The Insolvency Service

Review of the monitoring and regulation of insolvency practitioners

September 2018

Contents

1. Executive Summary

Following the introduction of “Regulatory Objectives”[1] for Recognised Professional Bodies (RPBs) in October 2015, the Insolvency Service has undertaken a number of reviews to assess the effectiveness of the regulatory regime. As part of that we have visited each RPB to assess how they carry out their monitoring and regulatory functions and have also undertaken a themed review on how insolvency practitioners (IPs) working at volume Individual Voluntary Arrangement (IVA) providers are regulated.

Volume providers are those firms which typically oversee a large number of IVAs, with employee IPs as supervisors, and with IVAs representing the majority or sole source of business. For monitoring purposes they are described as as any firm that controls greater than 2% of the total market (including new and existing cases), or greater than 2% of new cases over a rolling three month period.

This paper represents a summary of findings to date. We will be continuing our oversight activities in the coming months, as we move towards making a decision on whether to introduce a single regulator, as provided for in the Small Business, Enterprise and Employment Act 2015.

Our reviews were undertaken between November 2016 and November 2017, and this report includes findings from those reviews and other material received prior to July 2018. The reviews examined all five RPBs:

- **Association of Chartered Certified Accountants** (ACCA)
- **Chartered Accountants Ireland** (CAI)
- **Insolvency Practitioners Association** (IPA)
- **Institute of Chartered Accountants in England & Wales** (ICAEW)
- **Institute of Chartered Accountants of Scotland** (ICAS)

With effect from 1 January 2017, ACCA transferred all of its monitoring and regulatory functions (except for the initial authorisation of IPs) to the IPA[2]. For some years, CAI has contracted out its on-site monitoring visits to ICAS, though CAI deals

[1] See page 5
[2] Due to the collaboration between the IPA and ACCA, individual findings have not been included for ACCA

with the findings from those inspections. This report takes into account these collaborations.

The reviews considered:

- How monitoring visits to IPs were conducted, and the outcomes of those visits.
- The relationship between RPB’s membership and regulatory functions.
- Publicity given by RPBs for disciplinary sanctions and regulatory outcomes.

Additionally, in recent years, the way in which IVAs are marketed and provided has changed significantly with a move towards volume provision at firms that typically specialise in this type of debt solution to the exclusion of other formal insolvency procedures. We need to ensure that the way IPs in this environment are regulated has kept pace with these changes and have observed a number of RPB monitoring visits to volume IVA providers, looking at the outcomes from those visits.

Key findings from the reviews are that:

- All RPBs have appropriate procedures in place when risk assessing and carrying out monitoring visits.
- Monitoring visits to IPs are generally carried out effectively and robustly.
- Whilst monitoring visits were effective in identifying and reporting concerns, there were examples where regulatory and/or disciplinary outcomes were not being achieved in the way we would have expected.
- All RPBs have procedures in place to separate membership functions from regulatory activities.
- Transparency in the publication of disciplinary outcomes could be improved and work is ongoing with the RPBs in this regard.
- There are significant concerns about how IPs at “volume IVA” firms operate and are regulated.

The body of the report sets out the reasons for our conclusions and provides detail on our findings at each RPB.

2. Overview of Regulation

Background

Historically, monitoring visits by the Insolvency Service to the RPBs have focussed on processes and compliance with a Memorandum of Understanding. Individual monitoring reports for all the RPBs have been published over the past few years, which set out findings in relation to their regulatory activities. However, statutory 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 when authorising IPs.

In discharging regulatory functions, an RPB must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives which provide for:

- The RPB to have a system of regulating that secures fair treatment for persons affected by their acts or omissions, reflects the regulatory principles and ensures consistent outcomes.
- Encouraging an independent and competitive profession, which provides high quality services at fair and reasonable cost, acts transparently, with integrity and considers interests of all creditors in a particular case.
- Promoting the maximisation of the value and promptness of returns to creditors.
- Protecting and promoting the public interest.

Although there is no requirement for RPBs to operate in the same way and monitoring and regulatory procedures vary, guidance issued by the Insolvency Service outlines that an RPB should have a system of regulating people acting as IPs that reflects the objectives.

RPBs are all membership organisations in a competitive market, which combine their regulatory functions with other services (such as educational studies, examinations, webinars, roadshows and conferences).

As with any self-regulatory regime, there is a risk that others may question how willing RPBs are to apply sanctions to their own members. This review has considered the relationship between the membership and regulatory functions, the extent to which they are separate and the measures RPBs have in place to implement appropriate safeguards.

Our review has also considered how volume IVA providers are monitored and regulated. In most instances the IP(s) at such firms are salaried employees and there is a risk that they have limited control and knowledge of the cases to which they are appointed. We have reviewed RPB processes for ensuring that IPs have the capability to deal appropriately with large numbers of cases and effectively monitor the work of their staff. We have also looked at whether RPB procedures are sufficiently robust in assessing whether client funds held by IPs are adequately protected in line with industry standards and regulations.

We observed a number of on-site monitoring visits as part of the review and the associated committee meetings scheduled to consider the outcome of those visits, as set out below:

RPB	**Number of visits observed**	**Number of Committee meetings observed**
ICAEW	2	1
IPA[3]	5	3
ICAS	1	0
CAI	1	1

[3] A higher number of IPA visits were observed due to fact they authorise IPs at the majority of the volume IVA providers which is a major part of this review

3. RPB Monitoring

Consideration of the outcomes of monitoring visits is the responsibility of the relevant RPB committee. The extent to which each visit is reported to, and considered by, committees varies across the RPBs and largely depends on whether the outcome of the visit is satisfactory or unsatisfactory.

