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**Report on the first year of the Complaints Gateway**

**August 2014**

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**Foreword by Dr Richard Judge**

In June 2013, we established a new gateway to provide a single point of entry for complaints about insolvency practitioners. The Complaints Gateway has got off to promising start. This report covers its first year of operation.

The Gateway received over 900 complaints in the first 12 months – almost 200 more than in 2012/13 – a good indication that it is meeting the aim of making the complaints process easier to understand and use. It covered over 98% of insolvency practitioners.

The detail that we now see routinely is informing our understanding of the nature and number of complaints about insolvency practitioners. It also helps us better monitor the way in which complaints are dealt with by the regulatory professional bodies (RPBs). This improved insight is enabling us to tackle recurrent issues: for example, we identified a pattern of complaints about the time taken to close Individual Voluntary Agreements (IVAs) which led to a change in the way some RPBs approach this issue.

We will build on this positive start and continue to evolve and improve the Gateway. Monitoring outcomes from the Gateway will in future be reported as part of our Annual Review of Insolvency Practitioner Regulation.

While the Insolvency Service administers the Gateway, we have benefitted considerably from effective collaboration with the RPBs. Our shared ambition is to maintain a fair and transparent regulatory system, and public confidence in the insolvency profession. The Gateway demonstrably supports that goal. I would like to thank colleagues across the insolvency sector, and within my agency, for their considerable efforts and hard work in making the Gateway a success.

*Dr Richard Judge*

*Inspector General and Chief Executive*

*The Insolvency Service*

**Contents**

|  |  |
| --- | --- |
| **1. Overview** | 3 |
| **2. How the Gateway works** | 4 |
| **3. Complaints received**  | 6 |
| **4. Why some complaints are rejected** | 7 |
| **5. Appeals** | 8 |
| **6. Action taken by the regulators**  | 8 |
|  |  |
| **Annex 1: Facts and Figures**  | 10 |
| Table A: Complaints received |  |
| Table B: Complaints referred by subject matter |  |
| Table C: Ethics |  |
| Table D: Complaints referred by insolvency procedure |  |
| Table E: Complaints referred by complainant type |  |
| Table F: Complaints referred to the regulators |  |
| Table G: Reasons for rejecting complaints |  |
| Table H: Initial assessment of complaints by the regulators |  |
| Table I: Why complaints were closed in assessment |  |
| Table J: Complaints transferred to investigation |  |
| Table K: Summary of sanctions issued by the regulators |  |

**1. Overview**

This report summarises findings from the first 12 months operation of the Complaints Gateway. More detailed information is set out in the tables at Annex A.

Background

Launched in June 2013, following collaborative discussions between the Insolvency Service and the bodies that authorise insolvency practitioners, the Gateway provides a single entry point for complaints against insolvency practitioners acting in their capacity as office holders in insolvency cases.

All insolvency appointments are personal to the individual; this means that a complaint would be directed against the insolvency practitioner acting as an office holder such as an administrator, liquidator, nominee or supervisor of a voluntary arrangement or trustee in bankruptcy.

If a complaint relates to the associated firm or company, or to a member of staff who has been dealing with the case then the complaint would usually be considered in relation to the officeholder, even though the complainant may not have had any contact with this individual.

Coverage

Most of the insolvency regulators participate in the Complaints Gateway, those bodies are:

* The Insolvency Service
* Institute of Chartered Accountants in England and Wales
* Insolvency Practitioners Association
* Association of Chartered Certified Accountants
* Institute of Chartered Accountants of Scotland
* Chartered Accountants Regulatory Board

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As a result, 92% of all insolvency practitioners and 98% of those who take insolvency appointments are covered by the Gateway[[1]](#footnote-1). The Solicitors Regulation Authority (Law Society of England and Wales) and Law Society of Scotland have yet to agree to participate in the Gateway and we are continuing dialogue with these bodies to try and ensure full coverage.

Official Receiver

The Gateway does not consider complaints about the Official Receiver. While the Official Receiver carries out a statutory function when acting as an office holder in insolvency cases, he or she is a civil servant and complaints are dealt with through the Insolvency Service’s internal complaints procedure.

