



The Insolvency
Service

2014 Annual Review of Insolvency Practitioner Regulation

Produced by: Insolvency Practitioner Regulation Section

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Executive Foreword

I am pleased to present the Insolvency Service's review of insolvency practitioner regulation for 2014. Although I only joined the Service recently, I can see that this has been a year where tangible improvements were made that built on the achievements of previous years.

One of the best things we can do to improve public perception of the insolvency practitioner profession is to demonstrate a robust and effective regulatory regime. One way of demonstrating the effectiveness of regulation is to ensure that anyone with an interest can see how it works. In the actions we have taken to shine a light on the regulatory activities of both the Insolvency Service and of the regulatory bodies responsible for the direct licensing of insolvency practitioners, we demonstrate our own confidence in the system.

There is work still to be done. We need to strengthen our commitment to transparency. We also need to ensure that the sanctions applied where misconduct is identified are consistent and sufficient not only to deal with that misconduct, but also to provide reassurance to the wider public. We also have potential legislative changes to take into account, including increased powers for the Service as oversight regulator. Add that to the interest that will undoubtedly be focused on the effectiveness of the strengthened standard for pre-pack deals and we can be sure that we have another interesting year ahead of us.

1. Overview

At the end of 2013, we said we would:

- Look to strengthen the insolvency regulatory framework.
- Increase our visibility as oversight regulator.
- Implement and demonstrate a continued commitment to transparency.

This report sets out how we have worked to deliver on those commitments with the 8 bodies that authorise insolvency practitioners. Most significantly perhaps, all disciplinary sanctions against insolvency practitioners will be publicised via the Insolvency Service website in a consistent format, giving much greater transparency to the work carried out by the regulatory bodies. This builds on work done to monitor complaints against insolvency practitioners, with around 550 complaints handled by the [Complaints Gateway](#) in the second half of 2014.

Pre-pack deals continue to cause concern and we have been actively engaged in implementing key recommendations of the independent review conducted by Teresa Graham. Our monitoring of disclosure requirements for these deals has continued and the improvement in compliance and transparency to creditors has been sustained, although just over 3% of disclosure breaches were serious enough to be referred to the authorising bodies for potential disciplinary action.

In 2014, in line with our commitment to greater transparency, we also started to publish reports on our monitoring visits to the authorising bodies. Further detail and information on all these issues is contained in this Review.

2. Key Messages

In this section we set out some of the key developments during 2014, and how we have worked with stakeholders and communicated change.

2.1. Strengthening the regulatory regime

Over the past year, we have taken further steps to strengthen the regulatory regime in collaboration with a range of regulators and wider stakeholders.

As a starting point, we have improved our links with other oversight regulators to better understand and implement best practice. It has been important for us to recognise that we are part of a wider regulatory regime and that we can often learn from the approach taken by other regulatory bodies.

We also now have more frequent contact with the authorising bodies that regulate insolvency practitioners, achieved through ongoing bi-lateral engagement as well as the creation of a Regulators' Forum.¹ Among other matters, we have worked with that Forum to develop new guidance on the legislative changes expected in 2015, which we will look to publish over the summer.

We have sought to improve our links with key stakeholders including the industry trade body R3, to communicate our vision of maintaining and improving regulation to ensure a world-class insolvency profession. We have also seen important changes to the way that the standard-setting body, the Joint Insolvency Committee (JIC), operates and welcome the introduction of both a lay Chair and working towards a clearer role for the Insolvency Service in setting the JIC's agenda.

We have also looked at the way we operate ourselves and for the first time have published monitoring guidelines, which make clear how we will conduct our monitoring activities. Many of the changes introduced in previous years are now fully embedded in the regulatory system and we continue to learn from feedback received. Information from the Complaints Gateway is producing vital intelligence as we look to identify emerging trends in stakeholder concerns and seek to ensure timely and appropriate regulatory action in the small number of cases where this is required.

We continue to use our routine monitoring visits to identify best practice and any deficiencies and to make recommendations aimed at improving the effectiveness of regulatory processes and activities.

¹ As detailed in Annex 3, there are 8 authorising bodies - the 7 Recognised Professional Bodies (RPBs) and the Insolvency Service as a Competent Authority. Under measures currently before Parliament, the Insolvency Service will cease to directly license insolvency practitioners.

We are grateful to all those that have worked with us during the year to introduce and embed change and look forward to further fruitful collaboration in 2015 as significant legislative changes are introduced and brought into effect.

2.1.1. Legislative changes

In 2014, the [Government consulted](#) widely on possible changes to the law to strengthen the insolvency regulatory regime. As a result, the [Small Business, Enterprise and Employment Bill](#) (currently before Parliament) will introduce, among other measures, new regulatory objectives and oversight powers. These amendments are the most wide-ranging changes to insolvency practitioner regulation since its introduction in 1986. We are working closely with the authorising bodies to prepare guidance on the implementation of the changes, which are expected to come into effect from October 2015.

The [Deregulation Bill](#) (currently before Parliament) makes provision for specialised authorisation of insolvency practitioners, in respect of either corporate or personal insolvency. We will be working with relevant parties to make sure that the insolvency practitioner qualification process is adjusted to reflect this new flexibility. The Deregulation Bill also provides for the Secretary of State no longer to directly authorise insolvency practitioners.

These, and other, changes are summarised in section 5.

2.1.2. Fees

In early March 2015, the [Government announced](#) more transparency for fees charged in insolvency cases. These measures, which will come into effect from October, will act as a cap on fees by requiring insolvency practitioners to provide upfront estimates of their costs which can only be changed by agreement with those that are owed money.² We will consider how the authorising bodies are ensuring compliance by their insolvency practitioner members through our ongoing monitoring activities.

2.2. Transparency and consistency in regulation

It is important to recognise that the majority of the work conducted by the insolvency profession is carried out in a fair and professional manner, and to agreed standards. The regulatory regime for the most part works effectively to support this role. Complexities around the law and practice, however, mean that it can be difficult for those impacted by decisions made by insolvency practitioners to understand insolvency outcomes and decisions.

