

Annual Review of Insolvency Practitioner Regulation

June 2009

Foreword

by Stephen Speed



Administrations, liquidations, bankruptcies and other insolvency procedures are affecting an increasing number of people during this the most severe recession for decades. Whether it is as employees who have lost their jobs, indebted individuals, managers of struggling businesses or consumers who have lost deposits, all those affected are entitled to have confidence in the insolvency profession who are tasked with administering the insolvency.

Insolvency practice is a regulated profession and this Review, which we intend to publish annually, sets out the essential features of the regulatory regime that governs insolvency practitioners; what the public and businesses can expect from it; and what The Insolvency Service and the other regulators are doing to improve it.

A handwritten signature in black ink that reads "Stephen Speed". The signature is stylized with a large, sweeping initial 'S' and a long horizontal line extending from the end of the name.

Stephen Speed
Inspector General and Agency Chief Executive

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1 Overview of the insolvency regulatory regime

1.1 Structure of the regulatory regime

The authorisation regime for insolvency practitioners in Great Britain was introduced in 1986 by the Insolvency Act 1986. Similar legislation exists for Northern Ireland but this Review only covers England, Wales and Scotland¹.

1.2 Role of the Secretary of State

The Secretary of State is empowered to recognise professional bodies as being able to authorise and regulate their members to act as insolvency practitioners. These bodies have to enforce rules for securing that such of their members who are permitted to act as insolvency practitioners are fit and proper, and meet acceptable requirements as to education, practical training and experience. Only individuals can be authorised to act as an insolvency practitioner.

The Secretary of State is also able to directly authorise insolvency practitioners. The Insolvency Service, which is an Executive Agency of the Department for Business, Innovation and Skills (BIS), exercises these functions for the Secretary of State.

The Insolvency Service therefore has two distinct roles in relation to the regulation of insolvency practitioners:

- to monitor the regulatory activities of the Recognised Professional Bodies to ensure that they are undertaken in accordance with common standards (as set out in a Memorandum of Understanding agreed with the Secretary of State); and
- to authorise and regulate applicants who apply directly to the Secretary of State for authorisation to act as an insolvency practitioner.

In addition, The Insolvency Service oversees the development of regulatory policy and professional standards, monitors the effectiveness of the relevant legislation and provides guidance to the insolvency profession on law and practice.

¹ Insolvency legislation is devolved in Northern Ireland, although the regulatory regime follows very closely that which applies in England, Wales and Scotland.

1.3 The Recognised Professional Bodies

Seven bodies have been recognised by the Secretary of State to authorise their members (and other individuals) to act as insolvency practitioners. Those bodies are:

- **ICAEW** – Institute of Chartered Accountants in England & Wales
- **ACCA** – Association of Chartered Certified Accountants
- **IPA** – Insolvency Practitioners Association
- **LS** – Law Society of England & Wales
- **LSS** – Law Society of Scotland
- **ICAI** – Institute of Chartered Accountants in Ireland
- **ICAS** – Institute of Chartered Accountants of Scotland

Section 3.1 of this statement details the current volumes of authorisations.

All of the bodies have been recognised since 1986 and are collectively referred to as the *Recognised Professional Bodies* (RPBs).

Most insolvency practitioners have an accountancy or legal background, and this is reflected in the identities of six of the seven RPBs. Some of the RPBs (e.g. ICAEW, ACCA, ICAI, and ICAS) will authorise non-members as insolvency practitioners under Associate schemes. Associates, whilst not members of their authorising body, are subject to the body's professional rules and regulations, and their regulatory and disciplinary regimes. Most of the RPBs grant authorisations for a period of no more than one year.

1.4 Authorisation of insolvency practitioners by the Secretary of State

The Insolvency Service directly authorises insolvency practitioners on behalf of the Secretary of State.

The function includes the receipt and consideration of applications for authorisation, desk-top monitoring (e.g. complaint handling, reviewing annual returns and other intelligence), and undertaking on-site monitoring visits.

Most authorisations by the Secretary of State are granted for a period of three years, the maximum period allowed. Shorter periods of authorisation are granted where there are concerns about aspects of the insolvency practitioner's administration and there is a need to closely monitor a practitioner's progress to an agreed action plan to ensure improvements are secured before a further period of authorisation is granted.

In 2009-10, The Service will put its authorisation function at arm's length from its overarching regulatory function.

