

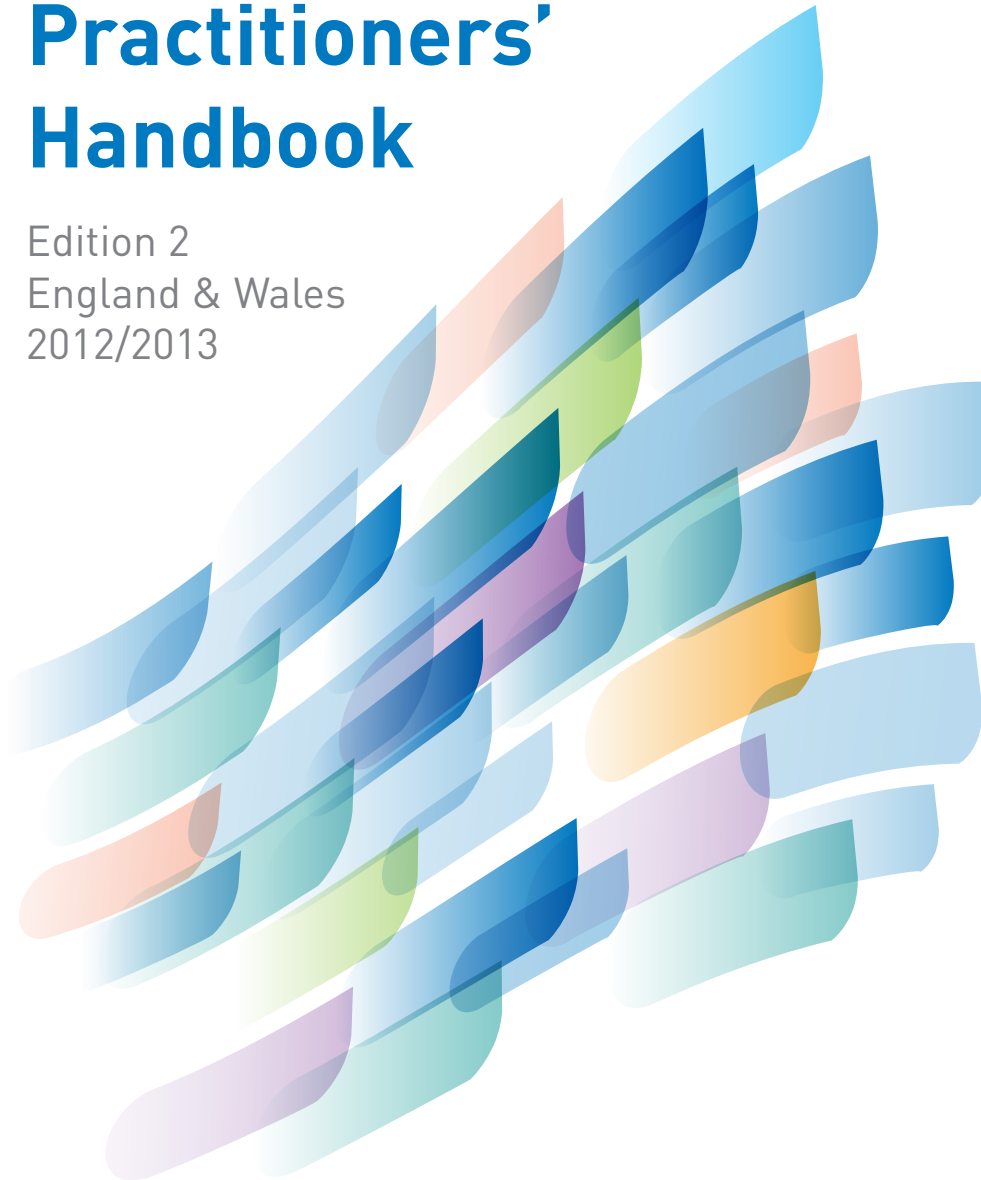
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Insolvency Practitioners' Handbook

Edition 2
England & Wales
2012/2013



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Welcome to the second edition of the IPA Insolvency Handbook. The launch of our new Handbook in our 50th anniversary year proved to be a great success, and the feedback from members and others has encouraged us to make it an annual publication.