Increased transparency has therefore been a major theme underpinning our work recently. The lack of understanding of the regulatory regime for insolvency

² These changes affect administration, creditors' voluntary liquidation, compulsory liquidation and bankruptcy.

practitioners amongst those affected by their actions is a continuing concern. It can sometimes lead to misplaced expectations and potentially can divert attention and resource away from the most serious matters on which the Insolvency Service and the authorising bodies should focus their activities.

We are aiming to place more and more of our activity on the public record, so that those who have a legitimate interest can see for themselves the work that goes in to ensuring that the insolvency profession is subject to robust regulation. We have published more details of the way in which we work and also the performance of the Complaints Gateway. We have also started to publish the results of our own monitoring activities and have agreed with the Recognised Professional Bodies (RPBs) that the sanctions they impose themselves will also be more readily accessible through our website.

We will continue to push for more transparency and consistency. It isn't enough for regulation to work well; it has to be seen to be working well.

2.2.1. Implementing the revised Regulators' Code – guidance on how we work

The Regulators' Code was updated in April 2014 and we took immediate steps to ensure compliance with those revisions through an internal audit.

In June, as part of our implementation of the Code and commitment to transparency, we published an explanatory document [‘Oversight regulation and monitoring in the insolvency profession’](#).

Our aim is to ensure that the guidance helps both the RPBs and other interested parties to better understand our monitoring strategy and how we go about our work. It is also part of an overarching initiative to ensure that those affected by the work of insolvency practitioners have confidence that the regulatory regime encourages best practice and deals both effectively and consistently with any poor performance or misconduct.

2.2.2. Publication of monitoring reports on the authorising bodies

In 2014, to increase transparency in our monitoring work, we started to [publish reports on our monitoring visits](#) to the authorising bodies. Previously, only summary details were included in the Annual Review. This has been a significant step, as the reports include our findings from the visit, any recommendations made, a rating on the key areas tested on the visit and responses from the authorising body.

The first report to be published was on the Insolvency Service itself, which deals with the direct authorisation of a small number of insolvency practitioners on behalf of the Secretary of State. More recently, we have published findings from our visit to the Association of Chartered Certified Accountants (ACCA).

We continue to learn lessons from the process and in future will look to publish our findings more quickly following the conclusion of a monitoring visit. In 2015, we are

planning full monitoring visits to a number of the RPBs and also some themed reviews across all of the authorising bodies (see section 5). Our aim is to publish those reports within 2 months of the conclusion of the work.

2.2.3. Common publicity for published sanctions against insolvency practitioners

To improve transparency, we reached agreement with the RPBs to include details of [published sanctions](#) against insolvency practitioners on the Insolvency Service's website.³

Details of the sanctions are provided by the RPBs in an agreed format, which gives a summary of the misconduct, the details of the sanction and how the Common Sanctions Guidance has been applied.

The information will be made available for 12 months and summarised in future Annual Reviews.

2.3. Engagement Activity

Over the last year, we have tried to better inform stakeholders of our work and new developments; this includes publication of the reports and documents highlighted in this Review.

2.3.1. Workshops

We took part in a number of stakeholder events during 2014, which involved giving practical presentations detailing best practice guidance on Statement of Insolvency Practice 16 (SIP16) compliance to insolvency practitioners and their staff (see section 4 for more details on SIP16 monitoring).

We also delivered updates on regulatory developments at a number of 'Roadshows' hosted by the RPBs.

2.3.2. General engagement with the profession and other stakeholders

We have worked as part of the JIC to introduce a lay Chair and to improve the information we provide to support the JIC's work plans. We are also continuing our engagement with the profession to implement the recommendations made by Teresa Graham on pre-pack administrations. This has included ongoing monitoring of SIP16 statements while the authorising bodies prepare to take on this role in 2015.

Recognising a need to engage more directly and frequently with the RPBs, we created a Regulators' Forum, which includes senior representatives from each of the authorising bodies. The Forum meets regularly to discuss key issues and share intelligence, and we have been working together to develop guidance on the

³ This applies to published sanctions arising from disciplinary matters heard from 1 November 2014.

implementation of changes to the law expected to come into effect from October 2015 (see section 5 for more details).

Additionally, we have engaged more frequently with the authorising bodies and stakeholders to discuss matters of mutual interest.

We continue to explore new ways of communicating and have been making greater use of social media, including a recent [‘podcast’](#) on oversight regulation across the insolvency profession. We have also contributed to the [Stakeholder Newsletters](#) which the Insolvency Service began publishing in October. These sit alongside existing, more specialised methods of communication, such as Dear IP.

2.3.3. Dear IP

A [quarterly newsletter](#) is sent electronically to over 2,000 stakeholders, including all insolvency practitioners. ‘Dear IP updates’ typically cover matters such as guidance on professional standards, policy developments, legal or regulatory changes and updates from departments across the Insolvency Service.

2.4. Complaints Gateway

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

All the RPBs, with the exception of the Solicitors Regulation Authority (SRA) and Law Society of Scotland (LSS), participate in the Complaints Gateway. We continue to push for full participation, although the SRA has recently been consulting on whether to continue its role as a RPB (see section 3).

2.4.1 First year report (June 2013 – June 2014)

In line with expectations, the Gateway received around 950 complaints in its [first year](#). Around 700 (75%) of those complaints were referred to the relevant authorising body for consideration. There were only 2 appeals against the Gateway rejecting complaints, neither of which was upheld.

2.4.2 June to December 2014 update

Rather than continuing to publish a separate Gateway report each year, updates will be part of our Annual Review. To align the timing of these reports, Annex 2 provides an update on the performance of the Gateway in the second half of 2014.

Between June and December 2014, the Gateway received 547 complaints. Of these, 395 (72%) were referred to the authorising bodies and 134 (around 25%) were rejected (18 complaints were on hold at the time of compiling this report pending further enquiries).