1.5 Regulatory and disciplinary sanctions

The RPBs have a range of sanctions that they are able to take against their insolvency practitioners. These range from: restrictions including limiting the number or type of appointments or imposing bans on accepting new appointments; fines (including circumstances where the member has consented to the fine) with or without orders for payment of costs; requiring an insolvency practitioner to make improvements to their practice; to the ultimate sanction of withdrawal of authorisation. Section 3 of this Review sets out the number and types of sanctions taken against insolvency practitioners.

The relationship between the Secretary of State and a person who is authorised by him is a statutory one and is governed by what the legislation permits. The only function that the Secretary of State may perform once an application has been granted is to indicate an intention to withdraw the application, manage any challenge to the notification and ultimately withdraw authorisation. The legislation provides a mechanism for handling a challenge to a decision of the Secretary of State to refuse or indicate an intention to withdraw an authorisation by reference to the Insolvency Practitioners Tribunal.

1.6 Achieving consistency in regulation

With a number of bodies able to authorise and regulate insolvency practitioners consistency in regulation is important and is achieved by the following means.

- A Memorandum of Understanding agreed between the RPBs and the Secretary of State sets out principles covering the granting of authorisations, ethics and professional standards, handling of complaints, retention of records, and the disclosure of regulatory information to other RPBs and the Secretary of State. In addition a sub-set of Principles for Monitoring insolvency practitioners has been agreed with the RPBs. The Insolvency Service monitors the RPBs for adherence to the principles set out in these documents, both of which are available on The Insolvency Service's website².
- The Joint Insolvency Committee (JIC) is a Committee on which all of the RPBs are represented together with The Insolvency Service, and was formed in 1999. It is concerned with professional and ethical standard setting across the profession, which it achieves through the approval of an Ethical Code, Statements of Insolvency Practice³ (SIPs) which are binding on insolvency practitioners, and Insolvency Guidance Papers. The JIC meets quarterly, with sub groups taking forward specific issues between meetings, and publishes a report each year.
- Regular meetings of monitors (who undertake on-site visits to insolvency practitioners) are held, with representatives drawn from all of the authorising bodies or their agents. The meetings provide an opportunity for the monitors to discuss technical issues and exchange, in appropriate cases, intelligence about insolvency practitioners.

² <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/iparea/iparea.htm>

³ SIPs can be accessed at <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/iparea/sip.htm>

1.7 The Insolvency Practices Council

The Insolvency Practices Council (IPC) was set up in the Spring of 2000 as an independent external body given a remit to: investigate and examine the ethical and professional standards of the insolvency profession; and make recommendations to the bodies that regulate the profession for any changes in regulation it considers are needed in the public interest. It also considers whether standards are being adopted, observed and enforced. It works closely with the JIC and the RPBs, which are required to cooperate with the IPC. The IPC is made up of an independent chairman, five independent lay members and three members of the insolvency profession. The IPC has made a number of recommendations to the profession in its annual reports which are available on its website⁴. Recent reports include recommendations on:

- improved statistical information on Individual Voluntary Arrangements (IVAs) and Debt Management Plans (DMPs);
- appropriate advice for distressed personal debtors;
- complaints handling by insolvency practitioners and their regulators;
- correspondence between insolvency practitioners and debtors/creditors;
- reports under the Company Directors Disqualification Act 1986; and
- pre-packaged administrations.

Issues surrounding personal insolvency have been and remain a major part of the work of the IPC because of the perceived vulnerability of private individuals.

⁴ www.insolvencypractices.co.uk

2 Developments in regulatory policy and activities undertaken in 2008

2.1 The “Hampton” review of insolvency practitioner regulation

During December 2008 the activities of The Insolvency Service in relation to insolvency practitioner regulation were reviewed by an independent team consisting of two peer reviewers from other regulators and a member of the Better Regulation Executive, a directorate within BIS responsible for promulgating the following principles of better regulation:

- **Proportionate:** regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.
- **Accountable:** regulators must be able to justify decisions, and be subject to public scrutiny.
- **Consistent:** rules and standards must be joined up and implemented fairly.
- **Transparent:** regulators should be open, and keep regulations simple and user friendly.
- **Targeted:** regulation should be focused on the problem, and minimise side effects.

