

# Inspection & Regulatory Update

## - Zoom in on Compliance

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28 April 2021



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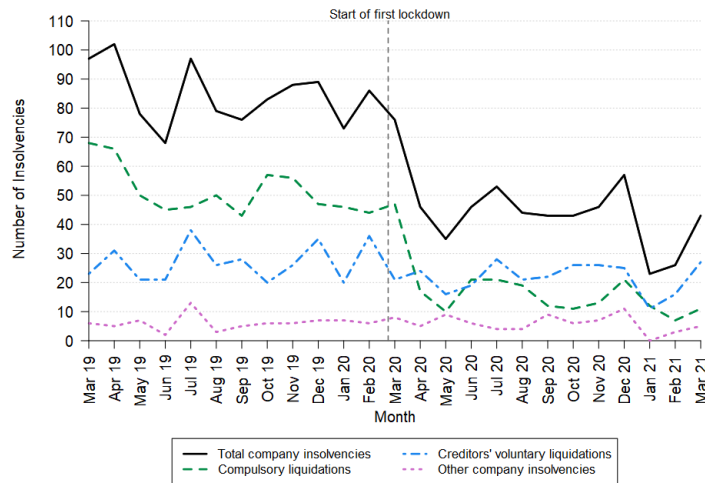
# Inspection & Regulatory Update 2021

- Does working from home really work?
- Key to successful compliance
- SIP Changes - SIP 9 and 7
- SIP 3.2
- Changes to SIPs 16 and 13
- Corporate Insolvency and Governance Act 2020 (CIGA)
- AML risk
- Rule consultation

\*Any underlined writing is a link to relevant reference point such as [IPA](#) leads to [Homepage | Insolvency Practitioners Association \(insolvency-practitioners.org.uk\)](#)

# Does working from home really work?

- The latest Insolvency Statistics show: In March 2021 there was a total of 992 registered company insolvencies, comprised of 883 CVLs, 25 compulsory liquidations, 74 administrations and 10 CVAs. There were no receivership appointments.
- The overall number of registered company insolvencies in March 2021 was 20% lower than in the same month in the previous year and 37% lower than in March 2019.

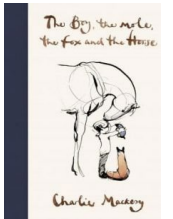


- If you need help please ask. IPA Vulnerable Insolvency Practitioner Policy  
Insolvency Practitioners Association ([insolvency-practitioners.org.uk](https://insolvency-practitioners.org.uk))

“What is the bravest thing you’ve ever said?” asked the boy

“Help” said the horse

Charlie Mackesy



# Key to successful compliance

- The golden key to compliance is (always):

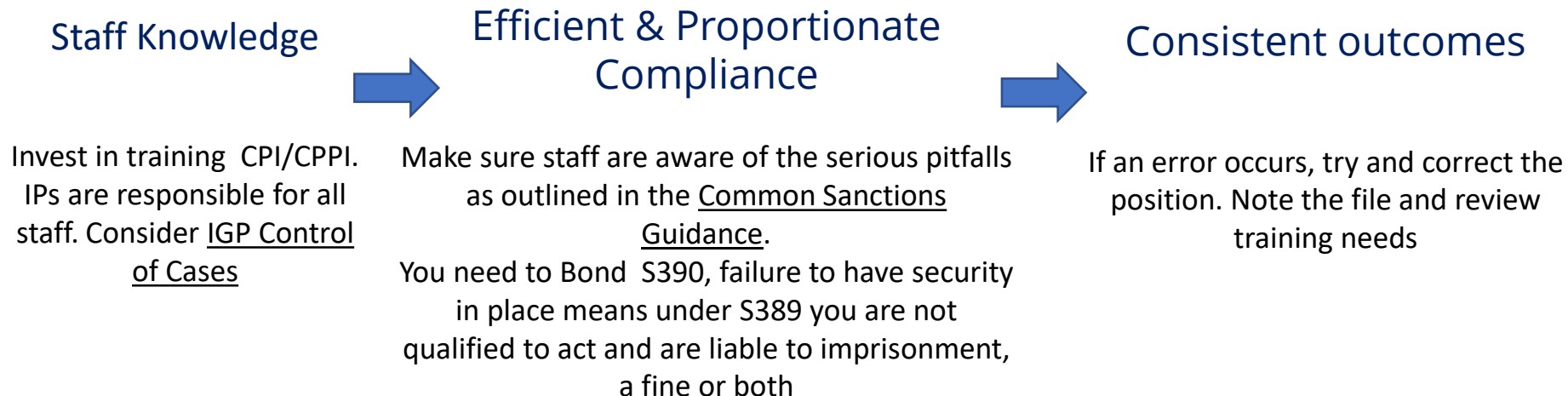
## The Insolvency Practitioners (Amendment) Regulations 2015