An unsatisfactory visit is likely to mean that an IP has not met the required standards in one or more areas, or there are general concerns regarding the procedures the IP has in place. A combination of additional monitoring visits and regulatory action is usually necessary.

All committees meet at least quarterly and are made up of a proportion of members who are not IPs (‘lay members’).

Our review found that RPBs have in place appropriate measures for risk profiling IPs for monitoring visits. Visits were generally carried out effectively and robustly with subsequent reports to committees matching the findings of the visits. The quality of the reports submitted to committees was generally of a good standard, of a factual nature and capturing and summarising the key issues effectively.

The review found that in most cases outcomes from monitoring visits were consistent and appropriate. However we were concerned about the outcomes in a small number of cases. Further details are included in the individual RPB reports contained in Annexes 1-4.

In these particular cases, it was evident that there was a focus on asking for improvements by the IP, and testing those through follow-up monitoring visits, rather than also making a referral for disciplinary action on individual case findings. This was of particular concern in cases where individuals were, or had the potential to be, adversely affected to a significant extent by the actions of the IP.

It is recommended that in cases where issues of concern have been identified on the monitoring visit that relate to an individual case, and there is evidence of, or the potential for, individuals to be adversely affected, these matters are referred for investigation and reported to the relevant committee.

4. RPB Membership Functions

As mentioned above, each of the RPBs membership functions provide a wide range of services to members. These include educational material delivered through webinars and roadshows, and other training and educational support. There is a need for RPBs so guard against the perception that decisions about membership are being influenced by considerations around numbers.

The reviews found that all the RPBs have governance structures in place to ensure that membership and regulatory functions are separated. All regulatory and disciplinary committees are independent and are governed by sets of rules and bye-laws. The appointments process for committees has sufficient safeguards in place to ensure that those involved in making appointments are independent.

The majority of the RPBs are also regulated by the Financial Reporting Council (FRC).

5. Publicity of Disciplinary Sanctions

Sanctions

All disciplinary sanctions against IPs are published on the gov.uk website in a format agreed between the RPBs and the Insolvency Service. This is in addition to any publicity issued by the RPB.

In order to improve the transparency of disciplinary outcomes further, we have identified a number of areas where the process could be improved to achieve consistency across the RPBs.

We have agreed with the RPBs that the name of the IP's firm as well as the individual practitioner will be published as part of the sanction unless there is a justified reason not to. RPBs have also agreed to include details of the costs paid by the IP as part of the sanction.

Further work is under way in respect of licence restrictions and warnings.

Licence restrictions

RPB committees have a range of powers available to impose a variety of restrictions on an IP's licence. Typically the majority of these restrictions are not published. It is the view of the Insolvency Service that any restriction where an IP is prevented from taking any new appointments or acquiring a portfolio of cases should be published in full for the duration of the restriction. We are in discussion with the RPBs on this point.

Warnings

In cases where misconduct has been identified, but through mitigation the RPB's committee has determined that a formal sanction is not warranted, a warning is typically issued. This is a formal finding and will remain on the IP's record. The majority of RPBs do not publish warnings in any format. It is the view of the Insolvency Service that this has the potential to undermine confidence in the disciplinary process and we are in discussion with the RPBs over increasing transparency in this area.

6. Regulation of Volume Individual Voluntary Arrangement Providers

At the time we commenced our review, the majority of IPs employed by “volume” IVA providers (88%) were regulated by the IPA, and that remains the case.

An IVA is a statutory debt management procedure under which an individual, with the agreement of their creditors, repays part of what they owe to their creditors (largely credit institutions in respect of credit cards and loans), generally over a period of five years. An IVA must be supervised by an authorised IP.

The number of people seeking debt relief through an IVA has increased significantly in recent years (over 59,000 in 2017 compared to 49,400 in 2016. Up until 2003 there were fewer than 10,000 annually). The way they are supervised has consolidated into a number of “volume” providers - ten providers accounting for over 80% of new IVAs registered in 2017.

The corporate structure of some providers means that the IP is often an employee, supervising several thousand cases with little control or say over the actions and policies of the firm.

This represents a different way of working compared to traditional insolvency practice, and the Insolvency Service has worked with the RPBs and industry stakeholders to strengthen guidance which sets out how RPBs are expected to carry out monitoring visits to volume IVA providers.

As part of our review we have shadowed monitoring visits to IVA firms. Whilst the monitoring visits themselves have been conducted robustly, there is an element of inflexibility in how they are carried out and we think that that more could be done to alter the course of the visit in response to findings, particularly around listening to advice calls.

We found that issues identified during the course of monitoring visits include:

- poor quality advice being given to debtors, potentially leading them to enter an IVA when other debt solutions may be more appropriate;
- sometimes it is not clear what the justification is for some charging of expenses

- financial products being potentially mis-sold to individuals who do enter an IVA.

Although RPB monitoring teams identified concerns like this during their visits, the post-visit process appears to lack robustness in some cases, and there has been, at times, a failure to address the issues in a prompt and efficient way. The emphasis tends to be too much towards recommending changes for the future, without sufficient consideration of whether regulatory penalties should also be applied and whether remedial action should be taken where debtors or creditors have been disadvantaged.