As a part of the review, stakeholders such as the RPBs, the Association of Business Recovery Professionals (R3), the IPC and creditor representatives were invited to contribute their views on the appropriateness and effectiveness of the insolvency practitioner regulation functions undertaken by The Insolvency Service. The report is expected to be published by the Better Regulation Executive in July 2009⁵.

The publication of this Annual Review of Insolvency Practitioner Regulation arises in part from views expressed by stakeholders that there was a perceived lack of transparency regarding the nature of the work undertaken by The Insolvency Service in relation to insolvency practitioner regulation. These views were echoed by the Business and Enterprise Select Committee in their report on The Insolvency Service published in May 2009.

2.2 Introduction of a new insolvency ethical code

A new insolvency ethical code came into force on 1st January 2009. The purpose of the Code⁶ is to provide the clear guidance necessary to ensure high professional and ethical standards by insolvency practitioners.

The Code is aligned to a model adopted by the International Federation of Accountants. A draft of the Code was produced by the JIC in March 2007 for public consultation. The consultation period ended on 2 July 2007. Thereafter the JIC had regular meetings to discuss the responses to the consultation and produced a substantially revised draft of the Code.

⁵ <http://www.berr.gov.uk/whatwedo/bre/index/html>

⁶ <http://www.insolvency.gov.uk/insolvencyprofessionandlegislation/iparea/ISCodeEthics.doc>

The revised version of the Code has now been adopted by each of the RPBs and the Secretary of State. Accordingly, all insolvency practitioners will continue to follow a standardised Code, regardless of their authorising body.

2.3 Pre-packaged administrations

Pre-packaged administrations, where a sale of a part or whole of the business of a company is negotiated prior to the formal appointment of the administrator and then executed immediately by the administrator, have been the subject of widely expressed concern by creditors and competing businesses.

Pre-packs can be a positive process as they can help to preserve economically viable businesses, either in whole or in part, thereby saving jobs and improving returns to creditors. However, creditors often found the practice lacked transparency as sometimes the first they heard about a pre-pack sale was some time after the event, and sometimes from the media rather than from the administrator.

Unsecured creditors were left feeling powerless and the lack of transparency fed concerns that matters were being engineered to keep them in the dark, particularly where the business was sold back to the same management team.

In order to address this concern, the JIC approved SIP16 which was issued by the RPBs and The Service and came into force on 1 January 2009.

SIP16 requires administrators to explain in detail to creditors the background to their appointment and the reasons for any transaction undertaken through a pre-pack administration. The detailed disclosure requirements of SIP16 are at annex 1.

The greater transparency afforded by these new requirements will give creditors better and quicker access to information, which will enable them to make informed decisions when considering subsequent proposals or resolutions sought by administrators.

During 2008, with the downturn in the economy gathering pace and the number of pre-packs increasing, concern about the use of the procedure grew, both amongst the creditor community and Ministers.

As a result The Insolvency Service decided to monitor the information being disclosed to creditors by administrators, and agreed with all of the RPBs that a copy of the SIP16 statement that administrators are required to send to creditors, should also be sent to The Service in every case. A report on the first 6 months of monitoring of SIP16 will be published by The Service in July 2009.

2.4 Monitoring the Recognised Professional Bodies

The Insolvency Service monitors the regulatory activities of the RPBs by undertaking on-site visits to investigate how they authorise and regulate their practitioners, and by assessing whether the bodies have followed their own rules and have acted fairly when investigating complaints.

During 2008 work continued on matters arising from a monitoring visit undertaken to the Law Society of England & Wales (LS) in late 2007, the report of which was issued in May 2008. A number of recommendations were made in the report relating to how complaints were dealt with and progressed by the Solicitors Regulation Authority (SRA), a body delegated by the LS to carry out its regulatory and disciplinary functions.

In particular, concern was expressed that there were in-built delays in complaints reaching the appropriate section within the SRA and that complaints were not being dealt with expeditiously. A connected concern was that there appeared to be a potential gap in dealing with complaints about poor service provided by solicitor insolvency practitioners. These concerns arise in part from changes to complaint handling procedures resulting from the creation of the Office for Legal Complaints. This change in structure provides an independent body to deal with complaints against solicitors. Whilst some of the recommendations made to the LS have been addressed and solutions identified to resolve others, the final resolution of some of them are subject to consideration by the Legal Complaints Service. Consequently, at the date of the publication of this report not all of the recommendations made following the 2007 monitoring visit have yet been satisfactorily addressed.

