



The Insolvency  
Service

# The Insolvency Practitioners Association Monitoring Report

August 2019

**A BEIS SERVICE**

## Executive Summary

The Insolvency Service has overall responsibility on behalf of the Secretary of State for ensuring that the activities of the regulatory bodies that authorise and licence insolvency practitioners are in line with regulatory objectives set out in part 13 Insolvency Act 1986. These objectives include a system of regulating insolvency practitioners which promote fair and consistent outcomes, maximises returns to creditors and protects and promotes the public interest. As part of our oversight activities, the Insolvency Service undertakes monitoring visits to the Recognised Professional Bodies (RPBs) using a risk based approach to assess their extent and frequency.

This report presents the findings of a monitoring visit, which took place in April 2019 to examine progress in relation to recommendations made by the Insolvency Service to the Insolvency Practitioners Association (IPA) during 2018. The annexes include information provided by the IPA prior to the visits, findings in relation to specific cases and recommendations.

## 1. The IPA - Overview of Regulation

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1.1 The IPA is an RPB which authorises and regulates insolvency practitioners as defined under [s391 Insolvency Act 1986](#). At 1 January 2019, the IPA licensed 551 practitioners of which 455 were authorised to take insolvency appointments. The IPA also carries out all regulatory functions on behalf of the Association of Chartered Certified Accountants (ACCA) as part of collaboration between the two bodies.

1.2 At 1 January 2019, the ACCA licensed 83 practitioners of which 78 were authorised to take insolvency appointments.

1.3 Between 16<sup>th</sup> and 18<sup>th</sup> April 2019, the Insolvency Service carried out an onsite monitoring visit to the IPA as a follow up to an in depth review in July 2018. The Insolvency Service had agreed a number of recommendations with the IPA and this latest visit was aimed at assessing progress against those recommendations.

1.4 Prior to the visit, staff from the Insolvency Service obtained information from the IPA as set out in Annex 1.

### **Overall findings**

1.5 Since our visit in July 2018, the IPA has worked to design and implement a new system for the enhanced monitoring of volume individual voluntary arrangement (IVA) providers, undertaken reviews of both the governance procedures and the complaints process and started work to change the structure of its independent committees. We recognise that the IPA is progressing significant change and that some projects are still ongoing, and because of that are not yet able to be fully evidenced.

1.6 Overall, the Insolvency Service has identified that there has been positive work towards implementation of the earlier recommendations. Some concerns remain, particularly around the findings of the independent committees although at the point of the visit a new committee structure was about to be implemented. The inspectors will be returning to the IPA to observe initial meetings of those committees.



## Progress against recommendations

Below is a summary of the recommendations which were agreed at the last visit in July 2018 and the IPA's progress against them.

Initial Recommendation	IPA Response	Current position
<p><b><u>Committees</u></b></p> <p>1. All committee minutes should:</p> <p>a) Address each area of concern placed before it and clearly explain the reason and conclusion reached on each of the specific issues/heads of complaint, both for a case finding and a no case finding.</p> <p>b) Clearly document the rationale behind the overall grading or case finding.</p> <p>c) Record a clear plan for the next course of action, e.g. referral to committee, licence action, follow up visit, further information required.</p>	<p>These concerns are understood to relate to the Membership and Authorisation Committee, which has in the past focused on the matters that may give rise to concerns about IP fitness, rather than discussing and commenting in detail on every point identified by the inspection team. The Committee has recently adopted a process of working through each point and we will explore whether discussions against each matter raised by the inspectors could be recorded in the same tabular format presented by the inspectors, with a conclusion paragraph and next steps. This recommendation will be covered generally as part of the intended governance review mentioned elsewhere and can be initiated immediately. <b>Timeline: Immediate</b></p>	<p>The minutes of the committees now generally contain more detailed information about the rationale behind each decision, as well as next steps if the case has not reached a conclusion.</p> <p>The Membership and Authorisations Committee's (M &amp; A) minutes are still, at times, unclear about action points and who should take ownership. A further review of the minutes to consider if a lay person could understand is recommended to ensure outcomes from the new committee structure are clear.</p>