In the majority of these cases no regulatory action has been taken, even though there was evidence in some cases pointed to debtors potentially being in the wrong debt solution. In our view, the findings in many of the visits we shadowed were sufficiently serious to warrant formal investigation for disciplinary consideration.

Further details regarding these findings are contained below and at Annexes 1 and 2.

Debt Advice

Statement of Insolvency Practice (SIP) 3.1 *"Individual Voluntary Arrangements*" sets out that:

- An IP should differentiate clearly between the stages and roles that are associated with an IVA (these being, the provision of initial advice, assisting in the preparation of the proposal, acting as the nominee, and acting as the supervisor) and ensure that they are explained to the debtor and the creditors.
- An IP should ensure that the information and explanations provided to a debtor about all the options available are such that the debtor can make an informed judgement as to whether an IVA is an appropriate solution.
- An IP should explain to the debtor, the debtor's responsibilities and the consequences of an IVA.
- Where an IVA is to be proposed, an IP should be satisfied that it is achievable and that a fair balance is struck between the interests of the debtor and the creditors.
- An IP's reports should provide sufficient information to enable creditors to make informed decisions in relation to the proposal and the IVA, and report accurately in a manner that aims to be clear and useful.

RPBs have procedures in place for reviewing and assessing the quality of advice given by the IP to debtors. In the visits observed by the Insolvency Service, most of these procedures were followed. However, there were a small number of visits taking place where no advice calls were listened to. The initial conversation is crucial in helping to determine the course of action chosen by the debtor and in our view a sample of calls where the IP is providing advice, and a sample of calls where the IP is going through the advice provided by an authorised introducer firm, should always be examined. It is an area of high risk as there is obvious benefit to the IP firm to recommend an IVA, even where other options might be more appropriate.

As outlined in Annex 1, examples were identified where in our view some debtors may not have been given full and appropriate advice, in accordance with the requirements of SIP 3.1, before agreeing an IVA. Rather, it would appear that debtors are being steered towards an IVA without being adequately advised about the options available.

This would appear to include, in at least two cases, income, expenditure and employment status being manipulated to improve the chances of an IVA proposals being agreed. Whilst the monitoring visits identified these behaviours, there is little evidence of robust action being taken as a result. Further details on these examples can be seen at Annex 1. We did not observe any consideration of remedying the position or compensating for bad advice. Given the potential consequences of an individual entering an IVA without appropriate advice, in our view this approach is not compatible with the requirement to ensure outcomes are fair and consistent under the Regulatory Objectives.

In a number of cases we observed, the debtor’s expenditure was seemingly manipulated to deliver an ‘on paper’ surplus monthly income of over £50 so that an IVA could be proposed and agreed. Whilst initially portrayed as an attractive debt relief option for debtors, there was little consideration given to whether it was realistic for the IVA to last for at least 60 months, and whether it was affordable.

There is a widespread practice of using introducer firms to generate potential IVA clients. As these firms, and also staff within some volume IVA providers, are often remunerated on a commission basis, there would appear to be an inherent incentive for surplus income to be established at a level sufficient for an IVA to be a viable solution even when other debt solutions may be more appropriate. We viewed copies of contracts between IVA providers and introducer firms which demonstrate that higher agreed monthly contributions will generate increased commission for the introducer firm.

We identified cases where debtors were being steered towards an IVA due to the effects of bankruptcy, when in reality bankruptcy may have been the most appropriate option and would have had little or no more impact on the individual than an IVA. We saw no evidence of IPs advising that there may be a better solution for the debtor in all the circumstances. Rather some debtors appeared to reject bankruptcy because they were worried it may result in them losing their job, and even where this was unlikely to be the case it was not explained to them by the IVA provider or introducer firm. In some instances, there was also evidence that introducers (who are often not regulated and therefore outside the scope of the RPBs or FCA) may be misleading people about the bankruptcy process, including suggesting that bankruptcy would require the consent of creditors.

In order to improve confidence in the advice stage of the process, we recommend that RPBs should treat breaches of SIP3.1 in the same way as other serious misconduct and take appropriate regulatory action. Where there is evidence that indicates that a debtor may have not been properly advised, or isn't in the right debt solution, the matter should be referred for formal investigation to the relevant committee. Consideration should also be given to remedial action for the debtor, where there is evidence that there has been poor advice. Any remedies should not prevent further disciplinary action but they may act as mitigation.

RPBs should also focus on whether the IP concerned is using a "lead generator", whether there are incentives for recommending IVAs and whether there are any commission based referrals as part of any investigation. Where there are such incentives, RPBs should investigate the safeguards the IP has in place to prevent abuse.

<u>Fees and Disbursements</u>

Statement of Insolvency Practice 9 (SIP 9 –"*payments to insolvency office holders and their associates*") sets out the standards in which IPs must adhere to when drawing fees or disbursements.

Disbursements are expenses met by and reimbursed to an IP in connection with an insolvency appointment. There are two categories; Category 1 and Category 2. Category 1 disbursements are payments to independent third parties where there is specific expenditure directly referable to the appointment in question, and these can be drawn without prior approval from creditors. Category 2 disbursements are expenses that are directly referable to the appointment in question but are not a payment to an independent third party. They may include shared or allocated costs that can be allocated to the appointment on a proper and reasonable basis. These require approval in the same manner as an IP's remuneration

Across the majority of volume IVA firms there have been significant increases in disbursements. At the same time, Supervisor and Nominee fees have remained relatively static, although we found evidence that at least one firm has varied pre existing cases that were acquired from other firms in order to increase Supervisor's fees from the common 15% of realisations to 20-25%. This variation was on a large portfolio case acquired from another firm and was done so in such a way that debtors and creditors had little or no say in the matter.