Monitors from The Insolvency Service undertook visits to the Institute of Chartered Accountants of Scotland (ICAS) and the Law Society of Scotland (LSS) in March and July 2008 respectively.

The visit to ICAS included a three-day on-site visit to their offices in Edinburgh; observation of a monitoring visit to one of their insolvency practitioners and observation of a Licensing Committee meeting. Issues arising from the visit included concerns about a lack of bond cover for a number of ICAS insolvency practitioners who, though no longer taking new insolvency appointments continued to administer existing cases. Bond cover is a legal requirement before an authorised insolvency practitioner is qualified to act as an insolvency office holder. Action was taken by ICAS during 2008 to ensure that those practitioners identified during the monitoring visit as having potentially inadequate bond cover rectified the situation.

The Insolvency Service's monitors visited the LSS at their Edinburgh office. Due to the small number of LSS insolvency practitioners the visit was completed in one day. There were no major issues arising from the visit although clarification was sought about changes to their complaint handling procedures following the creation of the Scottish Legal Complaints Commission, an independent body to deal with complaints against Scottish solicitors.

In 2008 two monitoring visits undertaken by ICAS and the IPA to their insolvency practitioners were observed by The Insolvency Service's senior monitor to ensure that the bodies' monitoring practices complied with the Principles for Monitoring. The Principles for Monitoring set out principles to which all the RPBs and the Secretary of State have agreed to adhere to when monitoring their respective insolvency practitioners. The observed visit by ICAS was to a practitioner working in a large accountancy practice, and that carried out by the IPA was to a practitioner working in a large organisation which specialises in providing IVAs. Whilst ICAS and the IPA have a different approach to monitoring, both were found to be fully compliant with the Principles for Monitoring.

During 2008 a risk assessment of the RPBs' performance against their obligations under the Memorandum of Understanding was undertaken. This was done to ensure that the monitoring of the RPBs by The Insolvency Service was in line with the Hampton principles that regulators should only intervene when necessary and that regulation should be focused, targeted and proportionate. This work will enable The Service to complete its transition to risk based monitoring visits to the RPBs and the implementation of themed reviews involving all RPBs on specific principles agreed within the Memorandum of Understanding.

The number of complaints received about the RPBs and how they have performed their regulatory functions is given in section 3.5 below.

3 Regulatory outcomes

3.1 Number of authorisations

3.1.1 Number of insolvency practitioners (and appointment takers) for each authorising body

IPs	ICAEW	ACCA	IPA	LS	LSS	ICAI	ICAS	SoS	Totals
Total number of IPs 1 Jan 2008	728	185	380	147	15	46	108	92	1701
Appointment takers 1 Jan 2008	567	157	304	34	2	34	87	90	1275

Not all authorised insolvency practitioners are appointed as office-holders in formal insolvency appointments. There are several reasons for this, including:

- for practitioners who are working in an insolvency practice it may be as a result of a decision by their employer that only practitioners at a senior level should take appointments;
- in the case of those practitioners authorised by the Law Societies that authorisation is obtained to demonstrate a high level of knowledge and experience of insolvency law and practice with a view to advising insolvency practitioners in their work;
- practitioners may be working for one of the authorising bodies, or for businesses which provide services to insolvency practitioners to assist them in complying with regulatory obligations.

3.2 Monitoring visits

3.2.1 Monitoring visits carried out by each authorising body

Monitoring visits carried out	ICAEW	ACCA	IPA	LS	LSS	ICAI	ICAS	SoS	Totals
Routine	77	48	84	2	-	8	18	20	257
Targeted	3	9	11	-	-	1	2	10	36
Total visits	80	57	95	2	-	9	20	30	293

The purpose of a monitoring visit is to enable the authorising body to make an objective assessment of the conduct and performance of insolvency practitioners authorised by it and to ascertain whether the practitioner is, and continues to be, fit and proper.

Every insolvency practitioner holding at least one appointment is subject to routine monitoring visits. Each practitioner should be visited at least once every three years but, if satisfactory risk assessment measures are employed by the authorising body, the gap between visits may be extended to, but not exceed six years. Risk assessment measures may include:

- an analysis of information provided by a practitioner to their authorising body about case numbers and progression;
- certification of case reviews;
- whether any complaints have been received about the practitioner and the outcome of investigations into those complaints;

- findings from previous monitoring visits to either the practitioner or the practice in which the practitioner works.