<p>2. M&amp;A should aim to set a clear strategy for ongoing action when considering an unsatisfactory report and not simply order a follow up visit and/or refer any specific matters to the Investigation Committee (IC). A strategy document should be developed so that in appropriate cases an overall picture and record of action points can be viewed by all committees and/or IPA staff from both the monitoring and complaints teams.</p>	<p>At the time of the Insolvency Service visit, steps had already been taken to attempt to speed up the handover by M&amp;A to the Investigation Committee by permitting the Secretariat to commence a complaint investigation process where concerns are identified in an inspection report, prior to M&amp;A consideration. <b>Timeline: Already Applied</b>  In addition, the M&amp;A rules have recently been critically reviewed by legal counsel, who has suggested significant changes, including the possibility of issuing penalties. <b>Timeline: Q1 2019</b></p> <p>Timeliness and efficiency will be covered generally as part of the intended governance review mentioned elsewhere. Our expectations about timeliness of decision-making are expected to feature.</p>	<p>The time lag for the M&amp;A to report a case for investigation has reduced however continued review of this process and how it could be made more efficient now that the new committee structure has been put in place.</p>
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<p>3. The IPA should review the performance of the IC to ensure its decisions and outcomes are fair and consistent for all parties. This should include:</p> <p>a) Timely completion and progression of complaints. Where it becomes apparent that the insolvency practitioner is involved in litigation, the IPA should seek advice on matters that may cause delays to progression and as to whether the complaint can continue despite the ongoing proceedings.</p> <p>b) Any delays in the process should not provide an opportunity for further mitigation or changes to consent orders that have already been accepted by insolvency practitioners, and fines should not be waived.</p> <p>c) Any deviations from the Common Sanctions Guidance (CSG) should be clearly explained and documented and referenced to either mitigating or aggravating factors.</p> <p>d) When considering a financial penalty in line with the CSG, it should be clear that the recommended amounts do not act as an upper limit and the IC is able to both increase and decrease the fine from this level based on the facts of the case,</p>	<p>All recommendations here are accepted and will be reported to the Investigation Committee</p> <p>a) This recommendation is accepted but it may not always be financially practical to seek legal advice in each case where there is an overlap between a complaint and litigation. In these cases, the IC will retain its discretion but be clearer on the reasons to defer a complaint. We will ensure that such decisions are clearly documented. <b>Timeline: Immediate</b></p> <p>b) This recommendation is also accepted and will be implemented. We would add that the particular complaint that appears to have given rise to this recommendation does represent a highly unusual set of circumstances that are unlikely to be repeated. <b>Timeline: Immediate</b></p> <p>c) Subject to any additional clarification, this is understood to refer mainly to the use of warnings given the reported findings but the general concern is accepted and this recommendation will be implemented. <b>Timeline: Immediate</b></p> <p>d) This recommendation is accepted and will be implemented by the IC. <b>Timeline: Immediate.</b></p> <p>e) We would welcome a discussion in relation to this recommendation before deciding how it could be implemented. In the context of disciplinary consideration against an individual IP, it is likely that we would need to distinguish</p>	<p>The IC was observed using the CSG; however, concern remains that on occasions the guidance is not being used in the way it was intended through taking a starting point and then considering mitigating or aggravating factors. There were examples of cases considered by the committee in which it was determined that the conduct was reckless. Having then established the potential sanction [severe reprimand and starting point of £5,000 fine] the committee then applied the sanction for inadvertent misconduct because they felt that the monetary sanction was more appropriate to the circumstances. If the determination is that the conduct is reckless then the committee should impose the appropriate sanction for that level of seriousness and use the mitigating factors to reduce any monetary fine, as long as it is appropriately documented. The rationale should be clearly understood and documented.</p>
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<p>e) Consideration of any benefits gained by the insolvency practitioner, firm or any connected party, where it has been determined that there has been an ethical breach.</p>	<p>between direct personal benefit and the relative benefit or materiality to their firm. <b>Timeline: TBC.</b></p>	
<p>4. The IPA should publish all warnings given to insolvency practitioners to increase transparency and confidence over disciplinary outcomes.</p>	<p>We have previously confirmed that the matters that have given rise to a warning can be published on an anonymous basis, but we will consider again whether the M&amp;A and IC rules should be changed to enable publication of warnings against the name of an IP. This is likely to feature in the proposed governance review. We will immediately publicise that warnings will be published on an anonymous basis. <b>Timeline: Immediate anonymous publication with further consideration as to named publication as part of M&amp;A rules amendment, unlikely to be implemented before Q1 2019.</b></p>	<p>The IPA is now publishing warnings anonymously on their own website and is considering the introduction of named publications.</p>
<p><b><u>Complaints</u></b></p> <p>5. The IPA should implement a system to track the progression of all complaints and to ensure any delays are promptly identified and rectified.</p>	<p>The finding here is deeply regretful to the IPA and the recommendation is accepted and will be actioned immediately. We will immediately implement a system for tracking complaints and a review of progress will be factored into the Investigation Committee meeting agendas as a matter of course. <b>Timeline: Immediate</b></p>	<p>The IPA now has a management system to track complaints and colour codes them to better highlight how old a complaint is. Distribution of cases across regulation officers now appears to be more evenly spread and the speed with which most cases are progressing has improved.</p>