Regulation 13 (1) In respect of each case in which an insolvency practitioner acts, the insolvency practitioner **shall maintain records containing information sufficient to show and explain—**

- (a) **the administration of that case** by the insolvency practitioner and the insolvency practitioner's staff; and
- (b) **any decisions made by the insolvency practitioner which materially affect that case.**"

- Apply the Code of Ethics (all 71 pages) in tandem with the new SIPs.

- Also:



# Key to successful compliance

- Document strategy and explain to creditors.
- Understand the risks of an appointment.
- Obtain all relevant documents. Are they FCA regulated?
- premises licenses and/or personal supervisor licenses? Debenhams required 106 premises licenses to allow trade continuation.
  - Retail outlets, fuel stations, restaurants, schools.
  - Pavement
  - Wedding or Gambling (operating and premises)
  - Gaming machines/permits & Notifications
  - Special Treatment Licenses (tattoos etc)
- Agents for COVID assistance (Health and Safety views).
- If license has been surrendered - Can the licenses be easily restored to add value.

# SIP Changes - SIP 9 and 7

- Why all the change? First consider the regulatory objectives

“Regulatory objectives” means the objectives of—

(a) having a system of regulating persons acting as insolvency practitioners that—

(i) secures fair treatment for persons affected by their acts and omissions,

(ii) reflects the regulatory principles, and

(iii) ensures consistent outcomes,

(b) encouraging an independent and competitive insolvency-practitioner profession whose members—

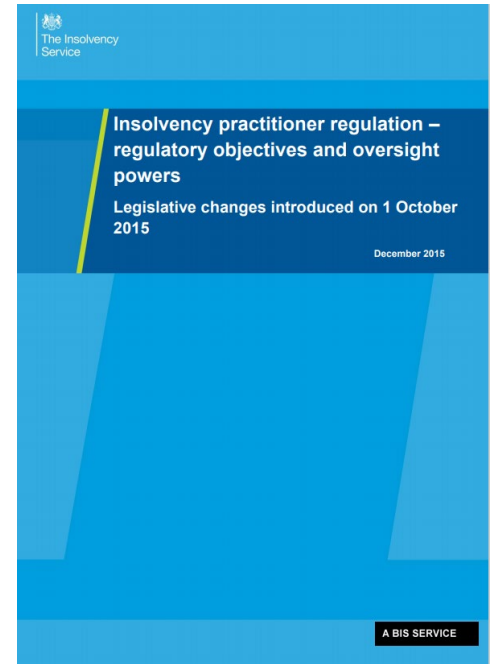
(i) provide high quality services at a cost to the recipient which is fair and reasonable,

(ii) act transparently and with integrity, and

(iii) consider the interests of all creditors in any particular case,

(c) promoting the maximisation of the value of returns to creditors and promptness in making those returns, and

(d) protecting and promoting the public interest.



