

STATEMENT OF REPRIMAND BY THE SECRETARY OF STATE

s391J of the Insolvency Act 1986

To

Institute of Chartered Accountants in England and Wales (ICAEW)

Whereas:-

1. The Secretary of State is satisfied that ICAEW has, in relation to the regulation and authorisation of Insolvency Practitioners, displayed a series of acts or omissions in discharging one or more of the regulatory functions outlined in section 391C(2) of the Insolvency Act 1986.
2. The Secretary of State believes that the aforementioned acts and/or omissions have had, or are likely to have, an adverse impact on the achievement of one or more of the Regulatory Objectives outlined in s391C(3) of the Insolvency Act 1986.
3. The Secretary of State provided ICAEW with notice of the intention to publish this Statement of Reprimand, along with a draft of this Statement, and allowed sufficient time for the ICAEW to make representations.
4. The Secretary of State, having considered any such representation as mentioned in (3) above, considers that it is still necessary to publish this Statement of Reprimand to ensure the achievement of the Regulatory Objectives, and in so doing ensure the high standards of Insolvency Practitioner regulation which is required for the maintenance of public protection and confidence in the industry.

Regulatory Objectives

The Secretary of State is satisfied, for the reasons outlined below, that the series of omissions of ICAEW has had, or is likely to have had, an adverse impact on the achievement of the Regulatory Objectives contained in s391C(3)(b)(ii) and (iii), (c) and (d) of the Insolvency Act 1986 of:

- (b) Encouraging an independent and competitive insolvency-practitioner profession whose members— ...

- (ii) act transparently and with integrity

and

- (iii) consider the interests of all creditors in any particular case.

With reference to the expectation that “*RPBs will be expected to tackle anti-competitive behaviour, abuse, including excessive fees, and misconduct through both monitoring and the proper assessment and thorough investigation of complaints from all sources, for example debtors, creditors, regulators and other insolvency practitioners*”...

“*Where there is evidence of misconduct or abuse (whether identified through dealing with complaints, monitoring activities, or any other intelligence or source), the Insolvency Service would expect that a RPB should take timely and necessary steps to address this, including the suspension or revocation of an insolvency practitioner’s authorisation in appropriate circumstances*”.

- (c) Promoting the maximisation of, and promptness of returns to, creditors.

This includes ensuring insolvency practitioners are “*bringing cases to an end in a timely manner and distributing funds to creditors in an efficient way at appropriate times*”.

- (d) Protecting and promoting the public interest.

With reference to the expectation that “*RPBs would seek to deal promptly with an act or omission by an insolvency practitioner which is serious enough to cause harm to the public, brings the reputation of the insolvency industry into disrepute by reducing public confidence or fails to uphold proper standards of conduct and performance*”. Further “*we expect to see RPBs proactively seeking to use intelligence received via complaints or otherwise to direct their activities towards any actions of insolvency practitioners likely to cause harm to the public interest*”.

Monitoring and Regulating of Insolvency Practitioners

The Secretary of State is satisfied that ICAEW has failed to effectively and consistently monitor and regulate an individual whom it had responsibility for regulating, Mr Adrian Duncan, as a licensed Insolvency Practitioner, in the series of omissions identified in discharging one or more of its regulatory functions, as outlined in s391C(2)(a), namely:

- i. Authorising persons to act as Insolvency Practitioners.

ii. Regulating persons acting as insolvency Practitioners.

The Secretary of State is satisfied that the following omissions of ICAEW has had, or is likely to have had, an adverse impact on the achievement of the Regulatory Objectives identified:

1. Between 27 January 2021 and 7 September 2021, ICAEW failed to conduct searches of the London Gazette, or to make equivalent alternative enquiries, to establish if Adrian Duncan was complying with the licence restriction imposed upon him on 3 September 2020 which prohibited him from taking on any new insolvency appointments.
2. Between 12 August 2020 and 7 September 2021, ICAEW failed to take steps to ensure that estate funds for which Adrian Duncan was responsible were subject to appropriate financial controls.

The Secretary of State considers the omissions of ICAEW, as outlined in points 1 and 2 above, and the details of which are contained in the summary attached, enabled or failed to prevent a risk of harm to creditors and reduction in public confidence in the regulation of insolvency practitioners.

FOR AND ON BEHALF OF SECRETARY OF STATE

DATE 30th June, 2023

Claire Hardgrave,
Head of IP Regulation Section, Insolvency Service