



The Insolvency
Service

Delivering economic confidence

Review of handling of complaints about Insolvency Practitioners

September 2016

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2. Executive Summary

The Recognised Professional Bodies (RPBs) authorise and regulate insolvency practitioners, which includes considering complaints about the conduct of their practitioners and taking disciplinary action in appropriate circumstances.

Historically, monitoring visits to the RPBs have focussed on processes and compliance with the [Memorandum of Understanding](#). Individual monitoring reports for all the RPBs have been [published](#) which set out findings in relation to complaints handling. The regulatory objectives introduced by the [Small Business, Enterprise and Employment Act 2015](#) provide the RPBs with a clearer and enhanced structure within which to carry out their regulatory functions in authorising insolvency practitioners. [Guidance](#) issued by the Insolvency Service outlines that an RPB should have a complaints system that is accessible, fair and transparent. This would include the proper assessment and investigation of complaints, and the provision of timely and appropriate information to all parties and to the Insolvency Service. An RPB's disciplinary procedures should secure fair and consistent outcomes.

This review considered:

- the progress and outcomes of complaints made since the introduction of the [Complaints Gateway](#) in June 2013.
- the reasons for any delays in complaint progression or resolution.
- the level of consistency in disciplinary outcomes under [Common Sanctions Guidance](#).

This report summarises key findings and recommendations, which have been discussed with the RPBs.

There is no requirement for all RPBs to operate in the same way and complaint-handling processes vary. Each of the RPBs has appropriate procedures in place for dealing with complaints though some potential areas for improvement were identified to better ensure fair, consistent and transparent outcomes.

It is acknowledged that some of the RPBs will not need to make any changes to their processes to implement some of the following recommendations:

- RPBs should ensure that information is sought from the insolvency practitioner in respect of complaints received unless there is a justified reason not to do so.

- the RPBs enter into discussions with the Insolvency Service to consider the feasibility of a mechanism whereby compensation can be paid to the complainant by the insolvency practitioner where they have suffered inconvenience, loss or distress as a result of their actions.
- those RPBs experiencing particular issues in progressing cases to discuss with the Insolvency Service their plans for ensuring timely progression of complaints.

The review found that the introduction of Common Sanctions Guidance has improved transparency in decision-making but there is scope to ensure more consistency in the application of the guidance. The Insolvency Service has been working with the RPBs to make changes to the guidance and appreciates the contributions made by all those involved. The revised guidance will be issued once a final agreement is reached.

Both the RPBs and the Insolvency Service, where notified, publish sanctions imposed against insolvency practitioners but not all disciplinary outcomes are published by all RPBs. As confidence in the regulatory system is likely to be improved where disciplinary actions are published and suitably explained, this is an area that the Insolvency Service plans to consider further with the RPBs.

3. Overview of complaint- handling

The review was carried out between July 2015 and March 2016, covering the five RPBs that will remain beyond September 2016¹:

- [Association of Chartered Certified Accountants](#) (ACCA)
- [Chartered Accountants Regulatory Board](#) (CARB)
- [Insolvency Practitioners Association](#) (IPA)
- [Institute of Chartered Accountants in England & Wales](#) (ICAEW)
- [Institute of Chartered Accountants of Scotland](#) (ICAS)

All complaints against insolvency practitioners are directed to the Complaints Gateway operated by the Insolvency Service, which carries out an initial

¹ The Law Society of England and Wales, and the Law Society of Scotland, have ceased to be RPBs. The Insolvency Service will stop authorising insolvency practitioners at the end of September.

assessment. If the complaint falls within the scope of the complaints system, and relates to an activity or behaviour which may result in an insolvency practitioner being liable to disciplinary action, it is passed on to the relevant RPB for consideration in accordance with published [guidance](#). A referral by the Gateway means that the Insolvency Service has assessed the complaint as being suitable for further enquiry by the RPB and no detailed investigation has taken place at that stage.

As detailed in section 5, each RPB has its own approach to dealing with complaints and there are typically four main stages:

- assessment / preliminary enquiries.
- formal investigation.
- consideration by a committee, which may impose a sanction.
- review/ appeal.

