

# COMMITTEE'S DECISION ON AN APPLICATION UNDER SECTION 20-40 OF SCHEDULE 2 TO THE BANKRUPTCY ACT 1966

## Application by Daniel Moore to vary/remove conditions of registration

### Decision and reasons for decision by the Committee under section 20-60 of

### Schedule 2 to the *Bankruptcy Act 1966* (the Schedule)

#### Application

Mr Moore became registered on 23 December 2008. On 29 July 2021 Mr Moore became subject to a number of conditions imposed on his registration as a trustee in bankruptcy. Those conditions were imposed as a result of the decision on 15 July 2021 by a Committee, convened under section 40-50 of the Schedule ("**the Disciplinary Committee's Decision**"). Pursuant to section 40-55(1)(f) Mr Moore was subject to the following conditions:

1. 111.1 -*that he does not consent to act as a registered trustee of any regulated debtor's estate unless he is to be jointly and severally appointed with another registered trustee, other than the registered trustees approved by the Committee for the purposes of paragraph 111.3 below for a period of 24 months (the Co-Appointment Condition);*
2. 111.2 – *that he engage an independent registered trustee, approved by the Committee, to undertake an audit of his current files and provide a report to the Inspector-General within 3 months (the Independent Audit Condition);*
3. 111.3 - *that he be supervised by two independent registered trustees, approved by the Committee, for a period of 24 months, during which time one or both of the supervising trustees shall, either jointly or separately, as agreed upon with each other and with Mr Moore:*
  - a. 111.3.1 – *review all substantive correspondence to regulated debtors, and creditors, before being sent,*
  - b. 111.3.2 – *meet with Mr Moore monthly to review active matters and actions taken since the last meeting; and*
  - c. 111.3.3 *provide professional and/or ethical advice and assistance to Mr Moore in administering regulated debtor estates. ("the Professional Supervision Condition");*

4. 111.4 – *that he shall ensure that any fees and expenses (if any) incurred as a result of complying with the condition at paragraph 111.3 are not borne by any regulated debtor's estate for which he is the registered trustee; and*
5. 111.5 – *that, of the 10 hours of Continuing Professional Education required to be completed each year of registration under sub-section 20-5(3) of the Rules, he completes 2 hours on the topics of ethics and professionalism, for a period of 24 months ("the Ethics and Professional Education Condition")*

The Committee approved Mr Cotter, registered trustee, of Robson Cotter Insolvency Group to undertake an audit of and provide a report in respect of Mr Moore's files<sup>1</sup>.

The Committee approved Mr Porter and Mr Scott, of SV partners as the independent registered trustees to undertake the supervisory requirement.<sup>2</sup>

By application made in accordance with section 20-40 of the Schedule dated 7 November 2022, Mr Moore requested that the Co-Appointment condition set out in paragraph 111.1 of the Disciplinary Committee's Decision be removed so that he may take sole appointments.

The basis of Mr Moore's application is that the Co-Appointment Condition:

- a) does not serve the purpose for which it was imposed;
- b) has, in its application, resulted in an unexpected outcome; and
- c) places an unreasonable burden on Mr Moore.

The unexpected outcome for various reasons cited in Mr Moore's written submissions is that he has not been able to secure the consent of another trustee to act on a joint and several basis. This has resulted in Mr Moore's inability to take on any new appointments.

### **The Disciplinary Committee's Decision**

The Committee convened under section 40-50 of the Schedule was required to consider two grounds set out in a Show Cause Notice. The Committee decided under 40-55(1) that each ground (in part) had been made out. Those grounds were:

- a) that Mr Moore failed to carry out adequately and properly the duties of a trustee, or any duties or functions that a registered trustee is required to carry out under a law of the Commonwealth or of a State or Territory, or under the general law, as set out in paragraph 40-40(1)(l) of the Schedule (**Ground 1**); and
- b) that Mr Moore failed to comply with a standard prescribed for the purpose of subsection (4) namely Division 42 of the Rules in respect of conduct after 1 September 2017 and in respect of conduct, prior to that date, the Performance Standards in Schedule 4A to the *Bankruptcy Regulations 1966* (the Prescribed Information Standards)<sup>3</sup> (**Ground 2**).

A summary of the findings (where made out) in the Disciplinary Committee's Decision is set out in **Annexure A** attached.