Around 40% of the complaints to the Gateway relate to Individual Voluntary Arrangements (IVAs) and, in particular, delays in arrangements being concluded due to enquiries into possible Payment Protection Insurance recoveries. Given these concerns, we agreed with the authorising bodies that where the delay in closing the IVA exceeds 6 months from the debtor's final payment, the RPBs will consider whether disciplinary action is appropriate in relation to these complaints. We will keep the situation under review through our monitoring activities.

3. Regulatory Developments

At 1 January 2015, the 8 authorising bodies licensed a total of 1,745 insolvency practitioners, of which 1,359 were actively taking insolvency appointments.⁴ This section outlines regulatory developments across the insolvency profession in 2014.

3.1. SRA consultation on insolvency regulation

In November, the SRA issued a [consultation](#) on proposals to stop acting as a regulator of insolvency practitioners.

The SRA specialises in authorising solicitor insolvency practitioners. At 1 January 2015, the SRA authorised 129 insolvency practitioners. Only 22 of those individuals were actively taking insolvency appointments, representing a very small part of the market. Since 2007, solicitor insolvency practitioners have been able to apply to any RPB to be authorised and the SRA already contracts out many of its insolvency regulatory activities to the Insolvency Practitioners Association (IPA).

While we did not respond publically to the consultation, we have been engaged with the SRA on its proposals. We understand that the outcome is expected to be announced in March.⁵

3.2. Establishment of the pre-pack pool

Pre-packaged administrations (pre-packs) continued to be in the spotlight in 2014. These are cases in which a sale of a part or whole of the business of a company is negotiated prior to the formal appointment of an administrator and then executed by the administrator immediately upon, or very shortly after, their appointment. Concerns have been particularly expressed where the business is sold back to the same management team.

Teresa Graham CBE was asked by the Secretary of State to undertake a review and a report, [‘Review into Pre-pack Administrations’](#), was published in June 2014. The conclusion of the review was that whilst there was a place for pre-packs, which could be beneficial for creditors, there were a number of ways in which their operation could be improved.

One of the key recommendations was the establishment of a pool of experienced business people who could provide a level of independent scrutiny of connected party pre-pack sales. Other recommendations were made in relation to - viability

⁴ Further statistics are provided in Annex A

⁵ To ensure there is no disruption to the progression of insolvency cases where a body stops acting as a regulator, we are aware that at least some of the RPBs have made provisions to enable insolvency practitioners to be ‘fast-tracked’ to them.

reviews by purchasers, strengthened marketing and valuation rules, and the revision and monitoring of SIP16.

The Review was welcomed by the Government. The Insolvency Service facilitated and chaired the industry led working group tasked with setting up the pool. In mid-December, an advertisement for pool members was circulated, with a closing date for applications of mid-January. The pool anticipates accepting its first cases during the spring.

The Insolvency Service is also working with the JIC to revise SIP16 in line with the recommendations made and more information is provided in section 4.

Although the Review envisaged these recommendations operating on a voluntary basis, the Small Business, Enterprise and Employment Bill contains a power, which will lapse after 5 years if not exercised, to make further restrictions targeted at connected party pre-packs should it prove necessary.

3.3. Standard Setting (JIC)

Professional standards are developed and agreed by the JIC, a body which brings the authorising bodies and lay representatives together to produce [SIPs](#) and other guidance for insolvency practitioners.

In early 2014, for the first time, the JIC appointed a lay Chair - Mr Philip King, Chief Executive Office of the Chartered Institute of Credit Management. In July, a revised SIP3 was published, covering both Company and Individual Voluntary Arrangements in England and Wales, and Trust Deeds in Scotland. In November, an Insolvency Guidance Paper was issued dealing with the handling of ['Retention of Title'](#) claims in insolvency cases. As detailed in section 4, the JIC is currently developing revisions to SIP16.

The ethical standards for insolvency practitioners have been the subject of much discussion and comment over recent years, in particular in relation to possible conflicts of interest. The last major changes to the [Code of Ethics](#) for Insolvency Practitioners came into effect from January 2009. We are participating in a JIC working group that has been formed to consider amendments to the Code.

We are currently working closely with the JIC to develop an appropriate work plan for the next 12 months.

4. Regulatory Activities

This section details our monitoring work in 2014 and other regulatory activities.

4.1. Complaints referred by the Insolvency Service

In July, the Insolvency Service referred the administrators of failed high street retailer Comet to their regulatory body for consideration of whether disciplinary action is appropriate on two grounds following an 18 month-investigation.

<IP's name removed>, <IP's name removed> and <IP's name removed>, insolvency practitioners at Deloitte, were referred to the Institute of Chartered Accountants in England and Wales (ICAEW). The referrals relate to a potential conflict of interest when the three practitioners, who had previously advised the company and connected parties, accepted their appointment as administrators of Comet following its collapse in 2012. In addition, an Employment Tribunal found that employees had not been consulted on the potential for redundancies as legally required.

These matters are currently being progressed by the ICAEW.

4.2. Monitoring disclosures in pre-pack deals (SIP16)

4.2.1. Background

Compliance requirements, including necessary disclosures, in relation to pre-packs are set out in [SIP16](#). Revisions, implemented in November 2013, introduced more timely and detailed disclosure requirements to the SIP.

In view of the Government's response to Teresa Graham's review, the profession is working to implement the pre-pack pool (as detailed in section 3) and the JIC is currently considering further SIP16 revisions, which are expected to come into effect in the next few months.

In response to concerns about a lack of compliance with SIP16's provisions on disclosures, we started detailed monitoring and reporting on SIP16 compliance in 2009. We continued this throughout 2014. Following the measures being introduced on pre-packs, we expect to hand over the role of monitoring SIP16 disclosure reports to the authorising bodies in 2015 and we will continue to work with them to ensure a smooth transition and continued high levels of compliance.