Most of the RPBs also offer a conciliation process where, following an initial assessment or preliminary enquiries, it has been identified that there is a case to answer but the matter might be resolved if an agreement can be reached that is satisfactory to both the complainant and the insolvency practitioner. If the insolvency practitioner is prepared to take the steps outlined by the complainant, or suggests alternatives which are accepted by the complainant, the matter may be resolved without using formal disciplinary procedures.

Once an investigation is complete, the RPB can submit the complaint to an investigation, complaints or consent order committee for consideration and decision.

The committee will determine the appropriate sanction if a case of misconduct or incompetence is made out and this is often imposed through a consent order agreed with the insolvency practitioner. In more serious cases of misconduct or incompetence, or if the insolvency practitioner does not accept a consent order offered by the investigation committee, cases are considered by a disciplinary committee or tribunal.

Each of the RPBs' committees consist of a mixture of both insolvency practitioners and non-insolvency practitioners (lay members). To ensure confidence in outcomes, all RPBs have recently increased lay membership with, in some cases, a majority of lay members on committees.

Where a sanction is to be issued regard will be given to the common sanctions guidance

This sets out the possible sanctions for various types of misconduct or incompetence by an insolvency practitioner, which have been proven following an investigation by the RPB. The guidance aims to provide transparency and to ensure that the outcome and sanction across the RPBs are comparable for similar types of misconduct. Where there is a deviation from the guidance, the RPBs should explain this with a reference to any aggravating or mitigating factors considered.

If a disciplinary sanction is imposed by an RPB, this normally results in the sanction being published. In some cases, an RPB's committee or tribunal may order there be no publicity or publicity on an anonymous basis. It should be noted that individual RPBs have different procedures when considering publicity. Since 1 November 2014, details of sanctions notified to the Insolvency Service have been [published](#) in a common format agreed with the RPBs.

If a complainant is not satisfied with how their complaint has been handled once it has been considered by an RPB's Investigation Committee and no case has been found, they may have a right to ask that it be independently reviewed. Although the reviewer has no power to overturn the decision made by the RPB or their committee, he or she can refer the matter back to the investigation committee for further consideration. Most of the RPBs have agreed to introduce a common panel of reviewers for complaints to increase consistency and transparency around the review stage of the complaints process.

4. Complaint Statistics

4.1 Number of complaints

During the first two years, almost 2,000 complaints were made to the Gateway and around two-thirds of these were referred to the RPBs as detailed in the following table.²

² 39 complaints were made against insolvency practitioners licensed directly by the Secretary of State and are not included as part of this review.

Table 1: Complaints referred to the RPBs (June 2013 – June 2015)

RPB	Number of complaints referred
IPA	584
ICAEW	572
ACCA	120
ICAS	47
CARB	1
Total	1,324

During this period, around a third of all complaints were rejected by the Gateway and the most common reasons for this were:

- insufficient evidence provided and/or no response received from the complainant to a request for further information.
- not a complaint about an insolvency practitioner.
- complainant has already been through the RPB's complaints process.
- complaints about IP fees (charge-out) rates which were not within scope of RPB review.

4.2 Complaint progression and outcomes

The RPBs provide information to the Insolvency Service on the progress and outcomes of complaints referred to them every six months. As shown in the table below, 208 complaints out of the 1,324 which have been referred to RPBs remained open at the start of this year.

Table 2: Number of complaints open and closed (at 1 January 2016)

RPB	Number of complaints closed	Number of open complaints
IPA	523	61
ICAEW	457	115
ACCA	93	27
ICAS	37	10
CARB	1	0
Total	1,116	208

5. RPB Processes

As detailed above, each RPB has its own approach to dealing with complaints and the recommendations made here focus on progression through the assessment and/or investigation stages.

5.1 Assessment / preliminary enquiries

Each RPB has a procedure for carrying out an assessment or preliminary enquiries following the receipt of a complaint from the Gateway. The purpose is to determine whether the complaint merits a formal investigation or warrants a referral to an RPB's investigation committee or equivalent. The nature of this process differs substantially between the RPBs.