The IPA started its life as a group of insolvency specialists back in 1961. The practitioners who came together then to form the origins of the Association shared a desire to see the profession recognised in its own right, and a common will to support each other. This handbook continues that tradition, by bringing together in one useful volume most of the key guidance and codes that practitioners (and those studying for insolvency exams) need to have at their fingertips.

We have a strong track record of supporting our students, who are of course potential future members of the Association. Our Certificates of Proficiency in Insolvency (CPI) and Personal Insolvency (CPPI) are established examinations that are widely recognised as providing a good intermediate test. They are sat by more people than any other equivalent insolvency exams in the UK, and more would-be IPs sit the Joint Insolvency Examinations (JIE) through the IPA than through any of the other registration bodies. As well as being an examiner and membership body for those involved in insolvency and related professional activities, the IPA is of course a Recognised Professional Body (RPB) for the purposes of authorising IPs to act as such under the Insolvency Act 1986. As the only one of the RPBs solely involved in insolvency, we have been at the forefront in:

- Developing new insolvency qualifications (e.g. CPPI);
- Issuing professional guidance (such as on Paymex and PPI);
- encouraging high standards in practice, through newsletters and helpsheets;
- widening access to insolvency knowledge via our annual conferences and lectures;
- extending the regulatory reach into related activities such as property receivership;
- and leading debates on current issues such as reform of complaints processes.

Together with the other member services we provide, we hope this publication will prove to be an invaluable reference for students and licensed practitioners alike.

David A Kerr FIPA
Chief Executive

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We were delighted and very proud of the response we received from our members to the first edition of our handbook.

This 2nd edition includes the OFT's revised Debt Management Guidance and the recent changes to the IVA protocol (effective as of 01 January 2013). We have also taken note of the queries we have received from our members over the year and taken the opportunity to include the MOJ's "Bribery Act 2010 – Quick Start Guide", which we hope you will find a useful addition to the publication.

We remain committed to providing our members with the tools and resources they need to perform their often difficult jobs, to the highest possible standards. We also hope this publication will help our student members in their exam preparations in order that we may welcome them to the IPA as full members, for what we hope will be long and satisfying careers in a challenging and diverse profession.

We are always keen to hear from our members and if there any materials you feel we could usefully include in next year's publication, please don't hesitate to contact me.

We continue to operate an Ethical & Regulatory Helpline for members seeking our clarification or interpretation of the materials in this publication. That helpline is staffed exclusively by JIEB qualified personnel. If we are unable to assist you, for instance where your query concerns a purely legal or technical matter, we now have a panel of solicitors who have offered to do so. Their details may be found on page [493](#).

We hope you find this publication a valuable resource in your work. Don't forget, this publication can also be downloaded as a navigable pdf from the members' area of our [website](#).

Alison Curry LLB MIPA
Head of Regulatory Standards & Support

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1.1 INSOLVENCY CODE OF ETHICS BACKGROUND AND OVERVIEW

A. INTRODUCTION

1. This document relates to the Insolvency Code of Ethics ("the Code"). This document has been prepared in order to assist the reader in understanding the Code and the background to it. This document is to be read in conjunction with the Code. This document does not form part of the Code. Its contents are not to be used for any interpretative purposes including during disciplinary proceedings. Neither are the contents of this document intended to be a comprehensive description of the Code. Accordingly where a section or part of the Code does not seem to require any comment, none is given.

B. BACKGROUND

2. For some years the bodies recognised under the relevant legislation in England and Wales, Scotland and Ireland to grant licences to *insolvency practitioners* ("the RPBs") have agreed upon and produced a joint ethical code for *insolvency practitioners*, the most recent version being that adopted in January 2004 ("the Insolvency Ethical Guide"). In 2006, the professional accounting bodies in England and Wales, Scotland and Ireland altered their principal codes of ethics to align them to a model adopted by the International Federation of Accounting Bodies ("the IFAC Code"). It was subsequently agreed that the Insolvency Ethical Guide should be reviewed and redrafted to align it more closely to the IFAC Code.
3. A draft of the Code was produced by the Joint Insolvency Committee¹ ("the JIC") in March 2007 for public consultation. The consultation period ended on 2 July 2007. Thereafter the JIC had regular meetings to discuss the responses to the consultation and produced a substantially revised draft of the Code.
4. The revised version of the Code has now been adopted by each of the RPBs. Accordingly, all *insolvency practitioners* will continue to follow a standardised Code, regardless of their authorising body. It is recognised, however, that some of the RPBs may wish to adopt the Code with minor modifications in order that it is integrated with any additional guidance provided them.