Targeted visits should be carried out if an authorising body becomes aware of concerns about a practitioner's activities. These concerns may arise from previous monitoring visits, from desk-top monitoring or from complaints.

3.3 Sanctions

Regulatory action resulting from professional misconduct may occur during three stages: the authorisation stage, particularly when considering the renewal of a licence; following a monitoring visit; and following an investigation of a complaint. Information is provided below about the sanctions undertaken by the authorising bodies in 2008, including some examples relating to specific insolvency practitioners. Some of the sanctions have been published by the authorising bodies and where this has occurred the published information, including in some cases the name of the practitioner concerned, is included.

3.3.1 Sanctions or action taken at authorisation and renewal stage in 2008

Sanction	ICAEW	ACCA	IPA	LS	LSS	ICAI	ICAS	SoS	Totals
*Licence revoked	1	-	2	-	-	-	-	-	3
Licence refused (first time application)	-	1	-	-	-	-	-	-	1
Licence refused (renewal application)	-	-	-	-	-	-	-	1	1

* The data for licences revoked at the renewal stage refers to the same data as shown under licences withdrawn following monitoring visits in table 3.3.2.

ACCA refused an application for a licence on the grounds that the applicant did not have sufficient relevant insolvency experience.

IPA renewed the licence of an insolvency practitioner on the condition that the practitioner did not accept any further insolvency appointments and that the practitioner closed his existing cases within 12 months. The practitioner had informed the IPA that their consultancy work was occupying their time to the detriment of their insolvency work and the sanction was imposed to bring the practitioner's existing cases to an orderly conclusion.

The Insolvency Service refused an application for re-authorisation as the applicant had not completed the required amount of Continuing Professional Development (CPD) to enable a further period of authorisation to be granted. The applicant undertook further CPD and was subsequently granted a further authorisation.

3.3.2 Sanctions following monitoring visits concluded in 2008

Sanction	ICAEW	ACCA	IPA	LS	LSS	ICAI	ICAS	SoS	Totals
Licence restricted	3	1	6	1	-	-	-	-	11
Licence withdrawn	1	-	2	-	-	-	-	-	3
Undertakings	21	-	12	-	-	-	-	-	33
Plans for improvements	9	-	27	-	-	-	-	6	42
Regulatory penalty	2	1	-	-	-	-	-	-	3

ICAEW refused to further extend the conditional licence of an insolvency practitioner beyond 31st May 2008 as the practitioner was not concluding cases in a timely way due to ill health.

ICAEW ordered an insolvency practitioner to pay a regulatory penalty of £4,500 for a breach of ICAEW's licensing regulations for failing to carry out an insolvency compliance review in 2006.

ICAEW ordered Robert David Hewitt of West Byfleet, Surrey to pay a regulatory penalty of £3,000 for drawing remuneration without the requisite authority.

ICAEW identified that an insolvency practitioner had failed to comply with SIPs or to keep fully up to date with their Continuing Professional Development. The practitioner was required to undertake a compliance review using an external reviewer and their licence restricted until an improvement could be demonstrated.

ICAEW identified weaknesses in an insolvency practitioner's planning, management and control of cases. An external compliance review had identified similar weaknesses but the practitioner had failed to act on the findings of the review. The practitioner had produced an Action Plan of proposed changes to the practice. The practitioner's licence was restricted and a targeted visit ordered to verify that the Action Plan was being taken forward.

ICAEW identified issues with the progression of cases by an insolvency practitioner. The practitioner's licence was restricted and a targeted visit ordered.

ACCA ordered an insolvency practitioner not to accept any new insolvency appointments and ordered the practitioner to close or transfer remaining cases to another insolvency practitioner following identification of serious deficiencies in the conduct of their work.

ACCA ordered that an insolvency practitioner should have a sample of their cases reviewed by another insolvency practitioner or a training company and receive a further monitoring visit in 2009.

IPA withdrew the licence of Mr Barry Peter Knights of Salisbury, Wiltshire on the ground that he had ceased to be a fit and proper person to act as an insolvency practitioner.

IPA withdrew the licence of Mr David Andrew Field of Matlock, Derbyshire on the ground that he had ceased to be a fit and proper person to act as an insolvency practitioner.