4.2.2. Outcomes

During 2014, we received SIP16 information in relation to 387 companies where the business or assets were reported as being sold through a pre-pack transaction. Information relating to 78% of these cases was in our view fully compliant with the disclosure requirements of SIP16. This is similar to compliance levels for the

previous year (79%) and approximately 85% of the breaches were of a relatively minor nature.

We contacted a total of 77 insolvency practitioners, in relation to 49 companies, where we identified relatively minor breaches of SIP16.

Where more serious breaches were identified, we referred 13 insolvency practitioners to the relevant authorising bodies for the matters to be considered from a regulatory and disciplinary perspective. Those disclosures related to 13 companies, representing just over 3% of the total number of disclosures reviewed.

Analysis of the SIP16 information indicated that:

- 67% of business or asset sales were to a connected party.
- Marketing activities were carried out by the administrator in 52% of cases.
- An element of the sale consideration was deferred in 69% of cases.

Once we have handed over responsibility for SIP16 monitoring to the authorising bodies, we will continue to monitor the ways in which they ensure compliance and how they deal with any possible breaches.

4.3. Complaints about the authorising bodies

As part of our oversight function, we monitor the performance of the authorising bodies. This is to ensure that those bodies continue to meet certain legal requirements and to enable us to consider any complaints about the way in which they operate. Complaints about the actions of the authorising bodies, for example allegations that they have not followed their own rules or have acted unfairly when investigating complaints against their insolvency practitioner members, are considered by Insolvency Practitioner Regulation Section (IPRS).⁶

As shown in Table 1, IPRS received relatively few complaints about the authorising bodies' processes in 2014 (this is consistent with previous years). Further details about our findings in relation to these complaints are provided below.

Table 1: Outcome of complaints received in 2014

| | ICAEW | ACCA | IPA | SRA | LSS | CARB | ICAS | IPS |
|-------------|-------|------|-----|-----|-----|------|------|-----|
| Upheld | - | 2 | 1 | - | - | - | - | - |
| Rejected | - | 1 | - | - | - | - | 1 | - |
| In progress | - | 1 | - | - | - | - | - | - |

⁶ Email: IPRegulation.Section@insolvency.gsi.gov.uk or telephone: 020 7291 6771.

4.3.1. Complaint against IPA

We received a complaint about the timeliness and the adequacy of the IPA's own process. Following an investigation, we identified that there were significant delays to the progression of the complaint and this part of the complaint was upheld.

We were satisfied with the IPA's procedures for investigating the complaint and the independent reviewer of complaints concluded that the delays in progressing the complaint did not affect the outcome of there being no *prima facie* case of misconduct.

The IPA acknowledged the delays and has since implemented measures to ensure the timely progression of complaints. The IPA apologised to the complainant for the delays and provided details of the improvements that had been introduced.

4.3.2. Complaints against ACCA

We received 4 complaints about the ACCA. Three of these concerned delays in the ACCA's handling and investigation of complaints. We found that there had been significant delays in the ACCA's progression of the investigation of two of these complaints. The ACCA accepted our findings and issued apologies to both of the complainants. Our enquiries in relation to the other complaint are ongoing.

The ACCA has taken steps to prevent such delays by introducing a new case management system and database to streamline the complaint handling process. More details are available in our recently [published monitoring report](#) on the ACCA.

A separate complaint, which was not upheld, concerned the ACCA's handling of a disciplinary action against one of its members and its conduct in applying to court for a transfer of insolvency cases to another insolvency practitioner. We found that the ACCA had followed its published procedures and that there was no evidence of any irregularities in its handling of either matter.

4.3.3. Complaint against Institute of Chartered Accountants of Scotland (ICAS)

We received a complaint about the handling by ICAS of a complaint against one of its members. Following a file review, we were satisfied with ICAS's handling of the matters raised and the complaint was not upheld.

4.4. Monitoring visits

During 2014, IPRS carried out full monitoring visits to Insolvency Practitioner Services (IPS) and to the ACCA. We carried out a follow-up visit to the IPA to review its progress in implementing the recommendations made following a full monitoring visit in November 2013. We also accompanied the Department of Enterprise, Trade and Investment on a follow-up monitoring visit to the Chartered Accountants Regulatory Board (CARB).

To ensure greater transparency, since September, we have been publishing our reports on the outcomes of monitoring visits to the authorising bodies. Each report summarises our findings, any recommendations made and the authorising body's responses. The reports enable the insolvency profession and the public generally to see our work and assess the performance of the authorising bodies. In due course, those reports and engagement with both the profession and stakeholders will help us to evaluate our monitoring strategy and performance to assess whether, and how, our monitoring could be carried out more effectively.

Details of our planned monitoring activities for 2015 are included in section 5.

4.4.1. IPS monitoring visit

Our initial visit, in April 2014, identified significant concerns in relation to monitoring and the handling of complaints; in particular, weaknesses were found in the robustness and quality of decision-making processes, and also in providing transparency to complainants. As detailed in our [report](#) published in September, changes were recommended to improve effectiveness and bring activities in line with best practice.

A follow-up visit was carried out in January 2015 and the [report](#) published in February. We identified a number of improvements and found that progress had been made against all of the recommendations made.

4.4.2. ACCA monitoring visit

We identified several positive findings, such as the investigative process and procedures, and also the templates used for monitoring visits. We raised concerns around the way in which some matters are dealt with and recommended that the ACCA should introduce, within its arrangements, a broader range of sanctions for those cases where it is not in the public interest to refer matters to the ACCA's Disciplinary Committee.

During our on-going engagement with the ACCA, we identified that some improvements had already been made; for example, making a formal 'rest-on-file' sanction available to the investigation officer (as well as to a disciplinary assessor). The ACCA has doubled its resource for dealing with insolvency complaints and introduced significant IT improvements.

Full details are provided in the [report](#) published in February and we plan to undertake a follow-up visit to the ACCA during the summer.