<p>6. The IPA should automatically investigate all complaints concerning delays in issuing IVA completion certificates if the delay exceeds six months after the date of the final payment into the IVA. This is as per the agreement with the Insolvency Service following the recommendation in the previous report on the IPA in 2016 and the other RPBs.</p>	<p>We do appreciate in the case highlighted that there may not have been a sufficient explanation for the delay but the Regulation Officer considered the matter to be marginal. The complaint assessment team leader has been reminded of the strict application of this arrangement, for passing on to his team and we will actively monitor the implementation of this requirement. <b>Timeline: Immediate subject to a discussion with the Insolvency Service.</b></p>	<p>The cases reviewed which related to delays in closure of an IVA had been progressed to investigation when the closure exceeded the six month time limit set by the Insolvency Service.</p>
<p>7. The IPA should undertake an internal review of the newly implemented assessment system to ensure it is working effectively and provide evidence to the Insolvency Service that the changes made are a positive step towards meeting the regulatory objectives.</p>	<p>We accept this recommendation and will undertake a review in January 2019, by which time the new system will have been operating under normal circumstances for at least the final quarter of 2018. <b>Timeline: January 2019.</b></p>	<p>The IPA has undertaken an internal review of processes Complaints are now no longer split between an assessment and investigation team, as they were before. Two senior regulation officers have line management responsibility for two teams and appear to be more aligned. Cases are now being spread more evenly across the teams in order to balance workloads and provide the opportunity for regulation officers to consider different cases of varying levels of complexity.</p>
<p>8. The IPA should expedite the cases highlighted in the case findings and all other complaints over six months old to ensure that timely and sufficiently detailed updates are being provided to complainants and insolvency practitioners. All aged complaints should be reviewed to ensure that they are progressed in a timely manner and document where this is not possible.</p>	<p>This recommendation is accepted and will be implemented immediately alongside additional steps to be taken to better track complaint progression generally. <b>Timeline: Immediate</b></p>	<p>Aged complaint numbers have fallen over the last six months and most cases appear to be being progressed, however there remain isolated instances of delays. In some cases there does not appear to be clear reasons as to why the delays are continuing. We have flagged these to the IPA and discussed our thinking on these specific complaints.</p>

<b>Monitoring</b>		
<p>9. The IPA should ensure that its case samples are representative of an insolvency practitioner's portfolio of cases. We do not prescribe a minimum sample size, but it must be:</p> <p>a) Drawn independently and at random from the insolvency practitioner's database.</p> <p>b) Contain a mix of cases appropriate to the insolvency practitioner's portfolio.</p> <p>c) Followed up with more in-depth sampling if quality in the initial sample is found to be unsatisfactory.</p>	<p>The recommendation is accepted and will be acted upon. Recommendations for sample size will be added to the review of governance and regulation and where practical, we will look to implement changes that may help to identify trends in activity. It is noted that the Insolvency Service considers the reports produced contained sufficient information and evidence and there is no suggestion that any significant matters have been missed. <b>Timeline: Q4 2018</b></p>	<p>Case samples continue to be a concern. There were a number of occasions where a sufficient sample of different types of insolvency procedures was not selected where a practitioner had a high volume of a particular case type. We note, however, that the IPA wishes to continue identifying what it considers to be 'high-risk' cases and this will influence, to some extent, the Inspector's selection.</p>
<p>10. The IPA should ensure that there are sufficient resources to undertake all visits required and follow the agreed guidance to visit all volume IVA providers in a rolling 12 month cycle or notify the Insolvency Service where this is not possible.</p>	<p>This is accepted and will be acted upon immediately. <b>Timeline: Immediate</b></p>	<p>The IPA has put in place additional resource for onsite monitoring, however this may be offset by the fact that a new regime in relation to risk profiling may result in slightly more visits per year. The IPA has developed a new shorter report. The IPA intends to continue working on refining the structure of their reports so they are easily accessible to all, and key messages are communicated at the start of the report e.g. overall outcome of visit.</p>
<p>11. The IPA should consider what monitoring visit cycle is appropriate for their insolvency practitioners and work with the Insolvency Service to ensure any published cycle is achievable and sustainable.</p>	<p>We will work with the Insolvency Service in this respect and plan to bring our published reporting cycle in line with other RPBs. <b>Timeline TBC</b></p>	<p>The IPA has given consideration to the monitoring cycle and resourcing to carry out what would appear, from an initial assessment, a higher volume of cases per year. A new system of bespoke visits for volume IVA</p>

		providers has a dedicated inspection team to encourage consistency of approach and it is anticipated that, generally, all inspectors should carry out a variety of different types of visits each year.
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# Detailed Findings

## 2. Committees - Regulatory and Disciplinary Outcomes Findings

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2.1 At the date of the visit the IPA had three committees that could take regulatory or disciplinary action against insolvency practitioners: the Investigation Committee (IC), Membership and Authorisation (M&A), and Disciplinary Committee. The Insolvency Service observed the IC on 16<sup>th</sup> April 2019 and also received feedback on a number of enquiries relating to the M&A committee's handling of various cases observed in July 2018.