IPA restricted the licence of Mr Richard E Floyd of Guildford, Surrey. The terms of the restriction place a limit on the number of insolvency appointments Mr Floyd can hold and will remain in place until such time as a series of improvements to Mr Floyd's practice are implemented.

IPA restricted the licence of Mr Alan W Adie of Aberdeen, Scotland limiting the number of appointments Mr Adie can hold and prohibited him from taking any new appointments from 1st January 2009. The restriction will remain in place until such time as a series of actions and improvements are implemented by Mr Adie.

IPA restricted the licence of an insolvency practitioner prohibiting the practitioner from accepting appointments and from disposing of any of the assets of cases in which the practitioner was insolvency office-holder until an application to court (made by the practitioner) for the transfer of cases to another insolvency practitioner was heard. The restriction was imposed following a monitoring visit that identified that fees in excess of those properly authorised had been drawn.

IPA ordered two insolvency practitioners working in the same practice to provide undertakings to comply with SIP3 (Voluntary arrangements) and SIP9 (Remuneration of office-holders) following a targeted inspection which identified compliance issues with both SIPs and also identified delays in collecting company records. A further inspection visit will be undertaken to assess the practitioners' performance in these areas.

IPA agreed an undertaking with an insolvency practitioner following a monitoring inspection which identified compliance issues with SIP3 (Voluntary Arrangements), the reporting requirements of SIP9 (Remuneration of office-holders) and with the adequacy of the practitioner's contemporaneous records of the acts, decision, strategies and advice of the practitioner. The practitioner entered into an undertaking to comply with these three areas of concern and these will be assessed by a further targeted visit.

LS restricted the licence of an insolvency practitioner by imposing a condition on the nature and type of appointments the practitioner was able to take. The practitioner had taken over a significant number of cases from a colleague who had retired and the LS had concerns over the quantity and scope of the practitioner's case load.

The Insolvency Service agreed Action Plans with six directly authorised insolvency practitioners covering matters such as a requirement to refund monies to an estate which were drawn in error; ensuring cases are bonded to the correct level; and filing documents at Court. The Action Plans also covered generic matters, such as ensuring inter-locking IVAs are dealt with properly, and that time records are maintained. A common failing found during monitoring visits was the efficiency of case progression, and some plans required the practitioner to explain why cases over five years old remained open and to provide estimated dates for closure.

3.3.3 Sanctions following complaints concluded in 2008

Sanction	ICAEW	ACCA	IPA	LS	LSS	ICAI	ICAS	SoS	Totals
Warning or caution (not publicised)	-	-	6	-	-	-	-	-	6
Undertaking, consent, agreement	1	-	-	-	-	-	1	-	2
Reprimand & Fine	2	-	2	-	-	-	1	-	5

ICAEW agreed a Consent Order with Geoffrey Robbins of Leicester of a severe reprimand, a fine of £5,000 and costs of £3,680 for failing to pay sufficient regard to the Guide to Professional Ethics when accepting an appointment in an IVA and failing to advise a successor supervisor of incorrect statements made by the debtor in his proposal to creditors.

ICAEW's Appeal Committee upheld in part (one charge out of three) decisions of the Disciplinary Committee in reprimanding an insolvency practitioner in respect of their appointment as receiver of a building under the Law of Property Act 1925. It was found that in November 1996 the practitioner had put improper pressure on the owner of the building subject to the appointment by insisting that the owner ratify the practitioner's appointment as receiver before they would consent to the sale of flats in the building, when there was no other reason to withhold consent. The Appeal Committee varied the order of the Disciplinary Committee to a reprimand, a fine of £2,500 and costs of £30,000. No order was made as to the costs of the appeal.

ICAEW ordered that Gordon Craig of Skelmersdale, West Lancashire be reprimanded, fined £5,000 and ordered to pay costs of £7,750 for failing to carry out sufficient investigations when nominee of a company in respect of a Company Voluntary Arrangement (CVA) to satisfy himself that the proposal had a reasonable prospect of being approved and implemented.

IPA agreed a Consent Order with Mr Jeremy C Frost of Croydon, Surrey in relation to a breach of SIP3 (Voluntary arrangements) and the Ethical Guide regarding connected IVAs. Mr Frost was severely reprimanded, fined a sum of £10,000 and also ordered to pay a contribution of £1,000 to the IPA's costs.