4.4.3. IPA follow-up monitoring visit

We found that the IPA had implemented all of the recommendations issued following a full monitoring visit in November 2013. The IPA had taken steps to improve transparency in its processes; for example, by providing copies of insolvency practitioners' responses to complainants, and also by laying proposals for increasing

the lay membership on its Investigation Committee which considers complaints. The IPA had increased by 50% its resource for investigating and dealing with complaints and was ensuring the more timely progression of complaints.

4.4.4. CARB follow-up monitoring visit

It was found that CARB had made progress against all of the recommendations issued as a result of the last full monitoring visit in 2012. In particular, complaints were being processed in a timely and transparent manner.

IT changes had improved the handling of complaints and a new enhanced system is expected to be implemented in late 2015, which will comprise authorisations, monitoring and complaints.

5. Looking Forward

While this review largely focuses on the past year, a range of current developments will shape the future of the regulatory framework. This section outlines key plans and developments expected for the next 12 months.

5.1. Planned monitoring activities in 2015

As part of our commitment to transparency, we set out below our planned monitoring activities for 2015. The schedule is indicative, as some dates may need to be changed according to business needs and other developments during the year.

In 2015, we are planning full and follow-up monitoring visits to a number of the authorising bodies, and also a number of themed reviews across all of the bodies. As a matter of course, IPRS will follow-up a full monitoring visit within 3-6 months to consider progress against any recommendations made. We will aim to publish reports on the outcomes of all these activities as soon as is reasonably possible.

Table 2: Indicative monitoring schedule (2015)

| Month | Activity |
|--------------|--|
| February | Full monitoring visit to ICAEW |
| March/ April | Monitoring visit to SRA ⁷ |
| April | Full monitoring visit to ICAS and full monitoring visit to LSS |
| May | Follow-up monitoring visit to ACCA |
| September | Full monitoring visit to CARB |

We also plan to undertake 3 themed reviews across all of the authorising bodies, which will look at:

- Complaints handling - including timeliness, regulatory outcomes and the application of Common Sanctions Guidance.
- Debt advice and insolvency outcomes.
- Inspection of insolvency practitioner firm accounts.

⁷ The scope of the visit will be determined by the outcome of the SRA's consultation on remaining an authorising body.

5.2. Common Reviewers

We have been working with the authorising bodies in recent years to try and ensure greater consistency among them. This collaborative working has seen the introduction of:

- The [Gateway](#) for complaints about insolvency practitioners.
- [Common guidance](#) on the application of sanctions against insolvency practitioners.
- [Common publicity](#) for sanctions imposed against insolvency practitioners.

Although, disappointingly, not all of the authorising bodies take part in these initiatives they do cover the overwhelming majority of active insolvency practitioners (around 98% of those practitioners who take insolvency appointments).⁸ We will continue to actively monitor these areas to ensure that they are delivering greater consistency in the handling of complaints, as well as action following monitoring visits by the authorising bodies and disciplinary outcomes.

As a next step, we are currently working with the authorising bodies to try and introduce a common panel of reviewers for complaints. Some good progress has been made already. The ICAEW and IPA, the two largest authorising bodies, already share some common reviewers, as do ICAS and CARB. We will continue to work with the authorising bodies in attempt to create a common panel across all of the authorising bodies.

5.3. Changes to the law

The Government consulted on a number of possible changes to the law and introduced legislation to Parliament, which has now progressed through many of the required stages. Some of these changes will have a significant impact on our work and the regulatory framework. Additionally, a long running project to change the rules for insolvency procedures is now well advanced.

The key changes, which will impact on regulation and are expected to be introduced between October 2015 and April 2016, are summarised below.

⁸ The SRA and LSS, the two smallest bodies in terms of the number of practitioners taking insolvency appointments, have so far declined to participate.

Table 3: Summary of planned changes to insolvency law

| Legislation | Summary of key regulatory measures | Expected timing |
|--|--|--|
| Small Business, Enterprise and Employment Bill | <p>Introduction of regulatory objectives, as well as new powers for the Insolvency Service as oversight regulator to:</p> <ul style="list-style-type: none"> • Direct a RPB to take action. • Impose a financial penalty on a RPB. • Reprimand a RPB. • Where it is in the public interest, apply to the court to directly sanction an insolvency practitioner. <p>Reserve power to introduce a single insolvency regulator.</p> | <p>Regulatory objectives and sanctions expected to come into effect from October 2015.</p> <p>Introduction of a single regulator to be kept under review. This would require consultation and further legislation.</p> |
| Deregulation Bill | <p>Partial authorisation of insolvency practitioners for those who choose to specialise in either corporate or personal insolvency.</p> <p>End of direct authorisation of insolvency practitioners by the Insolvency Service.</p> | <p>Provisions expected to come into effect from October 2015, although Joint Insolvency Examination Board exams unlikely to be changed until 2016 at the earliest.</p> <p>To come into effect from October 2015, with a transitional period of around 12 months.</p> |
| Modernisation of the Insolvency Rules 1986 | <p>Various changes to secondary legislation.</p> | <p>Statutory instrument expected to be made in autumn 2015 and commence in April 2016.</p> |

Annex 1: Regulatory and Disciplinary Statistics

Table 4: Number of insolvency practitioner authorisations (2012-2015)

| | ICAEW | ACCA | IPA | SRA | LSS | CARB | ICAS | IPS | Total |
|-----------------------|-------|------|-----|-----|-----|------|------|-----|-------|
| IPs at 1 January 2012 | 694 | 164 | 511 | 135 | 11 | 32 | 102 | 66 | 1,715 |
| Appointment takers | 547 | 141 | 436 | 17 | 1 | 28 | 95 | 64 | 1,329 |
| IPs at 1 January 2013 | 701 | 161 | 530 | 133 | 11 | 39 | 96 | 64 | 1,735 |
| Appointment takers | 563 | 141 | 444 | 21 | 1 | 35 | 85 | 62 | 1,352 |
| IPs at 1 January 2014 | 704 | 161 | 547 | 123 | 9 | 46 | 95 | 53 | 1,738 |
| Appointment takers | 550 | 142 | 460 | 23 | 1 | 42 | 87 | 50 | 1,355 |
| IPs at 1 January 2015 | 724 | 151 | 556 | 129 | 6 | 47 | 89 | 43 | 1,745 |
| Appointment takers | 577 | 137 | 458 | 22 | 1 | 42 | 82 | 40 | 1,359 |