2.2 The agenda for the IC meeting covered a large number of cases and we noted that Counsel was present to provide appropriate advice when requested by the committee.

2.3 The committee, at times, seemed to lack direction and efficiency. One particular case was discussed at great length which related to a number of similar cases against the same practitioner. These were intended to be linked by the regulation officer, requiring a single sanction to be issued. The committee could have developed this conversation more efficiently with reference to cases which had set a precedent for dealing with such sanctions some years ago. Deliberations meant that progress was often slow and some views, expressed without any apparent reference to the Common Sanctions Guidance (CSG) or precedent cases, were largely left unchallenged or questioned. Where direct reference to the CSG was actively used, the meeting benefited from improved structure and momentum.

2.4 The Insolvency Service did not observe the M&A committee as part of this visit, however a request was made for an update on a number of cases being dealt with by this committee, which were reviewed at the last visit. This return shows that some cases have concluded but others, which were referred for investigation, are outstanding. In one case of particular concern, the facts were considered to be very serious by the observed committee in July and yet no restriction was placed on the practitioner, with desk- based monitoring advised. There is no evidence that this monitoring has been regularly carried out or what the outcome has been.

2.5 Following a review of governance in late 2018, and taking into account the recommendations made in July 2018, the IPA is putting in place changes to the way in which its committees are structured and is moving to a two tier system. These proposals were ratified on 25<sup>th</sup> April 2019 at the Annual General Meeting and will now be rolled out in June

2.6 The new Tier 1 committee will address matters that are currently being dealt with by the IC and M&A, including complaints, licence requests and monitoring reports. Tier 2 will handle disciplinary/appeal matters. The merger of the IC and the M&A is expected to result in faster processes and an improved joined-up approach.

2.7 Tier 1 membership has a mix of both lay and practising members and will be quorate if there are three practising members present with two lay members. The terms of reference are currently broad and do not detail the parameters of the committee's responsibilities and sanctioning powers.

2.8 Membership will be for a maximum tenure of five years with a fallow year to follow if the member wishes to continue. All members will have training on their role and responsibilities and how these feed into the regulatory objectives. There is planned additional training on the CSG and how to apply it.

2.9 Tier 1 will be able to make regulatory orders; the extent of these is unclear from the documents viewed.

2.10 To speed up the process, consent orders will be signed by the chair before they are offered to the insolvency practitioner, and therefore if it is agreed the order will no longer need to return to the committee.

2.11 It is a welcome development that both regulation officers and monitoring inspectors will be eligible to attend and assist these new committees. Inspectors did not attend M&A committee meetings previously and, on occasions, this slowed down the process of the committee fully understanding the breaches highlighted in the report. This should now speed up the process to make a determination on a final grading and making referrals to IC to take appropriate action.

2.12 Tier 2 will handle referrals of disciplinary matters from the Tier 1 committee and if an agreement cannot be reached with the practitioner by consent, it will deal with any appeals. The committee will be quorate if three members are present including at least one lay member. There will not be regular scheduled meetings, but the committee will be called as and when cases need to be heard.

### **Other Committees**

2.13 There are three other committees, the Standards Ethics and Regulatory Liaison Committee, Member Services and External Affairs Committee and Finance and Risk Committee all of which have had new membership as part of the programme of change.

### **Recommendations**

2.15 We have prepared recommendations that the IPA may find useful to consider when developing and refining their new committee structure.

1. The minutes of the new committees should have clear action points with a responsible person so that work to be carried out between committees is clearly defined with appropriate ownership and timescales for completion.
2. To avoid a conflict of interest, members of the committee should not attend and sit at any meetings when a case is being heard about either themselves or someone within their firm. To ensure appropriate separation, where an allegation of potential misconduct by a committee member is considered to be very serious, the possibility of convening a sub-committee which is separate to the original committee composition could be considered.
3. We welcome the IPA's intention to provide training for committee members on how to use the CSG, including specifically the starting point for monetary sanctions and decision making on severity of the misconduct.
4. The IPA should ensure that the terms of reference for the new committees detail the parameters of their responsibilities and sanctioning powers, and this is reflected in any appropriate by-law change and shared with the Insolvency Service.

5. Any IPA staff should refrain from actively providing direction during committee meetings as this inevitably influences discussions and prevents the ongoing identification of areas for further development.