# SIP Changes - SIP 9 and 7

- From the 1 April 2021
- Apply Ethics Code first
- Emphasis on objectivity, independence and transparency
- All payments from an estate should be **fair and reasonable and proportionate** to the insolvency appointment.
- All payments should be directly attributable to the estate
- **Recovery of 'Overheads' not allowed** and isn't defined, but you need to apply the Ethics Code
- Category 1 Expenses, attributable to the case and not associated (typically insurance, independent agents where you are relying on their professional opinion)
- Category 2 Expenses - any element of shared costs across cases or any associations.
- Subcontractors – creditors shouldn't be paying twice for the same service.
- IPs should: 1) understand the requirements, 2) identify relationships, 3) review charging, 4) Disclose and report clearly, 5) document reasons and regularly review.
- SIP 7 – Disclosures should be clear, relevant, proportionate and consistent.
- Disclosures should support the narrative and support the SIP 9 principles.

## SIP 3.2

- Effective from the 1 April 2021.
- Scope and application of CVAs has changed.
- Emphasis on transparency and objectivity.
- Clearer definitions, explanations on advice and alternatives considered.
- Post pandemic application of CVA might be applicable but the options need to be clearly defined and a complete record maintained of the advice given.
- Full disclosure of costs of the CVA.



# Corporate Insolvency and Governance Act 2020 (CIGA)

- The Corporate Insolvency and Governance Bill was laid in Parliament on 20 May 2020 and this came into force as the Corporate Insolvency and Governance Act 2020 (CIGA 2020) on 26 June 2020
- 245 pages long, 50 sections and 14 Schedules

IPA expectations:

- Read the instructions first
- Document decisions, timelines and strategy
- Communicate clearly

CIGA a year on! IPA learning workshops with ISS 9 September 2021 [IPA Learning | Insolvency Practitioners Association \(insolvency-practitioners.org.uk\)](https://insolvency-practitioners.org.uk)

# Changes to SIPs 16 and 13 (England & Wales and Scotland)

## Evaluators - Get the right 'Guy' for the job

### Thank you SIP 4

- Draft bill 24 February 2021 - The Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021, which are due to come into effect on 30 April 2021, will impose additional obligations on connected person purchasers in administrations.
- IPs need to evaluate the impact of these changes on 'pre-packs'
- Evaluators need to state that they are *"satisfied that the consideration to be provided for the relevant property and the grounds for the substantial disposal are reasonable in the circumstances"* or not. A substantial disposal is in short, one that involves "all or a substantial part of the company's business or assets".
- IPs need to be mindful of public confidence – is the Evaluator insured? Pre-pack pool has experience but is the advice always relevant to the specifics of the case. Would more confidence be gained from an industry specific expert rather than insolvency led opinions. Document reasons.



Guy Goma, business studies graduate, went for an interview with the accountants department. Whilst he did a great job of evaluating the questions... He was not the right 'Guy'

[Guy Goma: - BBC News](#)

# The Volume IVA scheme is generating results and insight

- Year 2 VPR Benchmark report published in March 2021.
- Shared data hugely insightful in getting COVID-19 protocol guidance quickly enacted.
- Instant impact analysis of the Debt Relief order (DRO) consultation suggestions of £30,000 debt write off and £100 per month disposable income.
- SIP 3.1 and IVA protocol 2021 - changes include defining advice and reasons for client choice.

## Focus areas remain:

- Advertising
- Initial SIP 3.1 advice calls/Internal calls - Quality, accuracy and documenting decisions
- Income & Expenditure - Timeliness and accuracy
- Review of the property provision - Timeliness and adherence to proposals
- Progression – Closures in particular
- Annual reporting – Timeliness, accuracy and consistency
- Fees / disbursements – Approval and fair/reasonableness
- Connected party payments – Approval and transparency
- Trust cases – Status and progression

# Anti-Money Laundering - Do you understand current risks?

- Is there a clear policy that documents the risks your firm faces. Risk factors have changed dramatically in the last 12 months all risk assessments should evaluate current risk factors.