There are some differences in approach between commercial firms and the 'not for profit' sector. For those firms not operating on a strictly commercial basis we found that typical Supervisor's and Nominee fees were applied to all cases, but that no additional disbursements are charged other than those required in each case at a fixed cost. We also found that organisations operating under the Fair share[4] agreement would not typically engage the services of external agents and therefore don't incur additional disbursements. At least one large IVA provider for example operating under the Fair share agreement has demonstrated that successful Payment Protection Insurance (PPI) recoveries can be made without the use of Claims Management Companies (CMCs) and therefore at a much reduced cost because no extra fee is charged for the service. Some of the disbursements below, such as filing and storage are treated as costs of the business by those firms not operating on a strictly commercial basis and therefore not charged to the case.

The types or disbursements used by the commercial sector vary, but typically include those listed in the table below:

Disbursement	**Typical charge (£ per case)**
PPI investigation fee	250
Software fee	30-150
File storage fee	50-130
Credit file searches	30-180
Well being services	720
Insurance / Bond for death/critical illness	120
Courier Services	50-120

[4] Firms operating under this agreement, whereby advice is funded via contributions from creditor community, are not-for-profit organisations.

There are additional disbursements that are charged by all firms in every case such as the fee for insolvency bond (specific penalty) which must be obtained on the case and a statutory fee for registering the IVA with the Secretary of State.

Under SIP 9, IPs are also required to explain how all their fees are fair and reasonable. We saw no evidence of this being done. There is limited evidence that many of the disbursements charged in volume operations are providing real value to either debtors or their creditors. In most cases it is not clear whether they are required at all. There is also limited, if any, explanation provided by IPs as to why they are fair and reasonable.

The use of CMCs is also common in commercial volume IVA providers when looking at realising PPI claims due to the debtor. Charges for this service do not seem aligned with general market rates. In additional to investigation fees, of typically £250 per case, the sum retained by CMCs out of any successful claim is up to 40%. Returns to creditors are therefore diminished. At least one provider with a large portfolio of cases has demonstrated that cases can be run successfully without additional disbursements of this nature.

The Regulatory Objectives require RPBs to have a system of regulation in place to ensure that services are provided at a fair and reasonable cost.

Whilst it was evident that inspection teams do challenge inappropriate charges whilst on visits and report back accordingly, we found no evidence that the charges were being reduced. Nor did we see regulatory action being taken. However we do note that some cases are currently being investigated.

The Insolvency Service would expect RPBs to ask IPs to justify in each case whether fees and disbursements are fair and reasonable. Where a conclusion has been reached that fees and disbursements are not fair and reasonable, RPBs should treat the matter in the same way as overdrawn remuneration with an expectation that there be a refund to the estate. This would not prevent further regulatory action but may act as mitigation when considering any sanction.

Similarly, where a miscategorisation of disbursements has been identified and a connected party is involved, in our view this should be treated in the same way as overdrawn remuneration, with a refund to the estate being sought. This would not prevent further regulatory action but may act as mitigation when considering any sanction.

In order to further address concerns around the use of additional products and services, we have recommended changes to the Ethical Code that would ensure increased transparency around the costs and benefits of such products.

In respect of CMCs, where it is clear that there are alternative routes that may result in a greater benefit to the estate, (or example the involvement of the Financial Ombudsmen Service in a claim made directly by the debtor), this should be disclosed to creditors in advance of any decision made by the IP to employ a CMC. It would therefore be for the IP to explain and justify why, in those circumstances, it was still appropriate to employ a CMC.

Corporate structure and connected companies

Current structures across most large IVA firms are complex and as a result it is difficult to pinpoint who is in overall control. This was evident on a number of observed visits. As a consequence there are a number of concerns about the accountability and the role of the IP, who is personally appointed on every case.

Within the structures there is often evidence of a number of directly or indirectly connected companies which offer various services to debtors, and some firms would appear to use these arrangements to avoid Category 2 disbursements which require approval from creditors. In some firms the connections are clear and disclosed to creditors, but in others they would appear to be using non-connected intermediaries to justify Category 1 disbursements.

The Insolvency Service is aware that some RPBs are currently exploring whether a voluntary code for IVA providers to strengthen regulation is feasible. Discussions appear to be at an early stage. Whilst we welcome any moves to strengthen RPB powers in this area, such moves fall outside our own oversight role. In our view robust action by RPBs, operating in collaboration with one another could effectively prevent some of the behaviours currently being exhibited. For example, a robust approach to “block transfer” requests (where a tranche of cases is transferred to another IP) could prevent firms assuming they can simply move cases between IPs in order that their business activities are not affected by any regulatory action taken against an IP. In addition to this we have recommended that the publication of all future sanctions against IPs should include the name of the firm in order to act as a further deterrent. RPBs are taking steps to implement this recommendation.