### **3. Complaints Handling Findings.**

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#### **Complaints sampled and reviewed onsite (40 IVA complaints)**

3.1 In 2018, the IPA received 251 complaints from the Insolvency Practitioner Complaints Gateway, of these, a significant proportion were related to IVAs. The sample of cases was chosen because of the significant volume of IVA complaints and because in July 2018 we identified that a number of IVA cases had been closed at assessment and we did not agree with that decision.

3.2 The files were a random selection from a list provided with the pre-visit information and were a mixture of those closed either at assessment, investigation or by committee. The cases were selected as none of the files resulted in a prima facie case.

3.3 Appropriate conclusions were reached in all the cases we examined. We saw no files that were closed when they should not have been. We saw evidence that the cases had the appropriate level of scrutiny by the regulation officers and reasons for closure were clearly documented on the file.

3.4 On the visit we were encouraged to see progression of older cases too, although we felt that more could be done to make the process when the case reaches committee more efficient. A number of areas for improvement have been identified by the IPA for example closer working between the complaints teams to exchange knowledge and provide independent consideration of a case.

3.5 In order to better track complaints, and meet the goal of reducing the current number of aged complaints which are over 12 months old to fewer than 10, the IPA is now using management data.

3.6 The complaints team now have weekly meetings to discuss casework. The meetings are used to evenly distribute new cases whilst also considering broad

areas of specialism across the team. The focus will be on consistency of outcomes. At the time of our visit, it was still too early to effectively evidence. A buddying system has been implemented to ensure that regulation officers are able to gain expertise and information from more experienced members of the team. Initial feedback from IPA staff has been positive.

3.7 Any decision to close a complaint at assessment will now be considered by a senior regulation officer. This provides for a second pair of eyes to confirm the decision and aims to improve consistency.

3.8 The investigation reports, which are produced for the benefit of the IC, do not currently have a recommendation from the regulation officer as to whether the committee should find a prima facie case. The intention is to shorten the reports to make the key matters more apparent and for it to be easier for the committee to follow the pattern of events leading to the potential misconduct. The reports will also contain a recommendation on whether to find a prima facie case or not.

3.9 Those drafting reports should be mindful not to include a recommendation for a level of sanction, although an appropriate extract from the CSG could be used to direct the committee but not influence its decision. We would expect the new Tier 1 committee to consider the case in full and make a determination based on the evidence reviewed and their more in depth discussions.

3.10 A new case progression process map has been developed to help speed matters up and reduce progression issues identified at the previous visit.

## **4. Monitoring of Insolvency Practitioners Findings**

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### **Monitoring files (including reports and committee outcomes): 20**

4.1 Having reviewed a random sample of files onsite and received an update on a number of cases considered at the last visit, we remain concerned about the case sample size selected for monitoring and the way in which it is chosen by inspectors in advance of a visit. The new risk profile may benefit from additional indicators and the IPA should consider whether it may benefit from further development. The IPA



should also consider the impact on resource of the new enhanced monitoring of volume IVA providers.

4.2 The IPA does not appear to have taken account of our earlier recommendation that consideration should be made to the further development of a system/policy to appropriately sample when preparing a strategy for an onsite visit. Of the cases sampled, seven did not appear to have a representative sample of the type and number of cases that the practitioner currently held.

4.3 The nature and timing of monitoring visits carried out by the IPA is determined annually on a risk-assessment basis. The IPA is developing a new risk profile system, with a strategic risk-based analysis. This system will categorise insolvency practitioners as low, medium or high risk, and will be used principally to determine frequency of visits. The ultimate aim will be to move towards a six year cycle, with sign-posted visits to specific practitioners, as may be necessary, and always retaining the option of conducting a short-notice visit if the need necessitates this.

4.4 The risk profiling position of any insolvency practitioner will be explained in an accompanying piece of narrative which will set out the reason(s) for the categorisation.

The current risk criteria for insolvency practitioners are:

- The number and type of cases the insolvency practitioner has in their portfolio
- The outcome of the insolvency practitioner's previous visit
- Whether the insolvency practitioner has been given a warning by any IPA committee
- Whether they have had a consent order offered for a regulatory/disciplinary matter
- Number of complaints they have received in a rolling 12 month period.

4.5 Consideration should be given to whether this list should be expanded in order to provide a more rounded picture of the practitioner. Criteria relating to whether there is more than one practitioner at the firm could be included alongside information on whether the firm has a compliance team.

4.6 Based on an initial assessment this system has placed 120 insolvency practitioners (some of whom are now captured by the new volume provider enhanced regulation process see 4.8) into the high risk category and 78 into medium risk.