ACCA

In assessment, ACCA will determine whether the complaint is appropriate to move to investigation based on the information provided by the complainant. ACCA considers all complaints received but may close a complaint in assessment if it does not fall within its jurisdiction to investigate, such as a commercial dispute or where a complaint is made more than six months after the grounds for complaint matter arose, unless ACCA considers it is in the public interest to take forward for investigation.

ACCA does not usually contact insolvency practitioners during the assessment stage of the complaint. Under ACCA's process, gathering evidence to support the

complaint forms part of the investigation stage. Only a small number of complaints referred to ACCA from the Gateway are rejected at the assessment stage.

CARB

In assessment, CARB will determine whether a complaint is appropriate for investigation and will generally only reject complaints that they consider are frivolous or vexatious, or certain types of fee complaints.

ICAEW

In assessment, the ICAEW will determine whether the allegations in the complaint may result in the insolvency practitioner being liable to disciplinary action and whether the potential misconduct is capable of being evidenced. In the majority of cases, it is the responsibility of the complainant to provide the evidence to support the allegations made. The ICAEW may contact the insolvency practitioner for some information, but he or she will not be required, at that stage, to formally respond to any of the allegations made in the complaint.

If sufficient evidence has been provided to support the allegations, it will pass through to investigation. It is usually only during investigation that the insolvency practitioner will be formally contacted by the ICAEW.

ICAS

At the assessment stage, ICAS will make preliminary enquiries to determine whether or not there are sufficient grounds for further investigation. ICAS will determine whether the complaint raises questions over the insolvency practitioner's conduct or technical competency to the extent that there may be issues of professional misconduct, professional incompetence or unsatisfactory professional conduct.

In nearly all cases, ICAS will contact the insolvency practitioner as part of this process and seek their response to the allegations made in the complaint. The complaint and the response from the insolvency practitioner will then be assessed as to whether there are grounds for the matter to be progressed to the investigation committee.

All complaints which are dismissed following preliminary enquiries are automatically reviewed by three members of ICAS's Investigation Committee through a Review Panel which includes two lay members. The Review Panel can overturn the decision to dismiss, or can direct that further enquiries be undertaken.

IPA

In assessment, the IPA will determine whether the complaint, together with any supporting evidence provided, indicates that the insolvency practitioner may become

liable for disciplinary action. If insufficient information has been provided, the complainant may be requested to provide more. The IPA will not ordinarily contact the insolvency practitioner as part of the assessment process.

The following table summarises the number of complaints closed in assessment by the RPBs:

Table 3: Assessment of complaints by the RPBs

RPB	Number of complaints closed	Number of complaints closed in assessment
IPA	523	274 (52%)
ICAEW	457	299 (65%)
ACCA	93	4 (4%)
ICAS	42	2 (5%)
CARB	1	0
Total	1,116	581

5.2 Gathering Evidence

The most common reasons for closing a complaint at the assessment stage are the complainant's failure to respond to further enquiries or their inability to provide evidence to support their complaint.

Where evidence is requested, complainants are typically given an opportunity (at least 28 days) by the RPBs to submit this before consideration is given to closing the complaint, though in some cases this process can take longer.

As detailed above, some RPBs do not routinely contact the insolvency practitioner as part of the evidence gathering process. In some of the cases sampled, the types of evidence being requested from complainants by the RPB to support the allegations made were standard documents that would be in the possession of the insolvency practitioner. Additionally, the review identified that some cases had been closed which appeared to merit further investigation and for evidence to be sought from the insolvency practitioner.

Recommendation 1: RPBs should ensure that information is sought from the insolvency practitioner in respect of complaints received unless there is a justified reason not to do so. Specifically:

- **If the complainant has not provided or is unable to provide evidence to support their complaint and it is reasonably felt that the insolvency practitioner has the information required, further requests for evidence from the RPB should also be made to the insolvency practitioner.**
- **Where, having considered the evidence provided, a complaint is closed by the RPB without any reference to the insolvency practitioner this should be justified and explained by the RPB when closing the file.**

5.3 Compensation

There is currently no formal or agreed regulatory mechanism for compensation across the insolvency profession either from insolvency practitioners directly or through the RPBs. This in part is explained by the fact that insolvency practitioners are part of a unique profession whereby individuals act under the general supervision and powers of the Court. Any such mechanism would not be a substitute for any legal remedies available to individual complainants through the Courts.