Monitoring

As well as providing straightforward access for those wishing to make a complaint about the conduct of an insolvency practitioner, the Gateway allows the Insolvency Service to monitor the number and nature of complaints and associated regulatory outcomes, including the timeliness of disciplinary hearings and appeal processes.

Information from the Gateway has, for example, allowed us to identify the number and nature of complaints relating to the Insolvency Code of Ethics and we have reported findings to the Joint Insolvency Committee (which sets standards across the profession), to assist with its review into this area.

We have also observed that a high proportion of complaints are about Individual Voluntary Arrangements (IVAs), in particular in relation to delays in the closure of the arrangement due to the supervisor of the IVA claiming Payment Protection Insurance (PPI) refunds on behalf of the debtor for the benefit of creditors. As a result we are in ongoing discussions with the regulators over their handling of these complaints and we are pleased that both the ICAEW and the IPA, who handle the vast majority of these complaints, have agreed to take forward all cases for investigation where the delay in closing the IVA exceeds six months from the debtor’s final payment.

Regulatory outcomes

We are aware that a significant number of complaints remain under investigation and it is therefore too early to make an informed judgement on outcomes to date. We will however, be monitoring the duration of complaints and outcomes closely going forward.

**2. How the Gateway works**

The Gateway can provide information about how to make a complaint. When a formal complaint is received an initial assessment is carried out and further information may be sought if required.

**Complaints relating to an activity or behaviour which may result in an insolvency practitioner being liable to disciplinary action are passed to the relevant regulator**

More information on the Gateway and how to make a complaint is available at:

[www.gov.uk/complain-about-insolvency-practitioner](http://www.gov.uk/complain-about-insolvency-practitioner)

The following diagrams summarise how the Gateway operates and who to contact.

**Person seeks information on complaint process**

**Help**

**Online:**

[www.gov.uk/government/publications/insolvency-practitioners-guidance-for-those-who-want-to-complain](http://www.gov.uk/government/publications/insolvency-practitioners-guidance-for-those-who-want-to-complain)

**Insolvency Enquiry Line:**

insolvency.enquiryline@insolvency.gsi.gov.uk  telephone 0300 678 0015

 ([Find out about call charges](https://www.gov.uk/call-charges))

**Complaint rejected**

**Complaint sent to regulator**

**More information sought**

**Gateway considers complaint**

**Person makes a complaint about IP**

 

[www.gov.uk/complain-about-insolvency-practitioner](http://www.gov.uk/complain-about-insolvency-practitioner) 1 City Walk

Leeds, LS11 9DA

**3. Complaints received**

The Gateway received 941 complaints in its first 12 months. By comparison, 748 and 578 complaints were made to the regulators in 2013 and 2012 respectively. It may be that this increase in complaints reflects the improvement in accessibility and increased confidence in the simplification of the complaints process. Of the 941 complaints received: 699 were referred (74%), 170 were rejected (18%) and 72 complaints were being processed (8%).

***Figure 1: Breakdown of complaints (6 June 2013 to 5 June 2014)[[2]](#footnote-2)***

After a relatively slow start the number of complaints received picked up quickly and the number of complaints received in the year was broadly in line with forecasts.

*Figure 2: Variation of complaints over each month from 6 June 2013 to 5 June 2014[[3]](#footnote-3)*

Further information, including the number and type of complaints and details of complaints referred to the regulators is set out in **Tables A to F at Annex 1**.

Complainants

At the time of compiling this report, 699 complaints had been referred by the Gateway to the regulators. Most of those were made by debtors and creditors in insolvency cases, which together made up 75% of the total complaints referred.

*Figure 3: Complaints referred to the regulators[[4]](#footnote-4)*

**4. Why some complaints are rejected**

For a complaint to fall within scope there must be, for example, an indication of a breach of the insolvency legislation, Statements of Insolvency Practice, regulations and guidance issued by the regulators, or the Code of Ethics. The allegations should be capable of being supported with evidence.