¹ The JIC was formed in 1999 and aims to facilitate discussion between the RPBs in order to ensure that, as far as possible, there is a consistency of approach between them. Each of the RPBs is represented on the JIC.

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5. The Code is presented as a new document because the extent of the changes makes it impractical to issue a version highlighting the changes made to the earlier Insolvency Ethical Guide. However, it is not considered that the application of the Code in *practice* will be substantially different from the application of the Insolvency Ethical Guide.

C. OVERVIEW

Introduction

6. The Code is intended to assist *insolvency practitioners* meet the obligations expected of them by providing professional and ethical guidance. The purpose of the Code is to provide a high standard of professional and ethical guidance amongst *insolvency practitioners*.
7. Paragraphs 1 to 3 of the Code outline the purpose of the Code and its scope. The Code is to be applied to all professional work relating to an *insolvency appointment* including any professional work that may lead to such an appointment. An *Insolvency Practitioner* should ensure that the principles outlined in the Code are applied not only by himself but all members of the insolvency team.
8. Paragraph 3 requires that *insolvency practitioners* should be guided not merely by the terms but also by the spirit of the Code. In this regard, it is important to note that the examples set out in the Code are intended to be illustrative only. It is impossible to define every situation to which the principles set out in the Code will be relevant.

Fundamental principles

9. The earlier Insolvency Ethical Guide provided *insolvency practitioners* with five fundamental principles to which they must adhere, together with a list of common situations which *insolvency practitioners* may face.
10. The Code also includes five fundamental principles which have been revised from the Insolvency Ethical Guide. Each of the fundamental principles set out in the Code is based upon and follows closely the fundamental principles contained in the IFAC Code.

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11. The JIC does not consider that the application of the fundamental principles of integrity, objectivity, professional competence and due care and professional behaviour will be materially different from the application of the fundamental principles contained in Insolvency Ethical Guide.
12. The fundamental principle of confidentiality did not appear in the Insolvency Ethical Guide. Some concern was expressed during the consultation period that the inclusion of this fundamental principle may be inconsistent with an *Insolvency Practitioner's* duty or obligation, in certain circumstances, to disclose confidential information. The JIC does not consider this to be the case. As drafted, the fundamental principle of confidentiality makes it clear that where an *Insolvency Practitioner* has a legal or professional right or duty to disclose he may do so.
13. Following comments received during the consultation period amendments were made to the drafting of the fundamental principle of professional behaviour. This principle now contains an additional requirement not explicitly set out in the IFAC Code that *insolvency practitioners* conduct themselves with courtesy and consideration towards all whom they come into contact with when performing their work. This requirement was contained in the Insolvency Ethical Guide. Following the comments received during the consultation period, it was considered important that this requirement remained explicitly set out in the description of the fundamental principle of professional behaviour.

Framework approach

14. The Code sets out a framework that *insolvency practitioners* can use to identify actual or potential threats to the fundamental principles and determine what safeguards, if any, may be available to meet such threats.
15. The framework approach requires *insolvency practitioners* to identify, evaluate and respond in an appropriate manner to any threats to compliance with the fundamental principles.
16. The Code also provides detail concerning the threats that *insolvency practitioners* may face in the conduct of their work. The earlier Insolvency Ethical Guide identified and discussed two main types of threat: self interest and self review. The Code also identifies and discusses advocacy, familiarity and intimidation threats.

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17. Information is also included on potential safeguards. In particular examples are given of safeguards that may be introduced into the *practice* to create a work environment in which threats are identified and the introduction of appropriate safeguards is encouraged.

