



The Insolvency  
Service

# Institute of Chartered Accountants in England and Wales

## ICAEW Monitoring Report

June 2015

<b>Insolvency Practitioner Regulation Section (IPRS)</b>	
<b>Authorising Body</b>	The Institute of Chartered Accountants in England and Wales (ICAEW)
<b>Title</b>	ICAEW Monitoring Report 2015
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## PART 1 – EXECUTIVE SUMMARY

### Background

1.1. The ICAEW is a Recognised Professional Body (RPB) which authorises and regulates insolvency practitioners.<sup>1</sup> At 1 January 2015, the ICAEW licensed 724 practitioners of which 577 were authorised to take insolvency appointments.<sup>2</sup>

1.2. The monitoring visit was carried out jointly by Insolvency Practitioner Regulation Section (IPRS) and the Department of Enterprise Trade and Investment (DETI). The last monitoring visit to the ICAEW was in 2012.

1.3. The standards expected of the RPBs are set out in a [Memorandum of Understanding](#) (MoU) which covers matters such as the granting and maintenance of practitioner authorisations, handling of complaints, ethics and professional standards, security and caution, and the exchange and disclosure of information.<sup>3</sup> A separate document, the [Principles for Monitoring insolvency practitioners](#) (PfM), sets out the matters to be considered by the Bodies when monitoring their insolvency practitioners. The ICAEW has undertaken to abide by the standards and principles in both of those documents when exercising its authorisation and regulatory functions.

1.4. This report outlines the findings of the monitoring visit and makes a number of recommendations aimed at improving the effectiveness of regulatory procedures. An overall risk rating is provided for each key area reflecting the findings and significance of the recommendations made. An explanation of the risk ratings is provided in Annex 1.

### Summary Findings

1.5. We found that the ICAEW has strong controls in place in respect of its processes for monitoring its insolvency practitioners, with an effective monitoring schedule and risk assessment. All monitoring outcomes are reported to the Insolvency Licensing Committee. The ICAEW takes a robust approach to Statement of Insolvency Practice 16 (SIP16) compliance, including the use of thorough desktop reviews.

<sup>1</sup> As defined under Section 391(1) of the Insolvency Act 1986 and Article 350(1) of the Insolvency (Northern Ireland) Order 1989.

<sup>2</sup> Figures per 'Annual review of insolvency practitioner regulation 2014' - [www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2014](http://www.gov.uk/government/publications/insolvency-practitioner-regulation-process-review-2014)

<sup>3</sup> A similarly worded agreement applies in relation to Northern Ireland

1.6. The ICAEW has strong controls in determining disciplinary outcomes. While it has not (yet) been possible to observe an insolvency case being heard by the Disciplinary Committee, it was evident from observation of the Investigation Committee that its panel members are encouraged to discuss and test heads of complaint and determine the appropriate outcome.

1.7. We identified some weaknesses in relation to the authorisation of insolvency practitioners and bonding arrangements. While some of the complaint files reviewed demonstrated delays in complaint progression and some instances where the ICAEW's controls had weaknesses, these were relatively isolated and historical incidents. Many of the concerns identified have already been addressed by the ICAEW through a series of improvements introduced by their Professional Conduct Department (PCD).

1.8. The changes in the PCD include the introduction of new procedures, a triage system for dealing with complaints according to alleged seriousness (and/or the public profile of a complaint), more stringent 'Key Performance Indicators' to encourage early resolution of complaints, and changes in both staffing and structure following a restructuring exercise in the second half of 2014.

1.9. The new system was introduced in November 2014, and while we found encouraging evidence of complaints being progressed more efficiently and in a timely manner, the changes are relatively recent. We plan to carry out a follow-up monitoring visit in November to assess the impact of those changes on more cases and over a longer time period. During that visit, we will also consider whether, and to what extent, the recommendations made in this report have been implemented.

## **PART 2 – MONITORING PROCESS**

2.1 Prior to the visit, the Inspection Team requested detailed information about the insolvency practitioners authorised by the ICAEW, monitoring activities, complaint handling processes, regulatory outcomes and the resourcing of functions.

2.2 The following areas were examined during the monitoring visit to ensure compliance with the MoU and PfM:

- Granting of authorisations.
- Maintenance of authorisations (monitoring).
- Ethics and professional standards.
- Handling of complaints.
- Enabling bonds and cover schedules.
- Disclosures and exchanges of information.
- Retention of records.