The Disciplinary Committee's Decision noted the various instances of Mr Moore's conduct (as summarised in Annexure A) and that as a prudent trustee Mr Moore should have exercised

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<sup>1</sup> As required in paragraph 111.2 of the Disciplinary Committee's report dated 15 July 2021.

<sup>2</sup> As required in paragraph 111.3 of the Disciplinary Committee's report dated 15 July 2021.

<sup>3</sup> See Page 2, Para's 7 & 8 - Disciplinary Committee report dated 15 July 2021.

greater skill and judgement with his level of professional knowledge and experience. The Disciplinary Committee's Decision concluded that Mr Moore's actions were not appropriate or reasonable in the circumstances.

The objective of the conditions imposed by the Disciplinary Committee's decision were:

- a) to provide future assurance of Mr Moore being able to carry out adequately and properly his duties as a trustee, and
- b) to put in place appropriate safeguards to protect the public in relation to Mr Moore's conduct in administering regulated debtor estates.

This included:

- a) a mechanism by which an independent trustee could assess and report on whether Mr Moore had remedied concerns about the lack of effective system and controls within a three-month period,
- b) a recommended inspection by the Inspector General within 12 months of the Disciplinary Committee's Decision to assess the implementation and adoption of systems and controls, including that they are working effectively, and
- c) a process by which Mr Moore's future conduct (including communications) could be professionally monitored and assessed i.e. for the following 24 month period.

## **Committee**

The Inspector General in Bankruptcy (**the Inspector General**) referred the application to the Committee within two months of receiving the application. A Committee was convened to consider the application under section 20-45 of the Schedule, comprising:

- Ms Roslyn Shaw, a delegate of the Inspector General in Bankruptcy (Chair),
- Ms Kelly Trenfield, a registered trustee chosen by ARITA, and
- Mr Greg Rodgers a person appointed by the Minister.

Ms Kelly Trenfield was a member of the committee which by its decision imposed conditions, including the Co-Appointment condition.

## **No Interview of Application Required**

Section 20-55 of the Schedule provides that unless Mr Moore otherwise agrees, the Committee must interview Mr Moore for the purposes of considering the application. On 22 November 2022, Mr Moore's legal representative Mr Paul Evans advised the Committee that Mr Moore was agreeable not to be interviewed in light of the supporting material filed with the application, including written submissions, and a statutory declaration provided by Mr Moore.

On 10 January 2023 the Committee determined that it did not need to interview Mr Moore.

The supporting material filed by Mr Moore was considered by the Committee comprising:

- a) written Submissions for Variation dated 4 November 2022; and
- b) signed Statutory Declaration of Daniel Moore dated 4 November 2022 together with the following attachments:
  - a. a copy of Disciplinary Committee's Decision dated 15 July 2021 (Pages 1-21 of Annexure A) ("**the Disciplinary Committee's Decision**"),

- b. a copy of an expert report provided by Mr Cotter of Robson Cotter Insolvency Group dated 23 May 2021 (Pages 22-83 of Annexure A) (**“the First Audit Report”**),
- c. a copy of Inspector General’s initial inspection report dated 26 August 2022, (Pages 84-88 of Annexure A) (**“the IG’s Preliminary Findings Letter”**),
- d. a copy of the Inspector General’s final inspection report dated 15 September 2022 (Pages 89-90 of Annexure A) (**“the IG’s Final Findings Letter”**), and
- e. a letter from the supervising trustees, Mr Porter and Mr Alan of SV partners, dated 29 September 2022 (Page 91 of Annexure A) (**the Supervision Compliance Letter**).

### Other Material Obtained

Section 50-75 of the Insolvency Practices Rules (IPR 2016) provides that the Committee may make enquiries of any person for the purpose of making a decision in relation to the application. The Committee obtained from the Inspector General a copy of the subsequent expert report provided by Mr Cotter dated 25 October 2021 (**“the Subsequent Audit Report”**). This report was provided in compliance with the condition set out at paragraph 111.2 of the Disciplinary Committee’s Decision.

### Timing of Determining Application

Section 20-55(3) provides that the Committee must within 20 business days after obtaining agreement of Mr Moore not to be interviewed, decide the application and if a condition is to be varied specify the way it is to be varied.

Taking into account one public holiday, the Committee is required to determine the application by 8 February 2023.

### **Committee Report**

Section 20-60 of the Schedule requires that the Committee give Mr Moore and the Inspector General a report setting out its decision on the application and the reasons for that decision, and if the Committee decides that a condition should be varied – the way the condition is to be varied.