Insolvency appointments

18. Paragraphs 20 to 30 of the Code consider the particular application of the framework approach in relation to the decision by an *Insolvency Practitioner* to accept an *insolvency appointment*.
19. This part of the Code describes some of the safeguards that *insolvency practitioners* will need to consider implementing prior to accepting an appointment where there is a threat to the fundamental principles. The examples are not intended to be exhaustive. Neither will the examples given be applicable to all situations. As paragraph 28 makes clear, an *Insolvency Practitioner* may encounter situations where no safeguards can reduce a threat to an acceptable level. In such circumstances, an *Insolvency Practitioner* should conclude that it is not appropriate to accept an *insolvency appointment*.
20. Paragraphs 31 and 32 of the Code require an *Insolvency Practitioner* to take reasonable steps to identify any circumstances that pose a conflict of interest and give some examples of the types of situation in which such a conflict could arise.
21. Paragraphs 33 and 34 of the Code discuss some of the particular issues that can arise where two or more *practices* merge.
22. Paragraphs 37 to 39 of the Code expand upon the fundamental principle of professional competence and due care. An *Insolvency Practitioner* should only accept an *insolvency appointment* when the *Insolvency Practitioner* has sufficient expertise. This part of the Code also stresses the importance of maintaining professional competence by a continuing awareness of relevant technical and professional developments.

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Professional and personal relationship

23. Paragraphs 40 to 48 of the Code discuss some of the particular threats to the fundamental principle of objectivity that can arise from certain professional and personal relationships.
24. This section requires an *Insolvency Practitioner* to identify any threats to the principle of objectivity that may arise from a professional and personal relationship, to evaluate the significance of the threat in relation to the conduct of the *insolvency appointment* being considered and consider whether any safeguards will be appropriate to reduce the threat to an acceptable level.
25. Where there are no or no reasonable safeguards that can be introduced to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level the relationship in question will constitute a “significant professional relationship” or a “significant personal relationship”. Where this is the case the *Insolvency Practitioner* should conclude that it is not appropriate to take the *insolvency appointment*.
26. Some concern was expressed during the consultation period as to the use of the term “significant professional relationship”. The term “material professional relationship” was used in the Insolvency Ethical November 2008 Guide. The JIC does not consider that there is any substantial difference between the two terms.
27. Some concern was also expressed during the consultation period that the requirement for safeguards to be adopted to identify relationships between *individuals* within the *practice* and third parties that may give rise to a threat to the fundamental principles would be impractical in the case of large *practices*. Paragraph 43 now makes it clear that only such safeguards that are proportionate and reasonable in relation to the *insolvency appointment* being considered are necessary.

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Paragraphs 49 to 73 of the Code

28. Paragraphs 49 to 73 of the Code discuss a number of areas in which an *Insolvency Practitioner* will commonly encounter threats to the fundamental principles. Each section gives some examples of the types of safeguard that may be available to reduce the particular threats to an acceptable level.
29. Paragraphs 49 to 52 of the Code discuss some of the particular threats that may arise where an *Insolvency Practitioner* realises assets. This section stresses the importance for an *Insolvency Practitioner* to take care to ensure (where to do so does not conflict with any legal or professional obligation) that his decision making processes are transparent, understandable and readily identifiable to all third parties who may be affected by any sale or proposed sale.
30. Paragraphs 53 to 56 of the Code describe some of the threats to the fundamental principles that can arise when an *Insolvency Practitioner* intends to seek specialist advice and services. Such threats can arise where the *Insolvency Practitioner* obtains services from a regular source or where services are provided from within the *practice* or by a party with whom the *practice* or an *individual within the practice* has a business or personal relationship. This section describes some of the safeguards that may be available to reduce these threats to an acceptable level.
31. Paragraphs 57 to 62 of the Code concern the acceptance of fees and other types of remuneration (including referral fees and commissions) both prior to and after accepting an *insolvency appointment*.
32. Paragraph 63 of the Code prohibits the payment or offer of any commission for or the furnishing of any valuable consideration towards, the introduction of *insolvency appointments*. Paragraphs 64 to 69 discuss some of the particular threats that can arise where an *Insolvency Practitioner* seeks an appointment or work that may lead to an appointment through advertising or other forms of marketing. Paragraphs 70 to 73 concern the offer and acceptance of gifts and hospitality.