4.7 Insolvency practitioners placed into high risk will be visited annually, those classed as medium, on a three year cycle and those who are low risk on a maximum six year cycle. The IPA intend the profiling of practitioners to be fluid, for example if a large transfer of cases via a block transfer was to be made this would be impact on the amount of cases the practitioner has and may therefore impact on their status.

4.8 In 2018, there were 128 routine monitoring visits and six targeted visits carried out by the IPA. There were 18 routine and two targeted visits to ACCA licensed insolvency practitioners. The risk profile which has been developed could now mean that the IPA undertakes a slightly higher number of visits per year.

4.9 As set out in the [monitoring of volume IVA provider's guidance](#), all volume IVA providers should be visited at least every 12 months, due to the higher-risk work and volume of cases which they manage. In response to concerns around some of these firms' practices, the IPA has developed a new enhanced monitoring programme. Currently seven volume providers are signed up to be monitored in this way. The system is based on continuous monitoring via requests for monthly data, which is then analysed off-site. Each provider has three monitoring visits onsite per year, each examining a discrete area identified by a combination of the data received, monthly statistics, concerns at previous on site visits and complaints received.

4.10 The IPA intends to also develop non-static dashboards, which will provide real-time updates on cases at the firms who have signed up, allowing for the monitors to eventually access individual cases to carry out desktop monitoring on progress and the monitoring of telephone calls. It is expected that this will help to better identify anomalies and will enable inspectors to view the history of these cases. This system is in its infancy and the IPA has said that it will be a while before any benefit can be shown.

4.11 The IPA has developed a new shorter, more succinct, monitoring report for all its insolvency practitioners. Some of the reports reviewed by the Insolvency Service were drafted in the new style. The reports are easier to follow than the old format, having clear information about the inspector's findings from the outset and detailed background information in an annex on specific case file reviews.

4.12 From May 2019, inspectors will be able to give an informal warning to an insolvency practitioner whilst on a visit. We would be interested to see any policy documents which encapsulate this process and provide parameters of when and how it should be used. This should include whether the warning would be verbal or written and types of conduct where they might be appropriate.

## **Recommendations**

1. The IPA should continue to monitor the impact that the new enhanced monitoring for volume IVA providers has on its resources, and be reactive to any additional resource required.
2. The IPA should develop a policy for the issuing and recording of warnings by an inspector and regularly review the use of this power to make sure that the policy is being used in a fair and consistent manner. The IPA should consider what options would be available to a practitioner who wanted to challenge the warning.
3. When reviewing IVA cases, IPA inspectors may wish to actively include within their selection cases where the consumer is considered to be vulnerable, those with a particularly low income and small dividend returns to creditors. In such cases, if the consumer could potentially have been better suited to an alternative solution, this should be noted.
4. The IPA should review their new risk profile and consider if additional indicators of risk should be added. A decision should be made about how the IPA monitors will schedule visits and whether a system by which the monitors spread the practitioners from the same firm over different years may assist to reduce the risk of those practitioners only being seen every six years.

## 5. Authorisations Findings

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### Authorisation files reviewed: 10

5.1 A random selection of 10 authorisation files was sampled for review onsite. Authorisation criteria were evidenced on the file along with minutes of the relevant M&A committee. Regulator to regulator checks were undertaken on all files reviewed.

5.2 A number of questions were raised with the IPA on the files reviewed and all were answered satisfactorily, with missing paperwork explained and evidenced.

5.3 All decisions were found to be appropriate and the authorisations function of the IPA robust.

## 6. Bordereaux Findings

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6.1 In response to concerns surrounding a practitioner who had ceased to be authorised and filed incorrect bordereaux returns an additional area of monitoring was added to our follow up visit.

6.2 It was noted that the IPA does not currently check the bordereaux returns once they have been received. Further checks could identify under bonding of cases and anomalies regarding release from office. The IPA should check if all cases have concluded or been appropriately transferred to another practitioner. The bordereaux can be a source of intelligence for the monitors or could result in complaints being referred to the investigations team.

6.3 Bordereaux returns are submitted monthly by all appointment taking insolvency practitioners, and delayed returns average 2-6% a month. The IPA has a system in place for chasing late returns and a policy to refer the practitioner to the M&A Committee if they have failed to respond after 3 attempts to follow up the return.

6.4 The IPA has explained that some Insolvency practitioners hold more than one bond and in such cases there will be multiple entries in their database for a single practitioner. The current system provides an automatic alert when practitioners are due to submit returns, so follow-up action is targeted. When a practitioner moves firm, the IPA will typically follow this up for information-gathering purposes.

6.5 The IPA feeds relevant late return information to the inspectors, when appropriate, and then consideration of the practitioner's bordereaux can be made on the next onsite visit.