### **Notification to Mr Moore of Committee’s decision**

The Committee provided a draft of this report and decision to Mr Moore’s legal representative on 1 February 2023. Mr Evans did not raise any issue with the substance of the report however sought clarification of the intended effect of the variation. The report has been amended to provide this clarification.

### **Decision**

The decision of the Committee under subsection 20-55(3) of the Schedule is that Mr Moore’s Co-Appointment Condition at paragraph 111.1 be varied in the following way:

111.1

(a) Subject to subparagraph (b), that in respect of appointments to act as registered trustee of a regulated debtor’s estate accepted by Mr Moore between the date that this variation takes effect and 29 July 2023, he engage an independent registered trustee approved by the Inspector General in Bankruptcy, to undertake an audit of the conduct of at least 3 administrations for the

period of 12 months from their respective commencements, and prepare a report thereof to be provided to the Inspector General no later than 31 October 2024;

(b) the condition in subparagraph (a) shall not apply in respect of any administration where Mr Moore has been That he does not consent to act as a registered trustee of any regulated debtor's estate, ~~unless he is to be~~ jointly and severally appointed with another trustee, other than the registered trustees approved by the Committee for the purposes of paragraph 111.3 below. ~~for a period of 24 months.~~

## **Reasons for Decision**

The Committee notes at the outset that Mr Moore in his Statutory Declaration dated 4 November 2022 details his compliance to date, in respect of the Ethics and professional Education Condition<sup>4</sup> and the Professional Supervisory Condition<sup>5</sup>. The Committee observed that the Supervision Compliance Letter indicates compliance with the Professional Supervision Condition, however it does not specify any details in relation to the support provided including which administrations were reviewed or the nature of discussions which took place.

The Committee additionally notes that Mr Moore has complied with the Independent Audit Condition by providing the Subsequent Audit Report to the Inspector General within the required three-month period.

The Committee has considered the reasons cited by Mr Moore as to why it has been practically impossible for him to comply with the Co-Appointment condition. The Committee accepts that Mr Moore has made sufficient efforts to comply with the Co-Appointment Condition.

The inability of Mr Moore to take on new administrations between 29 July 2021 and to date (i.e. 18 months out of the 24 month period) has effectively frustrated the combined purpose of the Co-Appointment and Professional Supervisory Conditions i.e. on-going oversight of Mr Moore's conduct in administering regulated debtor estates. This includes the assessment of the professional support resources provided for and the assessment of the implementation and adoption of effective systems and controls.

The Disciplinary Committee noted its concern was *'that there was a real risk, without appropriate support, supervision, and updates to Mr Moore's systems and controls, errors identified in previous inspections (i.e. record keeping and timeliness) would be repeated.'*<sup>6</sup>

Further the Disciplinary Committee's Decision, when explaining its reasons for imposing the Co-Appointment Condition, indicated that the Committee *'considered a jointly appointed trustee who is responsible (jointly and severally) for each and every action taken in an appointment will provide a high level of assurance, over and above, the professional supervision and support provided'*<sup>7</sup> for by the professional supervision condition. The Disciplinary Committee's Decision also indicated that *'a joint and several appointment can provide on-going day-to-day support to Mr Moore, which a supervisor might not. In the Committee's view, the roles and responsibilities of the supervisor and joint and several appointee are different but complimentary and together they provide a greater overall assurance than either could alone'*<sup>8</sup>.

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<sup>4</sup> See Paragraph 5(c) of Mr Moore's Statutory Declaration dated 4 November 2022.

<sup>5</sup> See Paragraph 5(b)(i) of Mr Moore's Statutory Declaration dated 4 November 2022 and Page 91 of Annexure A.

<sup>6</sup> See Disciplinary Committee's decision –Page 16, para 111.

<sup>7</sup> See Disciplinary Committee's decision –Page 17, para 115.1

<sup>8</sup> See Disciplinary Committee's decision –Page 18, para 115.3

When determining the length of the Co-Appointment and Professional Supervision Conditions (i.e. 24 months) the Disciplinary Committee's Decision indicated that *'the Committee did not consider 12 months adequate for the Inspector General to assess a change in Mr Moore's conduct and practice until his current administrations were finalised and new ones were accepted'*<sup>9</sup>.