Early Exit Loans

One large volume IVA provider currently offers “early exit” loans – loans enabling debtors to settle their IVA early with a loan equivalent to the total value of the remaining contributions, to certain debtors. A second large provider has recently ceased offering new loans. The loans typically last longer than the remainder of the IVA and ultimately cost the debtor substantially more, due to an uncompetitive annual interest rate. Upon acceptance of the loan, debtors will no longer be bound by the terms of the IVA, and their creditors will be deemed to have been settled in full.

The loans are sold on the basis they will help the debtor in the long term, by improving their credit rating. There does not appear to be any evidence that this actually the case.

Our concerns are that some IPs working for firms that employ early exit loans are using their position as supervisor to facilitate introductions to an alternative provider of finance. The relationship between the debtor and the supervisor might unduly influence the debtor to enter into the loan. By concluding the IVAs early the IPs concerned will also benefit by not having the ongoing cost of managing the IVA so there may well be a conflict of interest.

Although this practice has been challenged by RPBs on monitoring visits, there has yet to be any determination made, or regulatory action taken.

The firms selling these products, whilst individually authorised by the FCA in order to do so, are connected to the IVA firm.

Introducer firms

The quality of the advice given to debtors by introducer firms and the checks volume IVA providers carry out once debtors are put in contact with them is questionable in some cases.

In some instances, the agreements between the parties are explored thoroughly by the RPBs as part of their monitoring processes, but we have observed this is not always so. The commercial aspect to these agreements is, in our view, a driver for inappropriate advice. For example, one agreement between an introducer and IVA firm provided for an increased referral where monthly contributions into the IVA were above £100, with a reduced fee where monthly contributions were between £50 and

£100. There is clearly an incentive for the introducer to ensure that the debtor's income is recorded as in excess of the higher amount, irrespective of whether that is realistic.

There is also evidence that at least one firm is using an intermediary or broker to act between them and the introducer firm. This adds to the cost, because a fee is charged by the intermediary on each case which leads to a further disbursement being charged.

Recommendations

- Where a RPB has identified poor or inappropriate debtor advice, there should be a focus on remedial action for the debtor (whilst recognising there may be practical limitations on what is possible) in addition to an investigation and disciplinary or regulatory action against the IP.
- In all cases RPBs should ask their IPs to justify whether fees and disbursements are fair and reasonable.
- Where a conclusion has been reached that fees and disbursements are not fair and reasonable, or there has been a miscategorisation of disbursements, RPBs should treat the matter in the same way as overdrawn remuneration, with IPs being required to seek requisite approval from creditors. Where no approval is secured, RPBs should make clear that they expect the IP to refund the estate.
- Publication of all future sanctions against IPs should include the name of the firm in order to act as a further deterrent.
- RPBs should ensure that prior to employing a Claims Management Company (CMCs), the IP has explored all cheaper alternatives and disclosed those in advance to creditors.
- RPBs should carefully consider whether early exit loans that are offered represent a conflict of interest and if so, take appropriate regulatory action
- RPBs should examine in all cases the nature of the relationship between introducers and the provider firm and the steps taken by IPs to satisfy themselves that correct advice as been given.

Annex 1: IPA findings

Number of Appointment taking IPs (as at 1 January 2018): 460

Number of Non- Appointment taking IPs: 97

Total number of IPs: 557

Monitoring process and risk profiling

The IPA operates a risk based approach to monitoring whereby all IPs should be visited at least once every three years although some are visited more frequently if circumstances dictate. The IPA builds a monitoring profile for each IP to help inform the timing for future visits. The IPA also requires IPs to carry out self-certification reviews on their own cases between monitoring visits. These constitute a requirement for each IP to undertake their own review of a sample of cases selected by the IPA. The IPA will use the findings of the self-certification reviews as part of its risk profiling, and at least one case will be selected by them for review on the monitoring visit itself.

Since 2016, in the majority of cases the IPA carried out visits to its IPs within the above timescales though a small number of visits exceeded the three year period by a small margin due to resource issues[5]. In the case of volume providers of IVAs visits have been carried out annually with the exception of one provider.

In one case the IPA did not undertake a monitoring visit to a newly authorised IP for almost two years. Such visits should take place within 12 months. In this particular case a number of serious issues were identified on the first visit adding further concern to the delay.

Onsite monitoring of IPs

The Insolvency Service observed five monitoring visits as part of this review.

The IPA has a detailed pre-visit process in place and a structured approach is adopted for each visit. A separate and detailed pre-visit questionnaire is used for visits to volume IVA providers.

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[5] We were made aware of resource issues by the IPA during 2016 as a result of TUPE requirements relating to the transfer of employees from ACCA under the collaboration agreement which restricted the IPA from filling existing staff vacancies.

The visits we observed were carried out effectively, with issues of concern being appropriately reviewed and reported.

There was evidence in all visits observed that the inspectors took steps to challenge excessive fees during the visit and reported the findings.

Role of Committees

The outcome of all monitoring visits is considered by the Membership and Authorisation Committee (M&A). The M&A will determine whether a visit is satisfactory or unsatisfactory and whether any regulatory action is required. The committee is responsible for determining the timing of future visits.

The M&A has a range of powers including licence withdrawal or restriction; however it does not have the power to issue fines or regulatory penalties. Instead, if matters that could lead to fines or regulatory penalties are identified, these are referred to a separate committee (the Investigation Committee) within the IPA for further investigation.

The M&A is made up of licensed IPs and four non-IPs (lay members) appointed by IPA's council following an application process. The IPA does not operate a majority of lay members on its M&A Committee, however lay membership has increased in recent years and the IPA proposes to increase this further.