Table 5: Insolvency practitioner authorisations revoked in 2014

| | ICAEW | ACCA | IPA | SRA | LSS | CARB | ICAS | IPS |
|------------------|-------|------|-----|-----|-----|------|------|-----|
| Licences revoked | 2 | 1 | 1 | - | - | - | - | - |

Table 6: Reasons for revoking insolvency practitioner authorisations

| Body | Date | IP | Reasons |
|-------|---------|---------------------|--|
| ICAEW | 13/2/14 | <IP's name removed> | Lack of co-operation. Failure to communicate changes in circumstances. Threat to public interest. Potential lack of case progression. |
| ICAEW | 12/6/14 | <IP's name removed> | Failure to pay licence fee |
| ACCA | 19/3/14 | <IP's name removed> | Unable to obtain an enabling bond (an insolvency licence bond) |
| IPA | 8/12/14 | <IP's name removed> | Ceased to be a fit and proper person to act as an insolvency practitioner. Failed to co-operate with the inspection process and implement the recommended changes to his practice in relation to numerous deficiencies both operational and compliance related |

Monitoring

Tables 7 and 8 summarise the number and type of monitoring visits undertaken by the authorising bodies in 2014, and also the outcomes from those activities.

A monitoring visit enables an authorising body to make an objective assessment of the conduct and performance of its insolvency practitioner member to ascertain whether the practitioner is, and continues to be, fit and proper. Every insolvency practitioner holding at least one appointment should be subject to routine monitoring visits and should be visited at least once every three years. If satisfactory risk assessment measures are employed, the gap between visits may be extended to, but not exceed, six years.⁹

Table 7: Number of authorising body monitoring visits to insolvency practitioner in 2014

| | ICAEW ¹⁰ | ACCA | IPA | SRA | LSS | CARB | ICAS | IPS |
|---------|---------------------|------|-----|-----|-----|------|------|-----|
| Routine | 125 | 58 | 152 | 1 | - | 14 | 23 | 15 |

⁹ Risk assessment measures may include an analysis of information provided by a practitioner to the RPB about case numbers and progression; certification of case reviews; whether any complaints have been received about the practitioner and the outcome of investigations into those complaints; findings from previous monitoring visits to either the practitioner or the practice in which the practitioner works.

¹⁰ In addition to the above, during 2014 ICAEW also carried out 32 other reviews, including 28 phone reviews to new appointment-taking insolvency practitioners

| | | | | | | | | |
|----------|---|---|----|---|---|---|---|---|
| Targeted | 2 | 3 | 13 | 2 | - | - | 1 | 6 |
|----------|---|---|----|---|---|---|---|---|

Table 8: Outcomes following monitoring visits to insolvency practitioner concluded in 2014

| | ICAEW | ACCA | IPA | SRA | LSS | CARB | ICAS | IPS |
|--|-------|------|-----|-----|-----|------|------|-----|
| Satisfactory | 115 | 49 | 102 | 2 | - | 4 | 22 | 7 |
| To be confirmed | 3 | 4 | 36 | 1 | - | 4 | 2 | 12 |
| Further visit | - | 12 | 2 | - | - | - | - | 2 |
| Licence withdrawn | 2 | - | 1 | - | - | - | - | - |
| Undertakings & confirmations | 2 | - | 8 | - | - | 6 | - | - |
| Regulatory penalties / referral for disciplinary consideration | - | 8 | 9 | - | - | - | - | - |
| Plans for improvements | 15 | 2 | 3 | - | - | - | - | - |
| Compliance review / self-certification requested | 20 | - | 2 | - | - | - | - | - |

Table 9: Summary of disciplinary sanctions issued (2014)¹¹

| Body | Date | IP | Sanction | Reason |
|--------------|---------|---------------------|--|---|
| ICAEW | 23 Sept | <IP's name removed> | A reprimand, a £2,650 fine and costs of £3,021 by way of Consent Order | Failing to have any or sufficient regard to paragraph 400.63 of the Code of Ethics. |
| IPA | 6 Feb | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as a Supervisor of a CVA. A reprimand and £4,000 fine | Breach of the fundamental principles and SIP3 by incorrectly signing and filing for a moratorium and conducting insufficient investigations to satisfy himself that the proposal was capable of implementation. |
| IPA | 11 Mar | <IP's name removed> | Disciplinary Order by way of consent in relation to her role as administrator. A reprimand and £2,000 fine | Breach of SIP16 by failing to provide all required information in an initial disclosure and failing to provide a full disclosure within the required timeframe. |
| IPA | 15 Apr | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as Supervisor of an IVA. A reprimand and £3,000 fine | Breached the fundamental principles and SIP3 by failing to act upon early receipt that an IVA proposal would be rejected and failing to provide the debtor with copies of relevant correspondence. |
| IPA | 15 Apr | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as administrator. A reprimand and £2,000 fine | Breach of SIP16 by failing to provide all required information in the disclosure. |
| IPA | 15 Apr | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as Supervisor of an IVA. A reprimand and £2,500 fine | Breach of the fundamental principles and SIP3 by failing to obtain independent confirmation of a secured creditor's support for a proposed IVA. |

¹¹ Details about insolvency practitioners generally are available via our [website](#).

