision to delegate very responsible duties, and to provide rights to the operation of the

banking systems, and then not to supervise, and not to impose checks and balances, lies at the heart of this matter.

There is no suggestion that the Applicant intentionally misappropriated the money to companies which he directed or in which he had an interest; nevertheless, the Applicant directed both companies at all material times and took the decision to delegate to Mr 'E' without imposing any sensible or workable method of supervising him. Furthermore, the amounts in question are very substantial and the period of misappropriation (although still not completely clear) extended from May 2013 until about August 2015. The amounts were very material to the income of 'A' Ltd in that period. This cannot be described as a case involving a one-off error by an employee while the employer's back was momentarily turned. It is a matter which exposes chronic shortcomings in the Applicant's directing of his business and supervision of his staff over a long period of time. Also, it is a matter where there is, even now, not a clear answer to what happened to all the money and whether any of it will be recovered.

The Panel had the greatest difficulty in understanding how such additional funds could have been included as income within the financial statements of 'A' Ltd without the Applicant being aware that something was clearly amiss. In the year ended 31 March 2015 the turnover of 'A' Ltd was £3,683,000 and it was £3,414,000 in the previous year. The information before the Panel indicated that the income for the year ended 31 March 2015 included some £2,500,000 which had been incorrectly removed from the estate accounts. This is some 68% of the income for that year. It is an amount in excess of the profits before taxation of that year of £2,367,000. In the year ended 31 March 2014 it seems that some 38% of the total turnover related to such incorrect transfers. The results for the year ended 31 March 2016 would also have been affected by incorrect transfers from April to August 2015.

Insufficient time has elapsed in a matter of this gravity, in which there would have to be substantial evidence that the same problem will not happen again, to persuade the Panel that the insolvency licence should be retained by the Applicant. The business model of 'A' Ltd had, at its heart, the requirement for strong controls over large transaction volumes. The Applicant failed to ensure that such controls were in place and the Panel does not have sufficient confidence in the Applicant that a similar problem will not happen again, so soon after the events in question, to restore that licence.

For these reasons, the Panel considers that the Applicant's insolvency licence should be removed. It agrees with the approach adopted by the Insolvency Licensing Committee.

The Applicant submitted that the email to him from ICAEW's case worker of 1 September 2015 gave him a legitimate expectation that no regulatory consequences would follow against him from his self-reporting of the matter in August 2015. Accordingly he submitted that the regulatory consequences which did, evidently, follow, are an abuse of process.

The Panel considered this matter very carefully due to the wording of the email. However, it firmly rejects this submission. To establish the basis for a legitimate expectation, the Applicant must show a representation by the relevant authority which is clear, unambiguous and devoid of relevant qualification. He relies on the statement by the caseworker in her email of 1 September 2015 as that representation. However, the Panel does not accept that it is made by the relevant authority. This caseworker had no power to decide whether or not regulatory consequences will flow from the matter. When she wrote the email, the caseworker obviously did not report on behalf of the Insolvency Licensing Committee which was the only relevant authority in this matter. Indeed, it was obvious that she was not doing so as the Committee was not yet apprised of what had happened.

The Panel can understand why the Applicant has placed reliance on what the caseworker told him, but does not accept that the reliance was, in the circumstances, either realistic or legitimate. In addition to the above points, neither the caseworker nor ICAEW had any knowledge at that stage that funds were missing or, indeed, that the funds had very largely been transferred wrongly for the benefit of 'A' Ltd and its holding company. It is not reasonable or realistic to construe the caseworker's remark on 1 September 2015 to apply to possible regulatory consequences arising out of events of which she knew nothing.

The Applicant also placed weight on references in one paper provided to him by ICAEW to a "Mr 'I'". The Panel rejects this submission. It is obvious that the references to Mr 'I' in the paper are administrative errors.

The Applicant has also asserted that the withdrawal of his Insolvency Licence will prevent him being employed, thus earning a living and so would breach his human rights. This is also rejected. The withdrawal of the Licence does not prevent

employment. It is the withdrawal of a licence under ICAEW's Insolvency Regulations.

Decision

Insolvency registration is withdrawn under regulations 5.12d and 5.12f of the Insolvency Regulations and Guidance Notes.