### **Recommendations**

1. When an insolvency practitioner ceases to hold an appointment taking licence and a final bordereaux return is submitted, the IPA should carry out relevant checks to be assured that the practitioner has concluded or transferred all cases to another practitioner.

## Annex 1

The requested sample cases and discussions on site were aimed at gaining a better understanding of the current position and the continued work at addressing past recommendations.

Documents requested and reviewed before the onsite visit were:

- a) All papers relating to the governance review that the IPA carried out since the last visit
- b) Minutes of all IC and M&A C meetings from July 2018 to March 2019
- c) A summary of progress on all the monitoring files viewed in July; their status at M&A, copies of any follow up correspondence and final outcome letter. For any still ongoing cases, a short summary explanation on why they are yet to be concluded.
- d) A copy of the review carried out by the IPA to assess the new process implemented prior to the visit in July 2018 which split the assessment and investigation of complaints.
- e) A copy of all documents relating to the new enhanced process for monitoring of volume IVA providers, including documents that are sent to the firms, a list of what should be returned and how regularly.
- f) Bordereaux returns - Statistics to include % of delayed returns in 2018 including a list of IPs who have consistently breached the requirement and any resulting action taken by the IPA, summary of what checks the IPA do on the returns and how under bonding is recognised.

A list of relevant cases was also requested in order that the regulatory team could choose a statistically randomised sample for review onsite. The files reviewed consisted of IVA complaints, monitoring files and authorisation files.

## Annex 2: Recommendations

### Committee Recommendations

1. The minutes of the new committees should have clear action points with a responsible person so that work to be carried out between committees is clearly defined with appropriate ownership and timescales for completion
2. To avoid a conflict of interest, members of the committee should not attend and sit at meetings when a case is being heard about either themselves or someone within their firm. To ensure appropriate separation, where an allegation of potential misconduct by a committee member is considered to be very serious, the possibility of convening a sub-committee which is separate to the original committee composition could be considered.
3. The IPA should ensure that the terms of reference for the new committees detail the parameters of their responsibilities and sanctioning powers, and this is reflected in any appropriate by-law change and shared with the Insolvency Service.
4. Any IPA staff should refrain from actively providing direction during committee meetings as this inevitably influences discussions and prevents the ongoing identification of areas for further development.

### Monitoring recommendations

1. The IPA should continue to monitor the impact which the new enhanced monitoring regime for volume IVA providers has on its resources, and be reactive to any additional resource required.
2. The IPA should develop a policy for the issuing and recording of warnings by an inspector and regularly review the use of this power to make sure that the policy is being used in a fair and consistent manner. The IPA should consider what options would be available to a practitioner who wanted to challenge the warning.
3. When reviewing IVA cases, IPA inspectors may wish to actively include within their selection cases where the consumer is considered to be vulnerable, with a particularly low income and small dividend returns to creditors. In such cases, if the

consumer could potentially have been better suited to an alternative solution, this should be noted.

4. The IPA should review their new risk profile for practitioners and consider if additional indicators of risk should be added. A decision should be made about how the IPA monitors will schedule visits and whether a system by which the monitors spread the practitioners from the same firm over different years may assist to reduce the risk of those practitioners only being seen every six years.

### **Bordeaux recommendations**

1. When an insolvency practitioner ceases to hold an appointment taking licence and a final bordereaux return is submitted, the IPA should carry out relevant checks to be assured that the practitioner has concluded or transferred all cases to another practitioner.



## Annex 3: The IPA response to recommendations

### Committee Recommendations

Recommendation	IPA Comment
<p>1. The minutes of the new committees should have clear action points with a responsible person so that work to be carried out between committees is clearly defined with appropriate ownership and timescales for completion</p>	<p>The recommendation to incorporate action points with ownership and timescales into committee minutes will be implemented immediately, in conjunction with the first meeting of the new Tier 1 Regulation and Conduct Committee. <b>TIMELINE - IMMEDIATE</b></p>
<p>2. To avoid a conflict of interest, members of the committee should not attend meetings when a case is being heard about either themselves or someone within their firm. To ensure appropriate separation, where an allegation of potential misconduct by a committee member is considered to be very serious, the possibility of convening a sub-committee which is separate to the original committee composition could be considered.</p>	<p>With regard to the recommendation for committee members not to attend any part of a meeting where there is an agenda item concerning them or their firm, we consider that our processes on committee conflicts and decision-making are robust and in line with best practice adopted by others such as the judiciary and would question the actual level of risk associated with this recommendation. Currently, when a committee meeting is held where there is a conflict of interest for a committee member, they are not allowed to attend that part of the meeting. It is difficult for us to agree to recuse committee members from entire meetings as this might overly restrict the specialist knowledge needed to consider areas requiring technical expertise and think that that would be unnecessarily disruptive but would be keen to work with the Insolvency Service to find a solution that addresses this concern. For instance, we consider that any perception of conflict should be overcome if our conflict management processes are better publicised and would be pleased to discuss this further with the Insolvency Service. This will be factored into the guidance accompanying the new rules governing Committee processes and will be raised at the Committee training sessions. <b>TIMELINE – JUNE 2019</b></p>