The M&A meets eight times per year. In addition there were a number of occasions during 2017 where it was necessary for the M&A to meet on an urgent basis, or to form a sub-committee to consider specific matters of IP fitness which needed to be addressed outside of scheduled committee meetings.

Whilst the IPA ensures that the M&A has the ability to convene quickly should the circumstances arise, in one particular case it required the intervention of the Insolvency Service to ensure that the consideration of the outcome of a visit to a high risk IP was not unduly delayed.

Monitoring visit outcomes

The review identified a number of concerns over the outcomes of monitoring visits:

1) Significant and serious issues were identified by the IPA's inspector which called into question an IP's fitness to act. Although the Insolvency Service was advised that an emergency meeting of the M&A was due to be convened upon the conclusion of the visit, it took further intervention to ensure that this meeting took place quickly to protect estates that in our view were at risk. The urgent meeting

resulted in a number of undertakings to be provided by the IP and an emergency restriction placed on the IP's licence. Despite the concerns in this case, the restriction was not published. Upon receipt of all of the information following the undertakings, the M&A saw fit not to take any formal regulatory action. It removed the restriction on the licence and ordered a follow-up visit.

2) The IPA's inspector had evidenced a number of concerns about the level of fees charged by an IP. These included:

- the costs of legal advice borne by creditors,
- some remuneration being paid prior to gaining authorisation from creditors,
- fees not returned to estates following advice that they were unauthorised,
- excessive adjournment and variation fees,
- estimated time costs being unduly conservative
- charging time for issuing invoices.

Despite these reported findings, the M&A decided that the visit be deemed satisfactory based on a comprehensive report from the IP and the fact that the IP had agreed to make a number of improvements and changes to process. None of the matters identified were referred for investigation. We note that the IPA has recently changed its processes and findings that indicate disciplinary attention may be warranted will now be referred for investigation at the same time as reference to M&A.

3) A significant number of concerns were identified regarding fees taken by an IP. These included:

- excessive time costs,
- excessive fee estimates,
- charge out rates disproportionate to the work involved,
- fortnightly billing of invoices leading to inflated administration and planning time costs,
- inaccurate time records
- some fees drawn without the requisite approval from creditors.

The Insolvency Service observed the M&A meeting that considered this case and whilst all of the issues of concern were discussed, there was no consideration of regulatory action. The M&A instead focused on the responses from the IPs concerned who agreed to introduce a number of measures to improve their compliance with regard to fees including the introduction of templates. The M&A

decided it would be appropriate to review these processes again on a follow-up visit within six months which took place in November 2017. It is noted that there was no evidence at this visit of any re-occurrence of the issues and the IPs received a warning for unauthorised remuneration (which had been repaid) on one case.

4) It was determined by the M&A that an IP did not meet the standards required to remain authorised. Despite this view and the number of serious issues of concern, the licence was not withdrawn. The M&A instead imposed a restriction on the IP's licence on the basis that the IP had indicated no intention to renew the licence at the end of the year. Ultimately, the authorisation was not renewed.

5) A number of concerns had been identified in relation to a volume IVA provider. Whilst a number of these issues are ongoing and being considered as part of follow up visits, of particular concern was the finding that inappropriate and inadequate debt advice was being given to debtors. In one particular case, evidence on call recordings indicated that the debtor was encouraged to provide inaccurate income and expenditure figures in order to further the chances that the IVA was approved. Despite this finding the M&A committee did not take any action in relation to this particular case however it is to be noted that following a change in process the IPA will now refer such findings for investigation going forward.

6) Concerns had been identified in relation to another volume IVA provider. These included inappropriate debt advice, excessive fees, and the miscategorisation of some fees meaning they have effectively been drawn without approval. No formal regulatory action was taken by the M&A. Whilst the IPs themselves were asked to respond to the various concerns around fees, no resolution was reached and the matters were carried forward to future visits to review any improvements made. A targeted visit was subsequently carried out. Following this visit, matters of concern relating to unauthorised remuneration and migration charges were referred for investigation and these matters are ongoing. In relation to debt advice, the IPA's inspector identified one particular case where a debtor's circumstances suggested an IVA may not have been the most appropriate solution. Despite this, the M&A took no regulatory action in respect of this case and the matter was not referred for investigation, instead it fell to the Insolvency Service to submit a formal complaint via the Complaints Gateway. As above, we note that following a change in process the IPA will now refer such findings for investigation separately to awaiting the outcome of the M&A consideration.

Governance Structure

The IPA's Council (its board of elected members) delegates responsibility for regulatory activity to independent committees. Each committee has its own terms of reference, and in the case of regulatory committees, a set of rules detailing processes, requirements and powers. Members of these committees are appointed by the IPA's Council, however its Council plays no role in decision making on complaints or monitoring outcomes. Council members are not permitted to sit on regulatory committees.

The IPA's membership function is entirely separate from its regulatory function, which sits within the IPA's secretariat. The IPA's secretariat function is responsible for day to day regulatory matters relating to the monitoring of IPs and investigating complaints. There are no provisions for the secretariat to make statements on matters concerning particular IPs, but will do so from time to time in the public interest.

Conclusion

Overall we found that IPA has processes in place to carry out effective onsite monitoring visits. However the review found a number of concerns over the outcomes of these visits and the decisions made by its committee.

Following the concerns raised in this report the IPA has begun implementing some changes to its processes.