| | | | | |
|------------|--------|---------------------|--|---|
| IPA | 20 May | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as administrator. A reprimand and £2,000 fine | Breaches of the fundamental principles and Insolvency Act/Rules for failing to set out reasons for not pursuing certain administration objectives, pursued an inappropriate objective, failing to separate fee approval resolutions from Administration proposals, failing to include in the report accompanying the proposals a timescale for nominating an alternate liquidator in the event of a move to CVL. |
| IPA | 30 Jun | <IP's name removed> | Disciplinary Order by way of consent. Severe reprimand and £15,000 fine | Breaches of fundamental principles by failing to ensure that a creditor claim was verified, abusing rules for inclusion on the Official Receiver's rotas, abusing administration process where liquidation would have been more appropriate, failing to obtain the requisite approval for pre-Administration costs. |
| IPA | 30 Jun | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as administrator. A reprimand. | Drawing remuneration in excess of that to which he was entitled due to clerical error, identified on a monitoring inspection visit and immediately refunded. |
| IPA | 30 Jun | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as trustee of a trust deed. A reprimand and £500 fine | Breach of the fundamental principles by failing to communicate in a straightforward, honest and professional manner about the status of 28 Protected Trust Deeds, failing to communicate with creditors/debtors, submit the required documents to obtain his discharge and retain the Sederunt books, failing to complete his statutory duties as Trustee and failing to comply with an undertaking to transfer all of his insolvency work to another Insolvency Practitioner prior to giving up his licence to practice. |
| IPA | 30 Jun | <IP's name removed> | Disciplinary Order by way of consent in relation to her role as Supervisor of an IVA. A reprimand and £2,000 fine | Breach of the fundamental principles by issuing inaccurate reports. |

| | | | | |
|------------|--------|---------------------|---|---|
| IPA | 29 Jul | <IP's name removed> | A reprimand, a £2,500 fine – Disciplinary order by way of consent in relation to his role as a Supervisor of an IVA | Breach of the fundamental principle of professional competence and due care by inappropriately advising a debtor to enter a second IVA and failing to notify and liaise with the Supervisor of the first IVA. |
| IPA | 3 Sept | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as liquidator. A reprimand and £3,000 fine | Breaching the fundamental principle of professional behaviour by failing to communicate with a creditor in a professional manner. Breaching the fundamental principle of professional competence and due care by failing to verify the validity and basis for the Company's move to MVL. |
| IPA | 3 Sept | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as liquidator. A reprimand and £500 fine | Breaching the fundamental principle of professional competence and due care by failing to communicate with employees in an accurate and professional manner. Providing misleading information, to the detriment of the employees, regarding the quantum of payments that the Redundancy Payments Office would pay them. |
| IPA | 3 Sept | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as Supervisor on an IVA. A reprimand and £1,000 fine | Breach of the fundamental principles and SIP3 by failing to implement the terms of the IVA, failing to reply to/heed communications, ignoring a creditor request to convene a creditor meeting, varying the IVAs without specific agreement, failing to clarify that a former Trustee had asserted that their fees were to be paid as an expense of the IVA. |
| IPA | 11 Nov | <IP's name removed> | Disciplinary Order by way of consent in relation to his role as a liquidator. A reprimand and £5,000 fine | Breach of the fundamental principles by failing to comply with the provisions of the Insolvency Rules 1986 (as amended) in relation to advertising (Rule 4.54) and convening a meeting of creditors (Rules 4.57 and 4.114 (1)) for the removal of the liquidator; failing to investigate the directors' conduct; failing to accurately calculate the prescribed part; and failing as soon as reasonably practicable to hand over information to the successor liquidator to allow him to perform his duties (although the information has since been provided). |

Table 10: Number of complaints received by subject matter (2014)

| | ICAEW | ACCA | IPA | SRA ¹² | LSS | CARB | ICAS | IPS | Total |
|--|------------|-----------|------------|-------------------|----------|----------|-----------|-----------|------------|
| Remuneration | 4 | 2 | 23 | - | - | - | - | 2 | 31 |
| Sale of Assets | 17 | 6 | 19 | - | - | - | 2 | 3 | 47 |
| Communication breakdown/ failure | 27 | 8 | 40 | - | - | 2 | 5 | 16 | 98 |
| Breach of ethical guidance | 23 | 50 | 83 | - | - | 2 | 1 | 4 | 163 |
| Company Directors Disqualification Act reporting | - | - | 6 | - | - | - | - | - | 6 |
| Misconduct/ irregularity at creditor's meetings | 1 | - | 10 | - | - | - | - | - | 11 |
| Delay in dividend payment | - | - | 1 | - | - | - | 1 | - | 2 |
| Mishandling of employee claims | 1 | 2 | - | - | - | - | 1 | - | 4 |
| Commercial dispute | 2 | - | - | - | - | - | 1 | - | 3 |
| Other | 178 | 3 | 122 | 5 | - | - | 12 | 5 | 325 |
| Total | 253 | 71 | 304 | 5 | - | 4 | 23 | 30 | 690 |

¹² The SRA did not categorise the complaints received by subject matter in its return.

Table 11: Number of complaints received by type of insolvency procedure in 2014

| Insolvency procedure | ICAEW | ACCA | IPA | SRA | LSS | CARB | ICAS | IPS | Totals |
|------------------------------|-------|------|-----|-----|-----|------|------|-----|--------|
| CVAs | 4 | 2 | 8 | - | - | - | - | 2 | 16 |
| Administrations | 47 | 11 | 37 | 1 | - | - | 3 | 8 | 107 |
| Administrative Receiverships | 2 | - | 1 | - | - | - | - | - | 3 |
| Liquidations | 55 | 29 | 61 | - | - | 3 | 4 | 6 | 158 |
| IVAs | 90 | 9 | 140 | - | - | - | 4 | 10 | 253 |
| Bankruptcies | 40 | 15 | 39 | - | - | 1 | 2 | 4 | 101 |
| Other | 15 | 5 | 18 | 4 | - | - | 10 | - | 52 |

Table 12: Complaints remaining open over 12 months¹³

| | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | Total |
|-------------------|----------|----------|----------|----------|----------|-----------|-----------|------------|
| ICAEW | 1 | - | 1 | 2 | 6 | 13 | 33 | 56 |
| IPA ¹⁴ | - | - | - | - | - | 13 | 53 | 66 |
| ACCA | - | 1 | - | 2 | 1 | 6 | 1 | 11 |
| ICAS | - | - | - | - | - | 1 | 1 | 2 |
| CARB | - | - | - | - | - | - | 2 | 2 |
| SRA | - | - | - | - | - | - | - | - |
| LSS | - | - | - | - | - | - | - | - |
| IPS | - | - | - | - | - | - | - | - |
| Total | 1 | 1 | 1 | 4 | 7 | 33 | 90 | 137 |

¹³ Each of the authorising bodies reports any complaints to us that have remained open for over 12 months.