<p>3. The IPA should ensure that the terms of reference for the new committees detail the parameters of their responsibilities and sanctioning powers, and this is reflected in any appropriate by-law change and shared with the Insolvency Service.</p>	<p>We note the recommendation to update the terms of reference and rules as necessary to document committee responsibilities and sanctioning powers. We will provide copies of approved rules for all new committees and processes to the Insolvency Service as soon as they are adopted by IPA Council and published. We will also revisit the terms of reference for the committees in the light of the new rules and we will also produce guidance to accompany the rules where necessary.</p> <p><b>TIMELINE – JUNE 2019</b></p>
<p>4. Any IPA staff should refrain from actively providing direction during committee meetings as this inevitably influences discussions and prevents the ongoing identification of areas for further development.</p>	<p>With regard to the recommendation for IPA representatives to refrain from providing direction during committee meetings, Secretariat staff are advised to provide information and precedents to allow the Committees to make appropriate decisions and roles and responsibilities are clear and covered in training. Generally and given the expected increase in IPA Secretariat attendance at Tier 1 Regulation and Conduct Committee meetings through the involvement of inspectors in monitoring matters as well as regulation officers for complaint matters, this will also form a topic covered at the forthcoming committee training sessions to ensure that appropriate parameters are documented and understood.</p>

## Monitoring recommendations

Recommendation	IPA Comment
<p>1. The IPA should continue to monitor the impact which the new enhanced monitoring for volume IVA providers has on its resources, and be reactive to any additional resource required.</p>	<p>In relation to the recommendation to monitor the impact that the new volume IVA monitoring scheme has on resources, we will keep the position under review as recommended and this will be a standing agenda item at inspector/regulation team meetings. <b>TIMELINE – IMMEDIATE</b></p>
<p>2. The IPA should develop a policy for the issuing and recording of warnings by an inspector and regularly review the use of this power to make sure that the policy is being used in a fair and consistent manner. The IPA should consider what options would be available to a practitioner who wanted to challenge the warning.</p>	<p>With regard to the recommendation to develop a policy in respect of the issuing of warnings by inspectors, this will be a power documented in guidance accompanying the rules governing the Tier 1 Regulation and Conduct Committee, which will also cover the effect of such warnings and appeal rights for practitioners. <b>TIMELINE – JUNE 2019</b></p>
<p>3. When reviewing IVA cases, IPA inspectors may wish to actively include within their selection, cases where the debtor is considered to be vulnerable, with a particularly low income and small dividend returns to creditors. In such cases, if the debtor could potentially have been better suited to an alternative solution, this should be noted.</p>	<p>With regard to the recommendation concerning the active inclusion of vulnerable/low income debtors and small dividend cases in inspection samples, for those in the volume IVA monitoring scheme there are already provisions for identifying and assessing low income cases but this will be expanded where necessary across non-scheme IVA providers and to separate consideration of vulnerable debtors and small dividend cases. <b>TIMELINE - IMMEDIATE</b></p>
<p>4. The IPA should review their new risk profile and consider if additional indicators of risk should be added. A decision should be made about how the IPA monitors will schedule visits and whether a system by which the monitors spread the practitioners from the same firm over different years may assist to reduce the risk of those practitioners only being seen every six years.</p>	<p>With regard to the recommendation to review and update our risk profiling system with additional indicators, our risk profiling systems will be kept under continual review and we anticipate adding additional risk factors and differentiators that we can update the Insolvency Service as the new system matures. <b>TIMELINE – ONGOING</b></p> <p>Further work is being carried out on adapting monitoring activity to the risk profile and we appreciate the suggestion in relation to practitioners at the same firm, which will be considered in conjunction with other means of</p>

	overseeing practitioners on longer cycles. <b>TIMELINE – IMMEDIATE</b>
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### **Bordereaux recommendations**

<b>Recommendation</b>	<b>IPA Comment</b>
1. When an insolvency practitioner ceases to hold an appointment taking licence and a final bordereaux return is submitted, the IPA should carry out relevant checks to be assured that the practitioner has concluded or transferred all cases to another practitioner.	With regard to the recommendation to ensure sufficient checks are carried out to establish that a practitioner has concluded/transferred all cases, we have briefed the relevant Secretariat personnel and will ensure that sufficient checks are carried out upon licence cessations going forward. <b>TIMELINE – IMMEDIATE</b>