**Reasons for rejecting complaints:**

**No response received from complainant:** If there is insufficient information from the complainant to enable the Gateway to make a referral decision, the complaint will be placed on hold whilst further information is requested. If no further information is provided within 3 months, the complaint is rejected.

**Not a complaint about an insolvency practitioner:** Typically these are complaints about the Official Receiver or other professionals, such as accountants or lawyers, who are not acting as insolvency practitioners.

**Already been through the complaints process:** This refers to those who had already complained to a regulator prior to the introduction of the Gateway. The regulator will continue to investigate those complaints and they cannot be considered by the Gateway. If the regulator’s investigations have been concluded, the Gateway is not an alternative route of complaint.

**Complaint about a standard insolvency procedure:** These complaints relate to actions being taken by insolvency practitioners which are in line with their statutory duties, for example the sale of a bankrupt’s property by his or her trustee.

**Complaint about charge out rates:** The Gateway is currently unable to refer complaints about the charge out rates of insolvency practitioners and their firms.

Information on why some complaints are rejected is set out in **Table G – Annex 1**.

**5. Appeals**

Where a complaint does not fall within the scope of the Gateway, or the complainant has failed to respond to a request for additional information, then the complaint is rejected. The complainant will be notified of this decision by the Gateway. Information on why some complaints are rejected is set out in **Table G – Annex 1**.

**5. Appeals**

Complainants have a right of appeal against any decision by the Gateway to reject their complaint. An initial appeal should be made to Insolvency Practitioner Regulation Section (email: IPRegulation.Section@insolvency.gsi.gov.uk). If this does not produce a satisfactory outcome, then the appeal will be dealt with according to the Insolvency Service’s complaints procedure.

**Out of 170 complaints rejected by the Gateway, only 2 appeals were made –**

**in both cases, the original decisions of the Gateway were upheld**

**6. Action taken by the regulators[[5]](#footnote-5)**

Monitoring

The regulators are required to provide information on the progress of their complaints to the Insolvency Service and we use this to ensure that the Gateway is operating effectively and to monitor the performance of the regulators as part of our oversight regulatory function.

Stages of the process

The regulators typically have two main stages in their own complaints processes; these are **‘assessment’** and **‘investigation’**.

Assessment

Whilst these processes differ slightly between regulators, the assessment process generally identifies whether there is a case to answer and whether this has been properly evidenced before the matter proceeds to investigation.

**190 complaints were closed by the regulators in assessment**

In addition to providing the outcomes of their investigations, the regulators also provide a summary of cases closed in their various assessment processes and the reasons for those closures. Details are set out in **Tables H and I – Annex 1.**

Conciliation

The ICAEW adopt a formal conciliation process where there is a case to answer and the complaint could be resolved via conciliation. The conciliator will try to help reach an agreement 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.

A number of the cases conciliated relate to IVAs and delays in debtors receiving their completion documents. The result of the conciliation process is that the IVA is closed. Whilst this is a positive outcome for the debtor it does not always produce the best regulatory outcome and ensure that any underlying misconduct is addressed. We are pleased that following discussions with the ICAEW, where a complaint is resolved through conciliation, any regulatory breaches will still be considered. Some of the other regulators also operate similar conciliatory procedures and this, together with the investigation process differs across each body.

Investigations

If it is decided there is a case to answer, or a potential liability to disciplinary action has been identified by the regulators, the complaint is passed on for further investigation and this includes cases which have been subject to a formal conciliation process. Further information is set out in **Table J – Annex 1**.

**272 complaints transferred to investigation**

**66 investigations concluded**

**206 investigations ongoing**

Disciplinary Outcomes

If a case of misconduct is found by the regulators, they should have regard to the common sanctions guidance when determining the appropriate sanction. Details are set out in **Table K – Annex 1**.