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Record keeping

33. Paragraphs 74 to 75 of the Code stress the importance of record keeping in relation to the work carried out by an *Insolvency Practitioner*.

The application of the framework to specific circumstances

34. Paragraphs 76 to 88 of the Code contain specific circumstances and relationships that will create threats to the fundamental principles. The examples describe the threats and the safeguards that may in some circumstances be appropriate to eliminate the threats or reduce them to an acceptable level in each case. In other circumstances, the examples contain a complete prohibition on the acceptance of an *insolvency appointment*. The examples are divided into three parts: examples which do not relate to a previous or existing *insolvency appointment*; examples that do relate to a previous or existing *insolvency appointment*; and some examples under Scots law.

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1.2 ETHICS CODE FOR MEMBERS

- 1 As a professional membership body promoting high standards of practice in relation to work undertaken by its members, the Insolvency Practitioners Association (“IPA”) requires its members to adhere to certain principles in all aspects of their professional work.
- 2 Furthermore, one of the bases for recognition (by the Secretary of State for Business, Innovation and Skills) of the IPA as a body entitled to authorise its members to act as insolvency practitioners, is that the IPA:
 - will arrange for appropriate ethical guidance to be made available to its members;
 - will ensure through its ethical code or guide that its members, when accepting appointments as office holders, are and are seen to be independent from influences which could affect their objectivity; and
 - will firmly but fairly apply its relevant professional and ethical codes or guides in relation to the activities of its members.
- 3 The Code of Ethics set out below (“the Code”) was produced by the Joint Insolvency Committee and has been adopted in substantially similar terms by all of the bodies recognised under the relevant legislation in England and Wales, Scotland and Ireland to grant licences to insolvency practitioners. The Code is stated to apply to all Insolvency Practitioners. However, all members are required to adhere to the Code and in particular the spirit of the Code (with such modifications as are appropriate in all the circumstances) in all their professional and business activities and in other circumstances where to fail to do so might bring discredit upon themselves or the IPA.
- 4 The Code will replace all previous Codes of Ethics issued by the Council. For the purposes of Article 66 of the Articles of Association of the IPA misconduct shall include any breach by a member of the Code.

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Definitions

Authorising body	A body declared to be a recognised professional body or a competent authority under any legislation governing the administration of insolvency in the United Kingdom.
Close or immediate family	A spouse (or equivalent), dependant, parent, child or sibling.
Entity	Any natural or legal person or any group of such persons, including a partnership.
He/she	In this Code, he is to be read as including she.
Individual within the practice	The Insolvency Practitioner, any principals in the practice and any employees within the practice.
Insolvency appointment	A formal appointment: (a) which, under the terms of legislation must be undertaken by an <i>Insolvency Practitioner</i> ; or (b) as a nominee or supervisor of a voluntary arrangement.
Insolvency Practitioner	An <i>individual</i> who is authorised or recognised to act as an <i>Insolvency Practitioner</i> in the United Kingdom by an authorising body. For the purpose of the application of this Code only, the term <i>Insolvency Practitioner</i> also includes an <i>individual</i> who acts as a nominee or supervisor of a voluntary arrangement.
Insolvency team	Any person under the control or direction of an <i>Insolvency Practitioner</i> .
Practice	The organisation in which the <i>Insolvency Practitioner</i> practises.
Principal	In respect of a <i>practice</i> : (a) which is a company: a director; (b) which is a partnership: a partner; (c) which is a limited liability partnership: a member; (d) which is comprised of a sole practitioner: that person; Alternatively any person within the <i>practice</i> who is held out as being a director, partner or member.

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GENERAL APPLICATION OF THE CODE

Introduction

1. This Code is intended to assist *insolvency practitioners* meet the obligations expected of them by providing professional and ethical guidance.
2. This Code applies to all *insolvency practitioners*. *Insolvency practitioners* should take steps to ensure that the Code is applied in all professional work relating to an *insolvency appointment*, and to any professional work that may lead to such an *insolvency appointment*. Although an *insolvency appointment* will be of the *Insolvency Practitioner* personally rather than his *practice* he should ensure that the standards set out in this Code are applied to all members of the insolvency team.
3. It is this Code, and the spirit that underlies it, that governs the conduct of *insolvency practitioners*. Failure to observe this Code may not, of itself, constitute professional misconduct, but will be taken into account in assessing the conduct of an *Insolvency Practitioner*.