In particular, as part of the review of an IP's response to a monitoring inspection report, any matters for disciplinary attention will be identified at that stage and a complaint file opened for onward consideration by the Investigation Committee, rather than awaiting for the M&A process to conclude. The IPA is also reviewing its M&A rules to ensure that processes are current and more straight-forward.

The IPA is also in the process of drafting regulations to address possible behaviours by IPs that might frustrate its processes.

Annex 2: ICAEW findings

Number of Appointment taking IPs: 599

Number of Non- Appointment taking IPs: 184

Total number of IPs: 783

<u>Monitoring process and risk profiling</u>

The ICAEW operates a general three year monitoring visit cycle for its IPs, except where they work within large multi-IP firms with dedicated compliance staff. In these cases, some IPs within the firm will usually be visited each year, but individual IPs are visited at least once every six years. The timing of monitoring visits is also based on previous findings and general risk assessment.

In addition to routine visits, the ICAEW also carries out telephone reviews with IPs where their visit resulted in either follow up action or regulatory action. The result of these phone reviews can influence decisions on the timing and nature of future monitoring visits.

The review found that the ICAEW carried out visits in accordance with their timescales and there were no occasions where more frequent visits would have been appropriate.

Since November 2016, visits to volume IVA providers have been carried out annually, in line with published guidance.

<u>Onsite monitoring of IPs</u>

The ICAEW has appropriate processes in place for carrying out onsite monitoring visits. The Insolvency Service observed two visits as part of this review and on both occasions no concerns were noted.

On both visits, it was evident that concerns were appropriately identified and included in the final monitoring report.

The ICAEW took a robust approach on both visits to challenging examples of potentially excessive fees and also in examining the disclosure of fees and expenses.

Additional visits were undertaken in advance of the full onsite visit to review client account and banking information in respect of volume IVA providers.

In order to facilitate these additional visits further resource was employed which focused on (and will continue to do so) the potential risk of misappropriation of estate monies due to financial / other pressures. In particular the focus was on areas of risk including whether poor controls over financial reporting and estate bank accounts could provide an opportunity for IVA providers to either fraudulently mis-report a firm's financial position or performance to maintain funding levels, or to misappropriate estate funds to meet short term cash flow need. A work programme has been developed to consider the pressure / incentives from funding providers and owner / managers.

Role of Committees

Regulatory matters arising from monitoring visits are considered by the Insolvency Licensing Committee (ILC). Visits are graded by ICAEW's Quality Assurance Department (QAD) and where regulatory action is required the matter is considered by the ILC. All other visits are closed by QAD under delegated authority from the ILC.

The Committee has a majority of lay members (who aren't IPs) chosen through application and appointment by the ICAEW's Regulatory Appointments Panel.

The ILC meets six times per year. The review did not identify any scenarios where it would have been appropriate for a matter to be considered by the ILC on an urgent basis but the ICAEW has confirmed that committee does hold urgent meetings as required.

Monitoring Outcomes

In one case, a number of concerns were evidenced and included in the final monitoring report. One issue of particular concern over migration fees charged on individual IVA cases was referred for investigation by the ILC. The investigation is ongoing, however no regulatory action has been taken, and no referral to investigation was made in respect of an individual case in which a debtor, who had settled their IVA by way of a full and final settlement, had not received their completion certificate some 12 months later. This is despite RPBs previously agreeing with the Insolvency Service that delays in receiving completion certificates that exceeded six months from the final payment would be investigated. The debtor also received a notice of breach some eight months after the settlement was agreed.

There were also a number of incidences of excessive costs being identified, which also resulted in no regulatory action or referral for investigation.

Governance Structure

The ICAEW made a number of changes to its structure that came into effect in January 2016 following an independent review by Sir Christopher Kelly which resulted in the creation of the ICAEW Regulatory Board. The Regulatory Board now has greater independence from the rest of the ICAEW. The independent review was undertaken in order to ensure that ICAEW's regulatory governance remained in line with current best practice and expectations in terms of how it, as a statutory and professional standards regulator, structures its internal regulatory framework.

The Regulatory Board is responsible for overseeing the development of ICAEW policy in all areas of professional standards, including discipline. In discharging its role and responsibilities it discusses matters with the ICAEW Board and relevant departmental boards. It is also responsible for ensuring the Professional Standards Department (which includes the monitoring function) runs the processes that underpin the licensing and disciplinary work effectively and efficiently.

Regulatory and disciplinary functions have been delegated to a set of committees. The ICAEW Regulatory Board has no involvement in decisions by the committees about individual cases although it has general oversight role over the operation of the disciplinary and regulatory committees. In addition, Regulatory Board members may not be members of the disciplinary or regulatory committees.

As a result of the governance review the ICAEW Regulatory Board was set up with parity between accountant and lay members (including the chair), Members of ICAEW's council and ICAEW Board are not eligible to sit on the ICAEW Regulatory Board.

Conclusion

We found that the ICAEW generally has appropriate measures in place when carrying out monitoring activities. We are pleased to note the additional steps taken by the ICAEW with regards to the review of client monies. Whilst in the majority of cases no concerns were noted over the outcome to monitoring visits, in one case not all of the issues identified on the visit were referred for investigation where evidence would indicate it was appropriate to do so.

Annex 3: ICAS findings

Number of Appointment taking IPs: 75

Number of Non- Appointment taking IPs: 18

Total number of IPs: 93

Monitoring process and risk profiling

ICAS operates a three year visit cycle to ensure that all IPs are visited at least once within each cycle. IPs are also selected for a visit based on risk assessments.