**3 disciplinary sanctions imposed in respect of complaints concluded –**

**all resulted in a formal warning**

Guidance on the sanctions that may be imposed is available at:

[**www.insolvency.gov.uk/insolvency/contact-us/IP-Complaints-Gateway/Common-Sanctions**](http://www.insolvency.gov.uk/insolvency/contact-us/IP-Complaints-Gateway/Common-Sanctions)

3.5 Secretary of State complaints

The complaints system adopted by the Secretary of State for the insolvency practitioners he authorises is different to the other regulators. The Secretary of State does not have the same range of sanctions available when considering complaints, the only sanction available being the withdrawal of the insolvency practitioner’s licence, which is necessarily restricted to the most serious cases of misconduct or criminal activity.

All complaints received are opened for investigation with the outcome of the complaint either being upheld or not upheld. If a complaint is upheld, the matters of concern will be used as part of the ongoing authorisation process of the insolvency practitioner concerned.

**31 complaints referred to the Secretary of State:**

 **- 4 were upheld or partially upheld**

 **- 7 were not upheld**

 **- 20 were subject to ongoing investigation**

**Annex 1: Facts and Figures**

**Table A: Number of complaints received (6 June 2013 to 5 June 2014)**

|  |  |  |  |
| --- | --- | --- | --- |
| **Month** | **Received** | **Referred** | **Rejected** |
| June 2013 | 20 | 14 | 6 |
| July | 91 | 65 | 26 |
| August | 39 | 36 | 3 |
| September | 88 | 74 | 14 |
| October | 86 | 60 | 26 |
| November | 117 | 85 | 32 |
| December | 53 | 41 | 12 |
| January 2014 | 62 | 53 | 9 |
| February | 155 | 127 | 20 |
| March | 74 | 60 | 7 |
| April | 59 | 35 | 8 |
| May-June\*\* | 97 | 49 | 7 |
| **Total** |  **941\*** | **699** | **170** |

\* 57 complaints are currently on hold pending further enquiry and 15 complaints received have not yet been considered by the Gateway at the time of compiling this report.

\*\* Includes complaints received up to 5 June 2014

**Table B: Complaints referred by subject matter**

|  |  |  |
| --- | --- | --- |
| **Complaint heading\*** | **No. of complaints** | **% of complaints** |
| Communication breakdown / failure | 167 | 23 |
| SIP 3 (Voluntary Arrangements) | 133 | 19 |
| SIP 2 (Investigations by office holders in administrations and insolvent liquidations) | 128 | 19 |
| Breach of ethical guidance | 96 | 13 |
| Sale / dealing with assets  | 74 | 10 |
| Remuneration | 24 | 3 |
| Misconduct / irregularity at creditors meetings | 17 | 2 |
| SIP 16 / pre-pack administrations | 7 | 1 |
| Delay in dividend payment | 5 | 1 |
| SIP 9 (Payments to insolvency office holders and their associates) | 3 | 0.4 |
| SIP 8 (Summoning and holding meetings of creditors pursuant to Section 98 of the Insolvency Act 1986) | 3 | 0.4 |
| Other | 58 | 8 |
| **Total** | **715** | **100** |

\*In some cases one complaint may include more than one category and so the total is greater than the total referred in Table 2.1

**Table C: Ethics**

|  |  |
| --- | --- |
| **Ethical code** | **No. of complaints**  |
| Conflict of interest | 40 |
| Professional competence and due care | 35 |
| Professional behaviour | 6 |
| Integrity | 4 |
| Confidentiality  | 4 |
| Misleading marketing / advertising | 1 |
| Commission payments | 1 |
| Other | 5 |
| **Total** | **96** |

**Table D: Number of complaints referred by insolvency procedure**

|  |  |  |
| --- | --- | --- |
| **Insolvency Procedure** | **No. of complaints** | **% of Complaints** |
| IVA | 220 | 32 |
| Administration | 174 | 25 |
| Liquidation | 148 | 21 |
| Bankruptcy | 105 | 15 |
| CVATrust Deed | 1918 | 32 |
| Sequestration | 6 | 1 |
| Other | 9 | 1 |
| **Total** | **699** | **100** |