## Regulation 18 Risk assessment

Each firm should complete an assessment of the risks of money laundering and terrorist financing to which its business is subject. Assess the risk factors for:

- Customers (verify ID and consider risks, check on Google)
- Location (verify and consider EU)
- Products (IVA, PTD and bankruptcy all relevant to a risk assessment)
- Transactions (where is the money coming from and controls of where it is going)
- Delivery channels (internet, no face-to-face meetings – all high risk)

Regular training is essential, and staff should be kept up to date with emerging risks and what activities are suspicious and might require a SAR report

- The following AASG alerts have been issued in the last 12 months:

Modern slavery	Pension Liberation Fraud	Illicit money from the Russian Federation	Third Party Payment and Debt Settlements – combined 2 alerts	Small Medium Enterprise	Documentary Trade Based Money Laundering (TBML)	Open Account TBML	Transparency of Beneficial Ownership of Companies	Payroll Company Fraud	Avoidance of CRS Reporting	Mirror Trading Behaviours
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# Anti-Money Laundering - Can staff spot the risks?

	Activity or Incident	Why is this suspicious
1	<b>Lack of Sales Records</b> - A business of any type has no sales records and asks their accountants to calculate income based on the funds received or deposited into their business bank accounts or provides their accountant with annual or monthly totals for which there is no supporting documentation. Money Service Business - no records of customer transactions or records of the fees charged for each transaction.	This is an indicator of Money Laundering. It is a recurrent feature of money laundering investigations for a variety of crime types. Failing to keep accounting records is also a criminal offence under Companies Act 2006 (s386). In R v Skinner and Ferron in 2016 two directors whose only records for their company were bank statements, a collection of invoices and insurance documents were convicted of this offence. The working papers prepared by an accountant for year end accounts do not meet the requirement.
2	<b>Income received at odd times of day</b> - Statements from card payment processors show that the majority of card payments are taken between midnight and six a.m. for a business which is not part of the night-time economy. The client 'lends' their card payment processing machine or account to other people or businesses and allows the monies from unknown customers to be paid into their account. Funds are withdrawn in cash or transferred to the person borrowing the card payment facilities	This is an indicator of money laundering. The receipt of income at odd times of day indicates the laundering of monies from prostitution. For example in the case of R v Echeazu at Southwark Crown Court in 2017 where Mr Echeazu had allowed persons running a brothel to use a card payment machine issued to his music studio business to collect card payments from brothel customers. This was supported by the timing of transactions and he was convicted of money laundering
3	<b>Lack of Assets or Supplies</b> There is a lack of assets necessary to carry out the core activity of the business. The person/business does not appear to have purchased enough goods to generate the reported sales.	This is an indicator that the company is a front for criminality. It is also an indicator of false accounting. For example in the case of a car hire firm with no cars in the company accounts. The cost of these cars as well as the majority of the company income was put through personal bank accounts which were never provided to the accountant.

# Anti-Money Laundering - Can staff spot the risks?

	Activity or Incident	Why is this suspicious
4	<b>Lack of Staff Costs</b> The person/business is in a service industry and has little or no staff or contractor costs but has reported an income higher than would be possible for the owners of the business to generate themselves. There are multiple payments to industry regulators from the same account and overlapping receipts, i.e. multiple wages received from different companies on the same day or in the same period. Prevalence of receipts from agencies or umbrella companies. Bulk of funds paid to family members or withdrawn in cash rather than spent on direct and administrative costs as in a normal business	These are indicators that the client may be involved in <a href="#">Modern slavery and Human trafficking</a> (further indicators in the attached link). For example, R v Lupu and others (Blackfriars Crown Court 2019), over 20 victims found living in squalor in a shared room, forced to work on building sites and as hotel cleaners with no training or safety equipment and whose wages were paid to their controllers. The controllers had filed tax returns as companies and as sole traders. Their bank statements showed income from multiple construction firms for the same periods and minimal payments to the victims. There are 8,760 hours in a year. When bank receipts for one of the companies were compared to the average rates of pay for the construction industry it showed that for one year it would have taken 16,930 hours of work to generate the income received.
5	<b>Loans and Bridging Loans Clients</b> (people or companies) who are not widely recognised financial institutions granting loans secured on the residential properties of their 'customers'. Loans recorded as owed to your client where there is no evidence that loans were paid out. Loans secured on residential properties with an interest rate in excess of 100%. Properties acquired by your clients for significantly less than market price when the 'customer' defaults on the loan or struggles to make repayments.	These are indicators of Extortion based on the investigations into organised crime families. While the clients presented themselves as businessmen they were involved in serious and organised crime and the extortion was accompanied by threats of violence that put the victims in fear of their lives
6	Regular cash transaction paid in and payments out with small balance retained	Money mules, compromised accounts and could be linked to <a href="#">Chinese underground banking</a>