- Reporting to the Secretary of State and the Department of Enterprise, Trade & Investment.

2.3 This report summarises the findings under 5 key headings – authorisations, monitoring, complaints' handling, disciplinary outcomes and bonding arrangements.

## PART 3 – DETAILED FINDINGS AND RECOMMENDATIONS

### Authorisation of insolvency practitioners

#### Rating:

 **Some weaknesses in control environment**

Findings	Recommendations	Response
<p>The ICAEW relies on self-certification by applicants for new authorisations that they have the requisite insolvency experience of at least 600 hours in the last three years. While we are advised that insolvency experience is checked on a sample basis, this was not evidenced in the cases sampled. Insolvency experience and compliance with Continuing Professional Development requirements are checked during monitoring visits.</p>	<p>That the ICAEW introduce procedures to verify relevant insolvency experience for new licence applications.</p>	<p>We will modify our application form to place more emphasis on providing details of experience up front. We would intend to use a form developed to elicit specific information relating to an applicant's experience which we have developed for RI applications in audit registration, a copy of which we have supplied to you separately.</p>
<p>Where new licence applications are received, the ICAEW contact other regulators for relevant information but this has not included DETI.</p>	<p>DETI should be included in regulator-to-regulator checks</p>	<p>We have added DETI to the e mail circulation</p>
<p>We identified serious deficiencies in relation to the ICAEW's handling of an insolvency practitioner who had lost the required insurances and practising licence.</p> <p>By way of background, the practitioner had been unable to renew his enabling bond in December 2011 and applied for a non-appointment taking licence, which was granted in 2012 on the basis that he transfer all of his insolvency appointments to another duly qualified insolvency practitioner. During 2013, the required transfers were not completed and the practitioner was able to obtain a further non-appointment taking licence for 2013.</p>	<p>We note and commend the ICAEW acting to ensure such a situation does not reoccur. This does not detract from the seriousness of the breach however, and we recommend that the ICAEW closely monitor and ensure the effective transfer of insolvency appointments where an insolvency practitioner ceases to be authorised. If steps to do so are not taken immediately by a former licence holder, the ICAEW should make its own application for a block transfer of appointments.</p>	<p>This is an isolated case. We should have verified that the scheduled transfer had actually taken place after being notified of the Court date rather than assuming it had happened. However, the same mistake has not been possible since the introduction of the Visual Files case management system as the system generates a schedule item to complete.</p>

<p>The ICAEW did not follow up this matter until an internal complaint was raised in September 2013. The insolvency appointments were not transferred until February 2014; an overall delay of over two years from the time the enabling bond was not renewed.</p> <p>The consequences of this prolonged delay are potentially very serious. An individual was acting as an insolvency practitioner without qualification, which is an offence under the insolvency legislation. In addition, creditors would have had no protection from fraud or dishonesty by the practitioner who did not possess the required insurances.</p> <p>Following the internal complaint being raised, an 'ad hoc' monitoring file was opened in December 2013 to review the application for a non-appointment taking licence and ensure a block transfer took place.</p> <p>As this was identified as being a one-off incident, we have applied an overall rating of amber in relation to authorisations. We will revisit the relevant procedures during the follow-up monitoring visit to further assure ourselves that adequate safeguards are in place to prevent any repetition.</p>		
<p>Whether an individual resides or practices in Great Britain, Northern Ireland or both; the ICAEW is a RPB in both jurisdictions and an authorised individual is therefore approved to act throughout the UK.</p> <p>While the ICAEW informs the Secretary of State of new authorisations and withdrawals in Great Britain, it has not been providing the required notifications to DETI in accordance with the relevant MoU.</p>	<p>That the ICAEW ensures that both the Secretary of State and DETI are notified of changes in authorisations, and are otherwise kept informed as required in accordance with the reporting duties throughout the year set out in the MoU with the Secretary of State and DETI.</p>	<p>DETI will be notified at the same time as the Secretary of State</p>

## Monitoring of insolvency practitioners

Rating:

 **Strong control environment**

Findings	Recommendations	Response
<p><b>Pre-visit process</b></p> <p>Although the pre-visit process is generally robust, we found that the insolvency practitioner is not asked for details of complaints received. This would be useful information to further inform the monitoring strategy.</p>	<p>That the ICAEW requests details of complaints received since the previous monitoring visit, or all complaints where this is a first visit, by the insolvency practitioner in advance of a monitoring visit.</p>	<p>We already consider any formal complaints that have come to ICAEW through the gateway as part of our pre visit planning work on all visits. On our visits we do discuss complaints received by insolvency practitioners. However we don't think it's practical to ask for this information to be submitted prior to the visit and aren't convinced of the merits of asking for this on all visits. But we will consider whether it might be appropriate on a visit by visit basis.</p>
<p><b>Monitoring process</b></p> <p>Notes from closing meetings are detailed and can serve as the monitoring report, though they do not detail the scope of the monitoring visit. A formal monitoring report is only produced where the outcome is referred to the Insolvency Licensing Committee.</p>	<p>That the closing meeting notes explain the scope of the visit in accordance with the PfM.</p>	<p>We believe it's important that the closing notes clearly set out those areas which the IP needs to address. As a result, we don't think it's helpful to include generic information in them. The notes already comment at some length on the scope of the individual visit.</p> <p>The page on our website which explains what happens on a monitoring visit already says that the Principles for Monitoring set out criteria which the RPBs</p>

		need to consider in their monitoring processes. We will update the page to include more detail about the areas we look at on visits, as agreed at the closing meeting.
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## Handling of complaints

Rating:

 **Strong control environment**

Findings	Recommendations	Response
<p>In some of the pre-November 2014 complaints reviewed, there were delays in progression.</p> <p>In one case, while the investigation continued there was no contact with either the insolvency practitioner or the complainant for approximately a year. In another the complainant had to request several updates on the status of their complaint.</p> <p>Some of the delays in complaints being progressed were due to extended correspondence to obtain information from the insolvency practitioner, the complainant, or both. In some cases, the ICAEW sets a deadline for responses but this is not consistently applied. This may have contributed to some delays in progression.</p>	<p>That both the complainant and the subject of the complaint are kept regularly updated throughout the investigation process.</p> <p>The ICAEW should ensure that deadlines for responses are provided to insolvency practitioners and complainants.</p>	<p>Both of these points are standard practice for case managers. We have reminded them of the requirement.</p> <p>As you know, significant changes have been made to the structure and processes within PCD in 2014 as well as changes in staff. All of the changes have been implemented to ensure that cases are investigated more efficiently. One of the process reforms relevant to this finding is that there is now a greater emphasis on holding early meetings with members and complainants in appropriate cases to capture all relevant information rather than it being obtained through lengthy correspondence.</p>
<p>One complaint, which was not resolved for over a year, was kept open for several months as the complainant questioned the integrity of the process and the capability of members of ICAEW staff, even though the complaint was substantively complete.</p>	<p>Where a complaint has been replied to in full (including necessary explanations) and the complaints' process has been exhausted, the complaint should be closed promptly. The complainant should be advised that if they are</p>	<p>In practical terms the file may have been through a closure routine but if subsequent correspondence is received the file has to remain open or be re-opened for that correspondence to be</p>

	<p>dissatisfied with the ICAEW's processes for handling the complaint, they should contact the Insolvency Service or DETI (as appropriate) as the oversight regulator.</p>	<p>saved on file and replied to.</p> <p>This particular file was closed in August 2014 but then had to be re-opened to deal with the ongoing correspondence from the complainant.</p> <p>We will refer complainants or IPs to the appropriate oversight regulator should they remain dissatisfied with our process once it is concluded.</p>
<p>There was evidence of a complaint manager advising the insolvency practitioner concerned how he should conduct himself in advance of an Investigation Committee report, potentially in order to minimise the sanction imposed. This may create an impression of protection of the subject of the complaint rather than a process of robust investigation.</p>	<p>The ICAEW should ensure that complaint managers are impartial in their dealings with complainants and insolvency practitioners to ensure that outcomes are fair.</p>	<p>We consider our team of case managers to be impartial.</p> <p>To put this in the appropriate context, the letter in question was sent to obtain the member's final representations and the case manager sought to ensure that the member's representations were focussed on the right points to assist the Investigation Committee in understanding both the errors made and any steps which had been taken by the member to avoid a re-occurrence as this would be relevant information for the Investigation Committee to consider when deciding on sanction. Members have the right within our processes to have the Investigation Committee re-consider the terms of a consent order by providing new or additional information. We seek to reduce the number of members who introduce new information after the consent order is made by ensuring that they provide all relevant information first time around. We accept it could have been better worded</p>

		and have reminded case managers on this point.
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## Disciplinary outcomes