**Table E: Number of complaints referred by complainant type**

|  |  |  |
| --- | --- | --- |
| **Complainant type** | **No. of complaints** | **% of Complaints** |
| Debtor | 294 | 42 |
| Creditor | 231 | 33 |
| Company Director | 57 | 8 |
| Employee | 17 | 2 |
| Shareholder | 6 | 1 |
| Other | 94 | 13 |
| **Total** | **699** | **100** |

**Table F: Number of complaints referred to the regulators**

|  |  |  |
| --- | --- | --- |
| **RPB (no of IPs as at 1/1/14)\*** | **No. of complaints referred** | **% of complaints referred** |
| IPA (460) | 288 | 41 |
| ICAEW (550) | 285 | 41 |
| ACCA (142) | 66 | 10 |
| Secretary of State (50) | 31 | 4 |
| ICAS (87) | 29 | 4 |
| **Total** | **699** | **100** |

\*IPs taking insolvency appointments

Note: The Chartered Accountants Regulatory Board (CARB) participates in the Gateway and to date there have not been any complaints about the insolvency practitioners authorised by CARB.

**Table G: Reasons for rejecting complaints**

|  |  |
| --- | --- |
| **Complaint Heading** | **No. of complaints rejected** |
| No response received from complainant to follow up request for further information | 90 |
| Not a complaint about an insolvency practitioner | 47 |
| Complaint about the effect of an insolvency procedure | 8 |
| Complaint about charge out rates | 7 |
| Already been through complaints process | 5 |
| Other | 13 |
| **Total** | **170** |

**Table H: Initial assessment of complaints by the regulators**

|  |  |  |  |
| --- | --- | --- | --- |
| **RPB**  | **No. of complaints referred** | **No. of complaints closed in assessment** | **No. of complaints ongoing in assessment** |
| ICAEW | 270\*  | 71 | 132 |
| IPA | 255 | 97 | 19 |
| ACCA | 66 | 4 | 2 |
| ICAS | 29 | 18 | 6 |
| **Total** | **620** | **190** | **159** |

\* This figure includes 69 complaints relating to the same individual case

**Table I: Why complaints were closed in assessment**

|  |  |
| --- | --- |
| **Closure Reason** | **No. of complaints** |
| Non-cooperation of complainant | 86 |
| No potential liability to disciplinary action / no evidence of misconduct | 62 |
| Lack of understanding of insolvency processes | 17 |
| Commercial matter / fee dispute | 17 |
| Complaint withdrawn | 5 |
| Matter for the Court | 5 |
| Small error with no evidence of repetition | 3 |
| Successfully conciliated | 3 |
| Other | 8 |
| **Total** | **206** |

**Table J: Complaints transferred to investigation and their current status**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **RPB** | **Complaints referred** | **Complaints transferred** **to investigation****(% of those referred)** | **No. of investigations concluded** | **No. of complaints ongoing in investigation** |
| ICAEW  |  270\* | 67 (25%) | 28 | 39 |
| IPA | 255 | 139 (55%) | 25 | 114 |
| ACCA | 66 | 61 (92%) | 11 | 50 |
| ICAS | 29 | 5 (23%) | 2 | 3 |
| **Total** | **620** | **272** | **66** | **206** |

\* This figure includes 69 complaints relating to the same individual case

**Table K: Summary of sanctions issued by the regulators**

|  |  |  |
| --- | --- | --- |
| **RPB** | **No of reprimands / fines** | **No of warnings** |
| ICAEW | 0 | 0 |
| IPA | 0 | 2 |
| ACCA | 0 | 0 |
| ICAS | 0 | 1 |
| **Total** | **0** | **3** |

1. As at 1 January 2014 [↑](#footnote-ref-1)
2. &3 See Table A at Annex 1 for full details [↑](#footnote-ref-2)
3. [↑](#footnote-ref-3)
4. See Table E for more details [↑](#footnote-ref-4)
5. The statistical returns submitted by the regulators reflect the number of cases referred to them up until 30 May 2014. [↑](#footnote-ref-5)