# AML RISK



## Risk Assessment - Addresses

- FinCEN Files: One of the world's 'dodgiest addresses' is in leafy Hertfordshire - Suite 2B 175 Darks Lane Potters Bar.
- Know the company, is it rational the person in control is right!
- Watch BBC iPlayer - Panorama - Banking Secrets of the Rich and Powerful (available for 4 months).
- The programme highlighted two companies Ergoinvest LLP and Chadborg Trade LLP that were both registered at the Darks Lane – FinCEN files highlighted that \$700m and \$2.6bn were fed through both companies. Companies house shows basic **identical** accounts for both companies showing 'Income from ordinary activities' £21,353 and profit £19,853.
- Criminal only have access to a limited number of addresses and people to front illegal activities. Patterns can be seen if you zoom out and look at the bigger picture.

# AML RISK



## Risk Assessment - Verify identity

- Do staff verifying ID know the different types of driving license Oct 2012 to January 2013?
- What about the UK passport do all staff know the security features  
Introducing the new UK passport design ([publishing.service.gov.uk](http://publishing.service.gov.uk))?
- How do you check the information is correct? What if your online verification gives a 'Pass' but fails on key information of address. What additional checks do you undertake?
- Check someone's driving licence information - GOV.UK ([www.gov.uk](http://www.gov.uk))
- How to prove and verify someone's identity - GOV.UK ([www.gov.uk](http://www.gov.uk))





# AML RISK



## Risk Assessment - Verify identity

- The Treasury's Office of Financial Sanctions Implementation (OFSI) can since January 2013 impose penalties for serious financial sanctions breaches. These can be up to £1m or the higher of 50% of the infringement.
- How many are on the list? Circa 36,000 entries (50/50 entities and individuals).
- What triggers a suspicion about an individual with staff? Sally-Anne Jones from Greenwich or Hamid Hamad Hamid AL-'ALI.
- What about a company name? Strategic Rocket Force of the Korean People's Army or Green Pine Associated Corporation (73,554 matches on Companies House).



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# Please respond to the First Review of the Insolvency (England and Wales) Rules 2016: Call for evidence – If you don't like the rules this is your chance to change them!