### Rating:

 **Strong control environment**

Findings	Recommendations	Response
<p>The disciplinary process is robust, though we note that sanctions against insolvency practitioners are infrequent. While sanctions are generally within the Common Sanctions Guidelines agreed by the RPBs, they rarely exceed the minimum or starting point.</p> <p>In one case sampled, the Investigation Committee used its own guidance on sentencing for a breach of the code of ethics, resulting in a fine and reprimand. The Common Sanctions Guidance, which is incorporated into the ICAEW's 'Guidance on Sentencing', calls for a severe reprimand and a fine commensurate with the breach.</p> <p>In another case, we noted that reference was made to the remuneration received by the insolvency practitioner being considered in determining the level of a fine. It was, however, not clear from the mitigating factors why the sanction was a reprimand rather than a severe reprimand in accordance with the Common Sanctions Guidance for breach of a SIP.</p>	<p>The ICAEW should ensure that sanctions relating to insolvency matters are applied in line with the Common Sanctions Guidelines.</p> <p>Consideration of aggravating and mitigating factors should be recorded for all aspects of a sanction.</p>	<p>The current guidance on sentencing is at: <a href="http://www.icaew.com/search?text=common+sanctions+guidelines">http://www.icaew.com/search?text=common+sanctions+guidelines</a></p> <p>The Common Sanctions guidance was referenced in the Investigation Committee report but, as one of the complaints related to promotion practices, the Committee was also provided with relevant extracts from the general Ethics section of the Guidance and it was this Guidance which was used by the Committee in making its decision.</p> <p>We also believe there should be a further review of the Common Sanctions guidance. For example a 'fine commensurate with the breach' needs clarification as it is not well understood.</p> <p>As a result of some of the changes to our processes, aggravating and mitigating factors are now always specifically recorded in the reasons for decisions made by the Investigation Committee.</p>

## Enabling bonds and cover schedules

### Rating:



### Some weaknesses in control environment

Findings	Recommendations	Response
<p>Legislation requires that insolvency practitioners submit monthly cover schedules by no later than the 20<sup>th</sup> calendar day of the following month. The ICAEW chase submissions if not received within 14 days of that deadline.</p> <p>In the cases sampled there were some delays in chasing monthly cover schedules. Where not submitted in time (in accordance with the law) there were examples of the required information not being chased for over a month.</p> <p>Bonding arrangements for insolvency practitioners are of vital importance because without sufficient security, creditors may not be protected from fraud. For this reason, an insolvency practitioner without bonding in place would be acting without qualification, which is a criminal offence. The cover schedule provided by the insolvency practitioner should demonstrate that they have sufficient security for the performance of their functions.</p>	<p>That the ICAEW runs its reconciliation report on the 21<sup>st</sup> day of each month and chases late submissions immediately.</p>	<p>To allow for postal submissions sent on time we will run the report on the 25<sup>th</sup> of the month then review against anything received in recent days to avoid chasing last minute submissions. We will then chase any outstanding within 5 working days.</p> <p>We have already asked our monitoring staff to specifically highlight the issue of late cover schedules, where appropriate, on future monitoring visits.</p> <p>We will also remind IPs of the deadline in our next newsletter and also blog about the need to submit cover schedules on time on our on-line community Talk Insolvency.</p>
<p>Some insolvency practitioners are repeatedly late in submitting the required cover schedules.</p>	<p>The ICAEW should consider regulatory penalties where a practitioner repeatedly submits cover schedules late.</p>	<p>Submission of cover schedules is one aspect of a number of important routine administrative matters IPs need to deal with in a timely manner. IPs who are repeatedly late in submitting cover schedules will be referred to QAD who may decide to bring forward the IPs next monitoring review. Late cover schedules may be symptomatic of wider regulatory</p>

		concerns.
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## ANNEX 1: RISK RATINGS

### **Serious weaknesses in control environment**

There are serious weaknesses in the risk and control environment that pose a high residual risk to effective and efficient delivery unless urgent corrective action is taken.

### **Some weaknesses in control environment**

There are some weaknesses in the risk and control environment that pose a residual risk to effective and efficient delivery unless corrective action is taken.

### **Strong control environment**

A strong risk and control environment is in place with low residual risk to effective and efficient delivery.