The Committee has considered what activities Mr Moore has undertaken in administering regulated debtor estates since the imposition of the conditions on 29 July 2021. The Committee has reviewed the First and Subsequent Audit Reports; and the IG's Preliminary and Final Findings Letters. The Committee notes the following:

- a) In the First Audit Report Mr Cotter detailed a number of constructive observations in respect of Mr Moore's systems and controls<sup>10</sup> and detailed potential actions<sup>11</sup> to remedy those areas identified as requiring improvement. At the time of writing his report Mr Cotter noted that Mr Moore had seven open personal insolvency administration files. All of these files were reviewed, in addition to one closed file. Mr Cotter noted the challenges for Mr Moore being a sole practitioner with no staff, and the absence of partners, colleagues or staff to engage with and *'bounce things off'*<sup>12</sup> in complying with his statutory duties, obligations and performance standards. Mr Cotter noted that he considered the proposed step<sup>13</sup> by Mr Moore of providing an updated report in 12 months time, was a *'sensible and valuable'* idea to consider. It is noted that Mr Cotter's report was relied upon by Mr Moore and formed part of the materials considered by the Disciplinary Committee<sup>14</sup>.
- b) In the Subsequent Audit Report, Mr Cotter indicated that he had reviewed all three open bankruptcy files with a view to identifying whether the steps recommended in the First Audit Report to improve systems and controls had been implemented. Mr Cotter opined that from an overall practice point of view and reviewing the three open files, where capable of having occurred and being sighted, the named steps appeared to have been adopted into Mr Moore's practice. Mr Cotter made the qualification that given Mr Moore's practice comprised only a very limited number of current open bankruptcy files, some of these steps may yet have been required to be utilised.<sup>15</sup>
- c) The IG's Preliminary Findings Letter noted that three current administrations had been inspected. A number of observations were made as a result of the inspection including charging at the appropriate rate for the type of task undertaken, a required update to precedent wording in relation to approval of remuneration without a meeting of creditors, and clarification about the correct date of discharge. A category C error was also recorded for a creditor's claim not properly being dealt with. These were confirmed in the IG's Final Findings Letter.

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<sup>9</sup> See Disciplinary Committee's decision –Page 18, para 115.4

<sup>10</sup> See Annexure A Pages 30-32 of Mr Moore's Statutory Declaration dated 4 November 2022.

<sup>11</sup> See Annexure A Pages 33- of Mr Moore's Statutory Declaration dated 4 November 2022.

<sup>12</sup> See Annexure A, Page 29 of Mr Moore's Statutory Declaration dated 4 November 2022.

<sup>13</sup> See Annexure A Pages 35 of Mr Moore's Statutory Declaration dated 4 November 2022.

<sup>14</sup> See Statutory Declaration of Daniel Moore dated 24 May 2021.

<sup>15</sup> See Subsequent Audit Report – Pages 7- 8.

In the absence of new administrations, the Committee is of the view that Mr Moore has not been able to demonstrate or provide the necessary assurance that he has addressed and/or remedied the concerns identified by the grounds made out in the Disciplinary Committee's Decision.

The Committee has strong reservations about removing the Co-appointment condition without providing for an alternative mechanism for assessing Mr Moore's future conduct. The Committee's view is that the protection of the public requirement would not be adequately addressed by only having in place the Professional Supervision Condition.

## **Conclusion**

The registration of Mr Moore as a trustee is subject to the following varied conditions:

1. 111.1
  - a. *Subject to paragraph (b), that in respect of appointments to act as registered trustee of a regulated debtor's estate accepted by Mr Moore between the date that this variation takes effect and 29 July 2023, he engage an independent registered trustee approved by the Inspector General in Bankruptcy, to undertake an audit of the conduct of at least 3 administrations for the period of 12 months from their respective commencements, and prepare a report thereof to be provided to the Inspector General no later than 31 October 2024,*
  - b. *The condition in subparagraph (a) shall not apply in respect of any administration where Mr Moore has been joint and severally appointed with another trustee, other than the registered trustees approved by the Committee for the purposes of paragraph 111.3 below.*
2. 111.2 – *that he engage an independent registered trustee, approved by the Committee, to undertake and audit of his current files and provide a report to the Inspector-General within 3 months;*
3. 111.3 - *that he be supervised by two independent registered trustees, approved by the Committee, for a period of 24 months, during which time one or both of the supervising trustees shall, either jointly or separately, as agreed upon with each other and with Mr Moore:*
  - a. *111.3.1 – review all substantive correspondence to regulated debtors, and creditors, before being sent,*
  - b. *111.3.2 – meet with Mr Moore monthly to review active matters and actions taken since the last meeting; and*
  - c. *111.3.3 provide professional and/or ethical advice and assistance to Mr Moore in administering regulated debtor estates.*
4. 111.4 – *that he shall ensure that any fees and expenses (if any) incurred as a result of complying with the condition at paragraph 111.3 are not borne by any regulated debtor's estate for which he is the registered trustee; and*
5. 111.5 – *that, of the 10 hours of Continuing Professional Education required to be completed each year of registration under sub-section 20-5(3) of the Rules, he completes 2 hours on the topics of ethics and professionalism, for a period of 24 months.*