¹⁴ 34 of the complaints being handled by the IPA relate to the same IVA practice and are being dealt with together.

Table 13: Sanctions following complaints concluded in 2014

| | ICAEW | ACCA | IPA | SRA | LSS | CARB | ICAS ¹⁵ | IPS |
|---------------------------------------|-------|------|-----|-----|-----|------|--------------------|-----|
| Warning or caution | 3 | - | 20 | - | - | - | 1 | - |
| Undertaking, consent agreement & fine | 1 | - | 15 | - | - | 2 | - | - |
| Reprimand & fine | - | - | - | - | - | - | 1 | - |
| Exclusion & fine | - | - | - | - | - | - | - | - |

¹⁵ These sanctions were applied in respect of one complaint and appealed. The appeal against the warning was successful, while the reprimand and fine was upheld.

Annex 2: Complaints Gateway Update

Table 14: Number of complaints received (6 June 2014 - 31 December 2014)

| Month | Received ¹⁶ | Referred | Rejected |
|--------------|------------------------|------------|------------|
| June | 79 | 61 | 18 |
| July | 109 | 74 | 35 |
| August | 53 | 40 | 13 |
| September | 79 | 56 | 23 |
| October | 79 | 53 | 25 |
| November | 71 | 49 | 11 |
| December | 77 | 62 | 9 |
| Total | 547 | 395 | 134 |

Table 15: Complaints referred by subject matter

| Complaint heading | Number of complaints | % of complaints ¹⁷ |
|---|----------------------|-------------------------------|
| Communication breakdown / failure | 108 | 27 |
| SIP 3 (Voluntary Arrangements) | 108 | 27 |
| SIP 2 (Investigations by office holders in | 18 | 5 |
| Breach of ethical guidance | 81 | 21 |
| Sale / dealing with assets | 38 | 10 |
| Remuneration | 19 | 5 |
| Misconduct / irregularity at creditors meetings | 12 | 3 |
| SIP16 / pre-pack administrations | 2 | 0.5 |
| Delay in dividend payment | 3 | 1 |
| Other | 6 | 1.5 |
| Total | 395 | 100 |

¹⁶ 18 complaints are currently on hold pending further enquiries.

¹⁷ Percentages do not sum to 100% because of rounding.

Table 16: Detail of complaints relating to ethics

| Type | Number of complaints |
|--------------------------------------|----------------------|
| Conflict of interest | 29 |
| Professional competence and due care | 28 |
| Professional behaviour | 7 |
| Integrity | 4 |
| Confidentiality | 9 |
| Commission payments | 1 |
| Other | 3 |
| Total | 81 |

Table 17: Number of complaints referred by type of insolvency procedure

| Insolvency Procedure | Number of complaints | % of complaints ¹⁸ |
|----------------------|----------------------|-------------------------------|
| IVA | 162 | 41 |
| Liquidation | 88 | 22 |
| Bankruptcy | 56 | 14 |
| Administration | 49 | 12 |
| CVA | 24 | 6 |
| Sequestration | 4 | 1 |
| Trust Deed | 9 | 2 |
| Other | 3 | 1 |
| Total | 395 | 100 |

¹⁸ Percentages do not sum to 100% because of rounding.

Table 18: Number of complaints referred by complainant type

| Complainant type | Number of complaints | % of complaints |
|------------------|----------------------|-----------------|
| Debtor | 191 | 48 |
| Creditor | 92 | 23 |
| Company Director | 38 | 10 |
| Employee | 4 | 1 |
| Shareholder | 10 | 3 |
| Other | 60 | 15 |
| Total | 395 | 100 |

Table 19: Number of complaints referred to the authorising bodies

| Authorising body (no. of IPs as at 1/1/15) ¹⁹ | Number of complaints referred | % of complaints referred ²⁰ |
|--|-------------------------------|--|
| IPA (458) | 181 | 46 |
| ICAEW (577) | 152 | 38 |
| ACCA (137) | 30 | 7 |
| IPS (40) | 17 | 4 |
| ICAS (82) | 14 | 4 |
| CARB (42) | 1 | 0.3 |
| Total | 395 | 100 |

Table 20: Reasons for rejecting complaints

| Complaint heading | Number rejected |
|--|-----------------|
| No response received from complainant to follow-up request for further information | 77 |
| Not a complaint about an insolvency practitioner | 22 |
| Complaint about charge out rates | 1 |
| Already been through complaints process | 5 |
| Other | 29 |
| Total | 134 |

¹⁹ Number of insolvency practitioners taking insolvency appointments

²⁰ Percentages do not sum to 100% due to rounding.

Annex 3: Authorising Bodies

Recognised Professional Bodies

[Association of Chartered Certified Accountants \(ACCA\)](#)

[Chartered Accountants Regulatory Board \(CARB\)](#)

[Institute of Chartered Accountants in England & Wales \(ICAEW\)](#)

[Institute of Chartered Accountants of Scotland \(ICAS\)](#)

[Insolvency Practitioners Association \(IPA\)](#)

[Law Society of Scotland \(LSS\)](#)

[Solicitors Regulation Authority \(SRA\)](#)

Competent Authority

Secretary of State (SoS) – functions are carried out on a day-to-day basis by [Insolvency Practitioner Services \(IPS\) of the Insolvency Service](#)