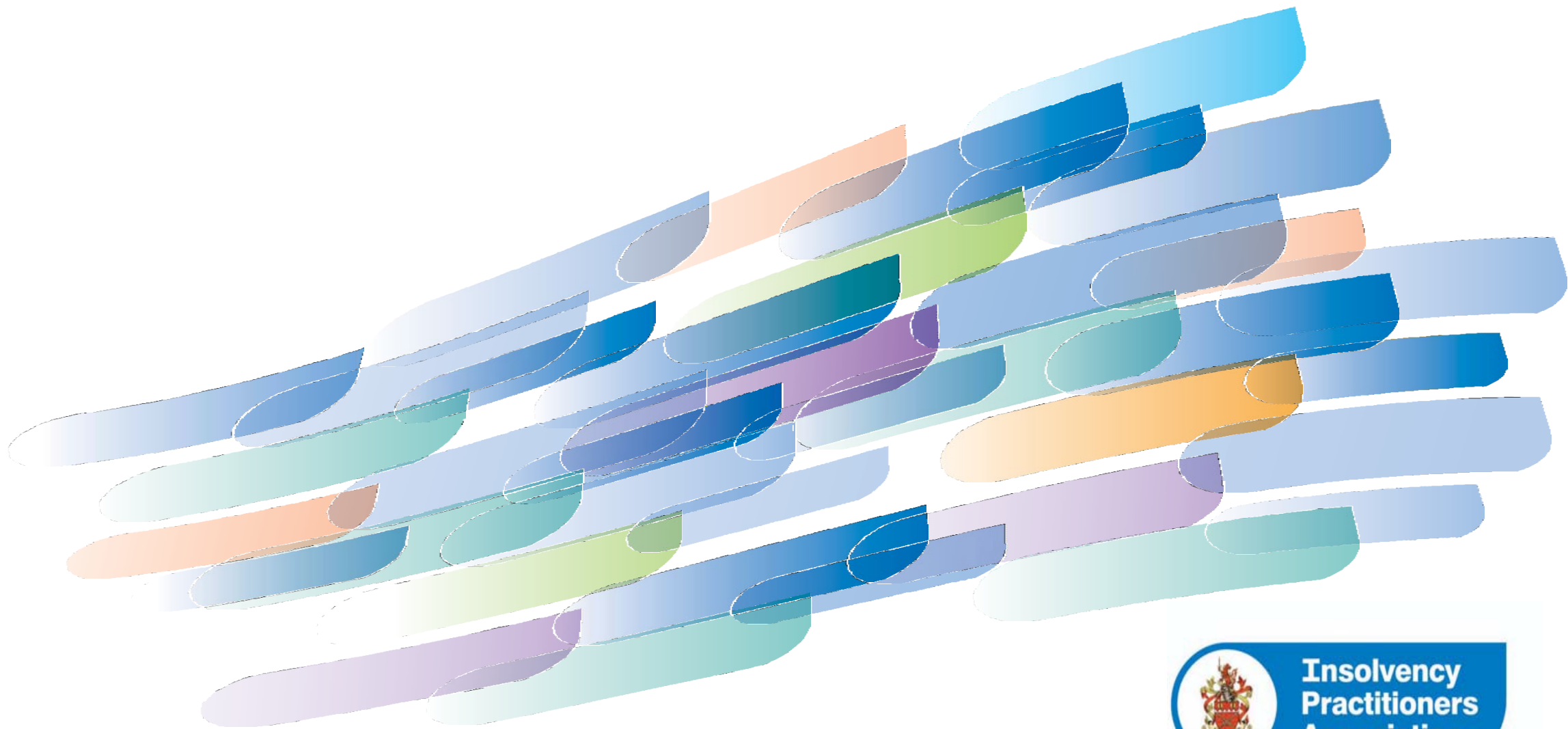
- Published: 11 March 2021 The consultation closes at 11:59pm on 30 June 2021.
- The Insolvency (England and Wales) Rules 2016 came into force on 6 April 2017. They have now been in operation for over four years, providing time for users of the Rules to apply the new legislation in a variety of different scenarios and reflect on its effectiveness.
- Rule 7 of the Rules creates a legal requirement for a review to be carried out and a report to be published.
- The call for evidence consists of 17 questions - The IPA will be sending out a questionnaire shortly to assist with collecting ideas and identifying issues. We are not expecting that many IPs will want to answer all 17 questions in detail and lodge their own response, but this exercise could be useful to highlight areas that could be easily changed.

**Every idea is important - and any idea big or small will be useful for the response to the Insolvency Service – please respond**

# Thank you

If you have any queries on the content or would like to discuss any point raised today, please contact me direct on [davidh@ipa.uk.com](mailto:davidh@ipa.uk.com)





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Practitioners  
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