IPA agreed a Consent Order with Mr Timothy Calverley of Bradford, Yorkshire in relation to his conduct as supervisor of a CVA and the issue of annual reports to creditors which were misleading and failed to comply with the requirements of SIP3 (Voluntary arrangements) and SIP9 (Remuneration of office-holders). Mr Calverley was reprimanded, fined a sum of £5,000 and was also ordered to pay a contribution of £500 towards the IPA's costs.

ICAS severely reprimanded Graham Cameron Tough of Glasgow and ordered him to pay a penalty of £35,000 and costs of £40,000. Mr Tough was found guilty of professional misconduct in that he failed in his responsibilities as a licensed insolvency practitioner in his handling of five separate appointments as a trustee under trust deeds for creditors (a Scottish personal insolvency procedure) and in particular he entered into improper financial arrangements related to referrals from a firm of debt counsellors.

3.4 Complaints against insolvency practitioners

3.4.1 Breakdown of complaints by type of insolvency procedure

Complaints about insolvency practitioners which cannot be resolved with the practitioner should be directed to the body which authorises them. The tables below provide information about the number of complaints made to the authorising bodies about insolvency practitioners. All of the authorising bodies publish information of how to make a complaint about the practitioners they authorise, and general advice is also available from The Insolvency Service's website.

Case type categories:	ICAEW	ACCA	IPA	LS	LSS	ICAI	ICAS	SoS	Total
Company voluntary arrangements	0	4	3	0	0	1	0	1	9
Administration orders	109	13	59	0	0	0	6	10	197
Administrative receiverships	9	1	2	0	0	0	2	0	14
Liquidations	101	51	91	0	0	4	3	32	282
Individual voluntary arrangements	36	24	36	0	0	1	0	8	105
Bankruptcies	77	22	44	5	0	4	3	19	174
Other	3	0	4	6	0	0	31*	3	47
Totals	335	115	239	11	0	10	45	73	828

* 25 of these relate to complaints made about Scottish personal insolvency procedures which are not shown separately on the above table.

3.4.2 Breakdown of complaints by subject matter

Complaint type categories:	ICAEW	ACCA	IPA	LS	LSS	ICAI	ICAS	SoS	Total
Remuneration	17	8	11	0	0	0	2	3	41
Sale of Assets	21	11	36	0	0	0	1	1	70
Communication breakdown / failure	33	16	14	1	0	7	10	18	99
Breach of ethical guidance	10	23	38	0	0	0	16	4	91
CDDA reporting	0	0	0	0	0	0	0	1	1
Misconduct / irregularity at creditor's meetings	7	9	1	0	0	0	3	3	23
Delay in dividend payment	21	2	1	0	0	0	0	0	24
Mishandling of employee claims	2	1	2	0	0	0	0	3	8
Commercial dispute	0	2	9	0	0	0	5	0	16
Complaint against legislation	0	1	23	0	0	0	1	0	25
Pension Protection Fund*	98	37	94						229
Other	126	5	10	10	0	3	7	40	201
Totals	335	115	239	11	0	10	45	73	828

* Complaints made by the Pension Protection Fund (PPF) were in respect of possible failures of insolvency practitioners to notify the PPF that the employer of an occupational pension scheme was subject to a formal insolvency procedure.

3.5 Complaints against the RPBs and The Insolvency Service

3.5.1 Complaints that the Authorising Bodies have not followed their own rules or have acted unfairly when investigating complaints against their members.

No of complaints	ICAEW	ACCA	IPA	LS	LSS	ICAI	ICAS	SoS	Totals
Total	*5	-	2	-	-	-	*2	1	10

* The two complaints relating to ICAS are connected with two of the complaints made in respect of ICAEW

The Insolvency Service liaised with the ICAEW on a matter concerning a complaint made about the ethical conduct of an insolvency practitioner holding a joint appointment. ICAEW were of the view that investigation into such a complaint should have been deferred pending the outcome of an investigation by the authorising body of the lead insolvency practitioner. The Service clarified with the ICAEW that in the case of ethical conduct issues it is expected that complaints should not be deferred pending consideration of a similar complaint to a joint appointee’s authorising body.

The Insolvency Service liaised with ICAS regarding a complaint made to The Service in December 2008 about ICAS’ complaint handling procedures, specifically in relation to the length of time taken to reach a determination from the first intimation of the complaint in August 2007. ICAS issued an outcome letter to the complainant in May 2009.

