



The Insolvency
Service

Insolvency Practitioners Association Monitoring Report

August 2016

Insolvency Practitioner Regulation Section (IPRS)	
Authorising Body	Insolvency Practitioners Association (IPA)
Title	IPA Monitoring Report 2016
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PART 1 – EXECUTIVE SUMMARY

Background

- 1.1. The IPA is a Recognised Professional Body (RPB) which authorises and regulates insolvency practitioners.¹ At 1 January 2016, the IPA licensed 567 practitioners of which 470 were authorised to take insolvency appointments.²
- 1.2. The monitoring visit was carried out jointly by the Insolvency Service and the Department for the Economy (DfE). The last monitoring visit to the IPA was in 2013.
- 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 to both the Secretary of State and DfE.³ A separate document, the [Principles for Monitoring insolvency practitioners](#) (PfM), sets out the matters to be considered by the RPBs when monitoring their insolvency practitioners. The IPA 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 some 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 IPA has strong controls in place across most of its processes. Some weaknesses were identified around the authorisation process, in particular the lack of checks being carried out by the IPA with the other RPBs for new licence applications which the IPA should address.

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

² Figures per 'Annual review of insolvency practitioner regulation 2015' – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/511324/IP_Annual_Review_2015.pdf

³ A similarly worded agreement applies in relation to Northern Ireland

PART 2 – MONITORING PROCESS

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

1.7. 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 DfE.

1.8. 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
Each application for authorisation includes a control sheet which records the information provided. In respect of new applications, the control sheet should be signed off as complete before the application is passed to the IPA's Membership and Authorisation Committee (M&A) for approval, however it was signed off as complete in only one case sampled.	The IPA should ensure that all applications are signed off as complete and approved as per its own procedures.	We agree this should be done in all cases and have implemented the recommendation.
The IPA relies on a combination of self-declaration by applicants for new authorisations confirming they have the requisite insolvency experience of at least 600 hours in the previous three years and two sponsor letters, one of which is from a licenced insolvency practitioner who has worked with the applicant. In some of the cases sampled the sponsor letter did not verify the number of hours acquired by the applicant.	The IPA should update its template sponsor letter so that it asks the sponsor to confirm the number of hours experience acquired by the applicant.	The letter template has been amended. Recommendation implemented.

<p>In respect of new licence applications, the IPA had not carried out regulator to regulator checks in any of the cases sampled. Where an IP was transferring from another RPB, the IPA only carried out checks with the former RPB. This risks the IPA being unaware of previously rejected applications, authorisations that have lapsed or been withdrawn, or the possibility of an IP applying to more than one RPB at the same time.</p>	<p>The IPA carries out appropriate checks with all of the RPBs, including DfE in relation to any new licence application.</p>	<p>We will carry out the appropriate checks. However, to be effective, this has to be implemented consistently across all the bodies involved, with speedy responses to avoid unnecessary delay in processing applications. To date we have not been in regular receipt of such checks from all the other authorising bodies. We question whether a central list of applications maintained by the Service and DfE (NI) might be more effective. We would also like to place on record that we have carried out checks with bodies in circumstances where applicants have known connections with those bodies, and we always carry out checks with an existing RPB when an IP is transferring a licence, as the findings confirm.</p>
<p>The IPA did not notify either the Secretary of State or DfE of three new licence applications which were refused, contrary to the requirements in the MoU.</p>	<p>The IPA should ensure that all applications for a new licence which are refused are notified in accordance with the MoU.</p>	<p>We accept the point made here, in the sense that we fully subscribe to the principle behind the recommendation, and will ensure the appropriate notifications are made. This may be important not least in the context of our response to the point above. We would however note that these three overseas applications were not refused as such – one was withdrawn and in the other two cases the matters were held over. Accordingly we do not believe we acted other than in accordance with the terms of the MoU.</p>

Monitoring of insolvency practitioners

Rating:

 **Strong control environment**

Findings	Recommendations	Response
<p><u>Monitoring cycle</u></p> <p>The IPA operates a 3-year cycle of rolling monitoring visits to its insolvency practitioners. The nature and timing of visits is determined on a risk-assessment basis with each practitioner having their own monitoring profile.</p> <p>In between monitoring visits, the IPA also requires insolvency practitioners to carry out self-certification reviews on a sample of cases selected on a risk-assessment basis. At least two of the cases selected for a self certification review are sampled on the next monitoring visit.</p> <p>The outcome of all monitoring visits is determined by the M&A.</p>	<p>N/A</p>	
<p><u>Pre-visit process</u></p> <p>The pre-visit process is robust. The IPA requests information from insolvency practitioners in the form of a Pre-visit Questionnaire (PVQ) and an ethical checklist, which includes information about caseloads, sources of work, and procedures for complying with money laundering requirements and the code of ethics.</p> <p>Whilst details of the IP firm's websites were requested as part of the pre-visit process, checks to ensure any advertising by the insolvency practitioner is compliant with</p>	<p>The IPA should ensure that website checks are carried out for all monitoring visits, with the result recorded in the monitoring report.</p>	<p>Website checks are carried out for all visits and reported on an exceptions basis. The outcomes of website checks will be included in reports in all cases.</p>

<p>the Code of Ethics were only evident in approximately half of the cases sampled.</p> <p>Where applicable, at least one pre-pack administration is sampled and compliance with Statement of Insolvency Practice 16 (SIP 16) tested.</p> <p>Insolvency practitioners are not routinely asked for the details of complaints received under their own formal complaints procedures.</p>	<p>The IPA should request, in the PVQ, details of complaints received by insolvency practitioners under their own formal complaints process in the 12 months prior to the monitoring visit.</p>	<p>This is reviewed on visits, but we will in future request this information as part of the PVQ.</p>
<p><u>Monitoring process</u></p> <p>Desktop instructions provide a structured and detailed record of the qualitative issues the IPA considers as part of monitoring visits which are issued to insolvency practitioners as part of the pre-visit process. These instructions were last updated in 2012.</p> <p>Following the completion of the visit a detailed report is issued to the insolvency practitioner, listing the key findings from the visit and a summary of each case reviewed. The insolvency practitioner is then invited to respond, however it is not clear from the letter what the practitioner is required to respond to. In some cases insolvency practitioners responded to both the key findings and the comments on each individual case.</p> <p>Whilst the case samples selected appeared appropriate in most cases, for higher risk IPs, such as those working for volume IVA providers, the case sample was not reflective of the overall number of cases and monitoring profile. In one case, the insolvency practitioner had 325 IVA cases rejected at the proposal stage; however none of these were sampled as part of the visit.</p>	<p>The IPA should update its qualitative issues checklists so that they reflect recent changes in legislation.</p> <p>The IPA should ensure that the letter to the insolvency practitioner accompanying the monitoring report specifies the areas that require a response. To assist with this the IPA should include the key findings from the visit at the beginning of the report.</p> <p>The IPA should consider the case sample in respect of potentially higher risk insolvency practitioners, in particular to ensure that a representative sample of all case types are reviewed and if necessary consider extending the length of the visit.</p>	<p>The schedule of qualitative issues is purposefully Rules-lite and is not a checklist. However, this will be reviewed and updated as necessary by our new Senior Monitoring Manager</p> <p>We are considering some amendments to the format of monitoring reports, which will likely include an executive summary at the beginning. Our covering letter will refer to this, so that the practitioner is not in doubt about the matters requiring a response.</p> <p>We will ensure that a representative sample of cases is selected on each visit.</p>

<p><u>Observed monitoring visit</u></p> <p>The visit was carried out robustly and professionally and in accordance with the PfM.</p> <p>Thorough checks were carried out on the practitioner's procedures for complying with the Code of Ethics, anti money laundering requirements and client account banking controls.</p> <p>Robust checks were carried out on the practitioner's procedures for drawing remuneration.</p>	<p>N/A</p>	
<p><u>SIP 16 Monitoring</u></p> <p>The IPA has taken a robust stance to the monitoring of SIP 16. All disclosures are reviewed and all instances of non-compliance are followed up, either with the IP or through more formal regulatory action depending on the seriousness of the breach.</p>	<p>N/A</p>	

Handling of complaints

Rating:

 **Strong control environment**

Findings	Recommendations	Response
<p>In all but one case reviewed, complaints were progressed promptly with timely and relevant information being sent to complainants.</p> <p>Following a prompt initial acknowledgement the IPA advises complainants that it will aim to notify them within a further 10 working days whether or not their complaint will be investigated. This risks raising complainant's expectations as the IPA was unable to meet its own target in any of the cases sampled, although in the majority of these cases the actual response time was reasonable and did not lead to any significant delays.</p> <p>In more complex and lengthy investigations the IPA provides a quarterly update to complainants. In two cases sampled however these were only holding letters rather than providing any meaningful update on the progress of the complaint.</p>	<p>The IPA should ensure that any commitments it makes to complainants are achievable and do not unnecessarily raise expectations.</p> <p>The IPA should ensure that quarterly updates inform complainants of the current position and details of the outstanding matters.</p>	<p>We are pleased to note the findings in respect of our complaints work. This is a sensitive area and we are conscious of the need to apply appropriate but not unduly burdensome evidential tests at the assessment stage of the process, and be firm but fair where we identify misconduct.</p> <p>We are also mindful of the need to handle complaints on a timely basis. We have invested additional resource and made changes to processes to enhance our performance in this area, but intend to make further improvements to timelines. We have also increased independence in the decision-making committee.</p> <p>We will review this and set a reasonable and achievable target time.</p> <p>Whilst there may be circumstances in which a holding letter is appropriate, we will endeavour as often as possible to provide substantive updates</p>
<p>The investigation of complaints is robust. All complaints subject to an investigation are considered by the</p>		

<p>Investigation Committee (IC). Where no case is found by the IC, prompt and detailed reasons are provided to complainants.</p> <p>Where the complaint relates to an IVA, and specifically the delay in the debtor receiving their completion certificate, the Insolvency Service has previously agreed with all of the RPBs that, if the delay exceeds six months from the date of the debtor's final payment, the matter will be investigated. In three cases sampled the IPA closed such complaints without an investigation.</p>	<p>The IPA should ensure that all such complaints are investigated.</p>	<p>We are content to follow this guideline.</p>
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Disciplinary outcomes

Rating:

 **Strong control environment**

Findings	Recommendations	Response
<p>The IPA has very strong controls in place when taking appropriate disciplinary action.</p> <p>For complaints considered by the IC, it was evident that the Common Sanctions Guidance was appropriately considered and applied in all cases.</p>	<p>N/A</p>	
<p>The M&A considers all monitoring reports and there is evidence of a robust discussion around each report and the outcome of the monitoring visit.</p> <p>In three cases it was not clear from observing the committee and viewing the minutes of the meeting what the outcome of the M&A's discussions were, whether it be regulatory action, further information required from the</p>	<p>The IPA should ensure that the decisions on the outcome of all monitoring visits are clearly made, recorded in the minutes of the meeting and communicated to the insolvency practitioner.</p>	<p>We will ensure there is greater clarity where needed.</p>

<p>insolvency practitioner or no regulatory action.</p> <p>The M&A does not issue regulatory penalties, instead where breaches warranting the consideration of regulatory action are identified, the matter is passed to the IC. In one case sampled the M&A entered into correspondence with the insolvency practitioner over possible overdrawn remuneration without the matter reaching a conclusion.</p>	<p>Where there are matters identified that have the potential to result in regulatory action they should be referred to the IC for consideration rather than the M&A entering into correspondence with the insolvency practitioner over the issue.</p>	<p>Where the IC can offer a sanction that is not available to the M&A committee, we will ensure that matters are referred to IC. There may be circumstances in which the M&A committee has a role to play, for example by encouraging repayment of an overdrawn fee, and where referral to another committee might not lead to any different regulatory action.</p>
<p>While the IPA notifies the Secretary of State of sanctions made against insolvency practitioners as required by the MoU, details of other regulatory action such as licence restrictions or appeals made by the insolvency practitioner have not been notified as per the requirements.</p>	<p>The IPA should ensure that details of all regulatory action, and any subsequent appeals are notified to the Secretary of State and DfE within the timescales set out in the MoU.</p>	<p>We will ensure that all such matters are reported as required.</p>

Enabling bonds and cover schedules

Rating:

 **Strong control environment**

Findings	Recommendations	Response
<p><u>Enabling Bonds</u> The IPA has strong procedures in place to ensure insolvency practitioners are appropriately bonded. The IPA does not issue any new licences until the insolvency practitioner has submitted their enabling bond.</p>	N/A	
<p><u>Cover schedules</u> The IPA has strong procedures in place to ensure that monthly cover schedules are submitted within the statutory timescales.</p> <p>There were very few cover schedules submitted late, and these were all promptly chased up and returned within five days.</p>	N/A	

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.