As part of the information gathering for this review, the RPBs were asked about whether they have a policy for paying compensation and their responses are summarised below.

ACCA

ACCA's Disciplinary Committee is able to award compensation from the IP to a complainant of up to £1,000. In addition, ACCA's Disciplinary Committee is able to order a waiver or reduction in fees.

CARB

CARB does not have a scheme to offer compensation or redress in insolvency practitioner cases.

ICAEW

The ICAEW does not operate a formal compensation or redress scheme, although its Disciplinary Committee can order a waiver or return of fees depending on the nature of the case. The ICAEW does operate a conciliation process which seeks to resolve complaints where there is a potential liability to disciplinary action but where

both parties are amenable to resolution and where the outcome can result in a voluntary payment of financial compensation by the insolvency practitioner.

ICAS

ICAS does not offer compensation to complainants in insolvency complaints. There is no power within ICAS' Rules or Regulations to pay compensation to complainants or to require insolvency practitioners to pay compensation. Redress may be available in certain circumstances through ICAS' conciliation process. This applies to complaints where there are no serious conduct or competence concerns. As part of this process, ICAS will (if possible) assist the parties to agree a mutually satisfactory outcome, which could include financial considerations.

IPA

The IPA does not operate a formal conciliation process but intends to introduce one in due course, particularly in the light of the number of consumer complaints in recent years. The IPA does not have a scheme to offer redress or compensation to complainants.

There are examples where insolvency practitioners have remedied errors through compensation payments before a formal complaint has been made to the Gateway. The review found that there is not a consistent approach and identified some complaints where the insolvency practitioner's conduct was not regarded as a serious matter but there had been a minor error or poor practice. Some of these complaints may have been resolved through compensation from the insolvency practitioner to the complainant.

To ensure fair treatment for complainants, the Insolvency Service is of the view that the ability to offer compensation should be explored (for example, where minor errors or mistakes have been made which can be rectified and have been accepted by the insolvency practitioner).

Recommendation 2: The RPBs should enter into discussions with the Insolvency Service to consider the feasibility of a regulatory mechanism whereby compensation can be paid by the insolvency practitioner to the complainant where they have suffered inconvenience, loss, or distress as a result of their actions.

5.4 Investigation

If the RPB concludes that the insolvency practitioner may be liable to disciplinary action, and sufficient evidence has been provided, the complaint will progress to

formal investigation. Some RPBs will have already carried out an investigation at an earlier stage of their process.

As part of the investigation process, those RPBs that have not already done so, will contact the insolvency practitioner for their response to the complaint. In almost all cases, each RPB will share the insolvency practitioner’s response with the complainant.

The following table summarises the number of complaints taken forward for formal investigation by the RPBs (including as part of initial assessment):

Table 4: Complaints formally investigated by the RPBs

RPB	Number of complaints closed	Number of complaints investigated ³
IPA	523	249 (42%)
ICAEW	457	158 (35%)
ACCA	93	89 (96%)
ICAS	42	40 (95%)
CARB	1	1 (100%)
Total	1,116	619

5.5 Length of Investigation

Guidance for the Complaints Gateway sets out that the RPBs aim to have substantially completed an investigation within six months, although this will vary on a case-by-case basis and may take longer. As part of best practice, complainants should be kept updated on progress.

The reasons why investigations by some of the RPBs were ongoing beyond 6 months included lengthy assessment processes, delays in contacting or obtaining responses from the complainant or insolvency practitioner, and in some instances there were resourcing issues.

The Insolvency Service accepts that there may sometimes be reasons, specific to an individual case, which could cause a complaint to be subject to a lengthy investigation (for example, if the matters raised are of a complex nature). Generally,

³ This table does not include complaints that are currently open and being investigated by the RPBs

the RPBs are encouraged to engage with the Insolvency Service to report any particular issues in case progression and plans for resolution.

Recommendation 3: Those RPBs experiencing particular issues in progressing cases should discuss with the Insolvency Service their plans for ensuring timely progression of complaints.