In 2008 a complaint about The Insolvency Service’s investigation into the conduct of a directly authorised insolvency practitioner was referred to the Adjudicator. The Adjudicator is an unbiased referee who can examine a complaint and make an independent recommendation following the matter being unsuccessfully resolved by The Service. In this particular case, involving a bankrupt’s property interest, the Adjudicator upheld the way The Service had dealt with the matter in concluding that the insolvency practitioner had acted appropriately.

The Insolvency Service received a complaint from a former bankrupt concerning the complaint handling procedures of the IPA following a complaint made about her trustee in bankruptcy. Although the complainant was invited to submit further details to evidence her allegations, no further information was received and no enquiries were made of the IPA.

4 Forward look

In July 2009 The Insolvency Service will publish a report on its findings from monitoring the requirement for insolvency practitioners to comply with the disclosure requirements of SIP16 (pre-pack administrations)- see section 2.3 above.

The Hampton Review of the activities of The Insolvency Service in relation to insolvency practitioner regulation will be published in July 2009. The Service awaits the publication with interest and will consider what needs to be done to implement recommendations made – see section 2.1 above.

The Government response to the report by the Business and Enterprise Select Committee into The Insolvency Service, which made a number of recommendations about the regulation of insolvency practitioners, will be submitted in July 2009.

For more copies of this publication please contact us at:

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Annex 1

Detailed requirements of SIP16

The following information should be disclosed by the administrator to creditors in all cases where there is a pre-packaged sales:

- The source of the administrator's initial introduction
- The extent of the administrator's involvement prior to appointment
- Any marketing activities conducted by the company and/or the administrator
- Any valuations obtained of the business or the underlying assets
- The alternative courses of action that were considered by the administrator, with an explanation of possible financial outcomes
- Why it was not appropriate to trade the business, and offer it for sale as a going concern, during the administration
- Details of requests made to potential funders to fund working capital requirements
- Whether efforts were made to consult with major creditors
- The date of the transaction
- Details of the assets involved and the nature of the transaction
- The consideration for the transaction, terms of payment, and any condition of the contract that could materially affect the consideration
- If the sale is part of a wider transaction, a description of the other aspects of the transaction
- The identity of the purchaser
- Any connection between the purchaser and the directors, shareholders or secured creditors of the company
- The names of any directors, or former directors, of the company who are involved in the management or ownership of the purchaser, or of any other entity into which any of the assets are transferred
- Whether any directors had given guarantees for amounts due from the company to a prior financier, and whether that financier is financing the new business
- Any options, buy-back arrangements or similar conditions attached to the contract of sale

This information should be provided in all cases unless there are exceptional circumstances, and if this is the case, the reason why the information is not provided should be stated.

The information should be provided with the first notification to creditors.

Annex 2


Bodies which authorise insolvency practitioners in Great Britain

Recognised Professional Bodies The Association of Chartered Certified Accountants (ACCA) 29 Lincoln's Inn Fields, London WC2A 3EE www.accaglobal.com	The Institute of Chartered Accountants of Scotland (ICAS) CA House 21 Haymarket Yards Edinburgh EH12 5BH www.icas.org.uk
Insolvency Practitioners Association (IPA) Valiant House 4-10 Heneage Lane London EC3A 5DQ www.insolvency-practitioners.org.uk	The Law Society of Scotland (LSS) 26 Drumsheugh Gardens Edinburgh EH3 7YR www.lawscot.org.uk
The Institute of Chartered Accountants in England & Wales (ICAEW) Metropolitan House 321 Avebury Boulevard Central Milton Keynes MK9 2FZ www.icaew.com	Law Society (LS) Ipsley Court Berrington Close Redditch Worcestershire B98 0TD www.lawsociety.org.uk
The Institute of Chartered Accountants in Ireland (ICAI) 83 Pembroke Road Ballsbridge Dublin 4 www.icaei.ie	The Insolvency Service PO Box 203 21 Bloomsbury Street London WC1B 3QW www.insolvency.gov.uk

Annex 3

Other organisations that work with the authorising bodies

Insolvency Practices Council
PO Box 698
Godalming
GU7 9AR
www.insolvencypractices.co.uk



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21 Bloomsbury Street
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