ICAS introduced an Authorisation Committee in April 2016. At the conclusion of a monitoring visit, the timing of the next one is determined by that Committee after a review of the visit findings. There is flexibility to carry out an earlier monitoring review based on the assessment of risk factors.

ICAS bases its risk assessment on a number of factors including the outcome of the previous visit, significant changes in case numbers, industry knowledge and intelligence and any ongoing or recent disciplinary action. A schedule of monitoring visits is prepared each year, which is subject to ongoing review against risk assessments.

In the case of an unsatisfactory monitoring visit, the Authorisation Committee determines whether or not a follow-up visit is required. The review found that all IPs were visited in accordance with the risk profiling set out above, and no concerns were noted over the timing or nature of these visits.

ICAS carried out monitoring visits to 28 IPs in 2016 (the year prior to the commencement of this review). In the two cases where the monitoring visits resulted in unsatisfactory outcomes, follow- up visits took place within three months to look at the issues of main concern (which related to compliance with money laundering requirements), and further follow-up visits within 12 months to review other matters. This action appeared proportionate and appropriate given the facts of the cases.

Onsite monitoring of IPs

ICAS has appropriate processes in place for carrying out onsite monitoring visits. There is a detailed pre-visit process in place and thorough checklists are used. The Insolvency Service observed one monitoring visit as part of this review and it was noted that all processes were followed and no concerns were noted.

ICAS has separate procedures in place for monitoring large providers of Protected Trust Deeds, which are in line with guidance published by the Insolvency Service and also applied to volume IVA providers.

Role of Committees

Matters arising from monitoring visits are considered by the Authorisation Committee.

The Authorisation Committee is made up of a mixture of IPs, chartered accountants, and ‘lay’ members (those who aren’t IPs or chartered accountants). IP members of the committee are used to provide insolvency technical knowledge.

The Authorisation Committee meets six times per year, which is proportionate for the number of visits ICAS carries out. The Authorisation Committee has approved a scheme of delegation whereby only reports with unsatisfactory outcomes are presented to the Committee for consideration (with reference to a grading system approved by the ICAS Regulation Board). The review did not identify any scenarios where it would have been appropriate for a matter to be considered by the Committee on an urgent basis.

Governance Structure

The membership and regulatory functions at ICAS are split and operated by separate teams working to different directors, boards and committees.

The monitoring team is advised of any concerns which may arise and are relevant to its functions.

Investigations into the conduct of IPs are carried out by a separate team.

Electronic records of the investigation and monitoring functions are held separately within the network and access is restricted only to members of the respective teams.

The disciplinary function within ICAS operates independently of the investigation function and reports to a Disciplinary Board.

Conclusion

The review found that ICAS is operating effectively when exercising monitoring and regulatory activities and no issues of concern were noted.

Annex 4: CAI findings

Number of Appointment taking IPs: 41

Number of Non- Appointment taking IPs: 2

Total number of IPs: 43

Monitoring process and risk profiling

As referred to above, the monitoring of IPs is carried out on behalf of CAI by ICAS. A formal contract is in place for the outsourcing of this function.

CAI operates a risk based approach to monitoring with each IP visited under a three year cycle. CAI also carries out desk top monitoring following the submission of an IP's individual annual return to help inform any changes to the monitoring cycle. When an IP is selected for a monitoring visit by CAI under its risk assessment process it is then passed to ICAS to undertake the visit itself.

CAI does not authorise any IPs at volume IVA providers.

The review found that all IPs were visited within the requisite timescales.

Role of Committees

Matters arising from monitoring visits are considered by the Insolvency Licensing Committee (ILC).

Under the agreement with ICAS, CAI retains full responsibility for considering the outcome of monitoring visits and whether any regulatory action is appropriate following receipt of a full monitoring report which is produced by ICAS.

CAI does not operate a policy of having a majority of lay members on its ILC, however it has been working with the Insolvency Service to implement a new appointments policy whilst retaining appropriate expertise within the ILC. In order to increase lay membership, CAI has agreed that two members would retire in each of 2016, 2017, and 2018 with two new members being appointed in the same years resulting in an increase in lay membership. The ILC met five times during 2017, which was proportionate given the number of IPs visited. Once a monitoring visit has been carried out on its behalf by ICAS, the outcome of the visit is considered in full by the ILC.

The review did not identify any scenarios where it would have been appropriate for a matter to be considered by the ILC on an urgent basis.

The ILC has the power to issues regulatory penalties where appropriate. The review did not identify concerns over the outcome of monitoring visits.

<u>Governance Structure</u>

CAI has a clear separation of membership and regulatory functions. The Chartered Accountants Regulatory Board (CARB) was created in 2007 with is functions and responsibilities defined in its Bye-Laws.

Following a recent review of its governance arrangements, changes were made to CAI's Bye-Laws to provide for an independent board with a lay majority and for the departments overseeing regulation and discipline to have their own appointed director reporting to both CARB and CAI's Council.

The 'Membership Department' is entirely separate from the 'Professional Standards Department' which oversees regulation and discipline. There is no sharing of staff between the two departments and both have their own director and operate under a Board with clear terms of reference.

<u>Conclusion</u>

The review found that CAI is operating effectively when exercising monitoring and regulatory activities and no issues of concern were noted.