The Committee notes that condition 111.1(a) applies only to appointments accepted by Mr Moore between the date that this variation takes effect and 29 July 2023. In the event Mr Moore is appointed to act as registered trustee pursuant to condition 111.1(a) in less than three regulated debtor estates, the audit requirement would only apply to those administrations.

The Committee notes that where Mr Moore has already complied with the conditions imposed by the Disciplinary Committee's decision, no further action is required. Specifically, the Committee notes that Mr Moore has complied with the condition set out in 111.2 above<sup>16</sup>.

## Appeal

If Mr Moore is dissatisfied with this decision, an application can be made to the Administrative Appeals Tribunal to have the decision reviewed. The application must set out a statement of reasons for the application and be made within 28 days of receipt of this report.

Signed:



Roslyn Shaw  
Delegate of the  
Inspector General  
8 February 2023

Signed:



Kelly Trenfield  
Committee Member  
Nominated by ARITA  
8 February 2023

Signed:



Greg Rodgers  
Committee Member  
Appointed by the Minister  
8 February 2023

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<sup>16</sup> As discussed in Reasons for Decision, the Subsequent Audit Report was provided on 25 October 2021.



## Annexure A

### Summary of the findings (where made out) of the Disciplinary Committee's Decision

Ground	Instance No	Finding	Conduct
1	2	Made out	Ss19(1)(f) and (g) <sup>17</sup> – Failure to take timely action to recover unpaid income contributions and utilisation of powers available under the Bankruptcy Act.
2	1, 2, 3, 4 and 6	Made out	<p>1 – ss 42-30(j) of the Rules<sup>18</sup> in two administrations - Failure to co-operate with Inspector General. Admission made by Mr Moore about delays in providing files and responding to inquiries and apology to Inspector General.</p> <p>2 – ss42-15(3) of the Rules<sup>19</sup> - i) Failure to preserve confidential information where necessary, and ii) Failure to act impartially in relation to an administration. This conduct concerned the disclosure of a confidential psychiatric report in a bankrupt estate in relation to a third party, not the bankrupt. Certain aspects of Mr Moore's conduct toward the bankrupt found to lack impartiality.</p> <p>3 – ss42-15 of the Rules<sup>20</sup> - Failure to communicate in an objective and professionally courteous tone and manner in connection with a report to creditors. Admissions made by Mr Moore that report was not objective or professionally courteous and apology to Inspector General provided.</p> <p>4 – ss42-185 and s42-190<sup>21</sup> - Failure to meet requirements in respect of i) income and contribution assessments and ii) monitoring the payments of contributions by regulated debtors. Failure to take timely action recover unpaid income contributions and utilisation of powers available under the Bankruptcy Act 1966.</p> <p>6 – Div 42 of Rules<sup>22</sup> and Section 3.7 Division 3.4 of the Performance Standards – Failure to distribute funds in a timely manner. Absence of contemporaneous notes in relation to Mr Moore's decision making.</p>

<sup>17</sup> *Bankruptcy Act 1966*

<sup>18</sup> *Insolvency Practice Rules 2016*

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid*

<sup>22</sup> *Ibid*

Ground	Instance No	Finding	Conduct
2	5	Made out in part	Ss 42-10 and 42-70 – Failure to act impartially and failure to keep property records in relation to work done in relation to a specified bankrupt estate. Failure to clearly understand importance of proper record keeping – right of Inspector General, creditors and bankrupt to request information and documents relating to the estate and/or inspect the administration file. Admission by Mr Moore that he could have kept more detailed file notes. Committee found an aspect of Mr Moore’s conduct toward the bankrupt lacked impartiality, given apparent favourable treatment shown in granting information hardship relief without proper basis.