Fundamental principles

4. An *Insolvency Practitioner* is required to comply with the following fundamental principles:

(a) Integrity

An *Insolvency Practitioner* should be straightforward and honest in all professional and business relationships.

(b) Objectivity

An *Insolvency Practitioner* should not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

(c) Professional competence and due care

An *Insolvency Practitioner* has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in *practice*, legislation and techniques. An *Insolvency Practitioner* should act diligently and in accordance with applicable technical and professional standards when providing professional services.

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(d) Confidentiality

An *Insolvency Practitioner* should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the *Insolvency Practitioner* or third parties.

(e) Professional behaviour

An *Insolvency Practitioner* should comply with relevant laws and regulations and should avoid any action that discredits the profession. *Insolvency practitioners* should conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

Framework approach

5. The framework approach is a method which *insolvency practitioners* can use to identify actual or potential threats to the fundamental principles and determine whether there are any safeguards that might be available to offset them. The framework approach requires an *Insolvency Practitioner* to:
 - (a) take reasonable steps to identify any threats to compliance with the fundamental principles;
 - (b) evaluate any such threats; and
 - (c) respond in an appropriate manner to those threats.
6. Throughout this Code there are examples of threats and possible safeguards. These examples are illustrative and should not be considered as exhaustive lists of all relevant threats or safeguards. It is impossible to define every situation that creates a threat to compliance with the fundamental principles or to specify the safeguards that may be available.

Identification of threats to the fundamental principles

7. An *Insolvency Practitioner* should take reasonable steps to identify the existence of any threats to compliance with the fundamental principles which arise during the course of his professional work.

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8. An *Insolvency Practitioner* should take particular care to identify the existence of threats which exist prior to or at the time of taking an *insolvency appointment* or which, at that stage, it may reasonably be expected might arise during the course of such an *insolvency appointment*. Paragraphs 20 to 48 below contain particular factors an *Insolvency Practitioner* should take into account when deciding whether to accept an *insolvency appointment*.
9. In identifying the existence of any threats, an *Insolvency Practitioner* should have regard to relationships whereby the *practice* is held out as being part of a national or an international association.
10. Many threats fall into one or more of five categories:
 - (a) **Self-interest threats:** which may occur as a result of the financial or other interests of a practice or an *Insolvency Practitioner* or of a close or immediate family member of an individual within the practice;
 - (b) **Self-review threats:** which may occur when a previous judgement made by an individual within the practice needs to be re-evaluated by the *Insolvency Practitioner*;
 - (c) **Advocacy threats:** which may occur when an individual within the practice promotes a position or opinion to the point that subsequent objectivity may be compromised;
 - (d) **Familiarity threats:** which may occur when, because of a close relationship, an individual within the practice becomes too sympathetic or antagonistic to the interests of others; and
 - (e) **Intimidation threats:** which may occur when an *Insolvency Practitioner* may be deterred from acting objectively by threats, actual or perceived.
11. The following paragraphs give examples of the possible threats that an *Insolvency Practitioner* may face.
12. Examples of circumstances that may create self-interest threats for an *Insolvency Practitioner* include:
 - (a) An individual within the practice having an interest in a creditor or potential creditor with a claim which requires subjective adjudication.
 - (b) Concern about the possibility of damaging a business relationship.
 - (c) Concerns about potential future employment.

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13. Examples of circumstances that may create self-review threats include:
- (a) The acceptance of an *insolvency appointment* in respect of an *entity* where an individual within the practice has recently been employed by or seconded to that *entity*.
 - (b) An *Insolvency Practitioner* or the practice has carried out professional work of any description, including sequential *insolvency appointments*, for that *entity*.

Such self-review threats may diminish over the passage of time.

14. Examples of circumstances that may create advocacy threats include:
- (a) Acting in an advisory capacity for a creditor of an *entity*.
 - (b) Acting as an advocate for a client in litigation or dispute with an *entity*.
15. Examples of circumstances that may create familiarity threats include:
- (a) An individual within the practice having a close relationship with any individual having a financial interest in the insolvent *entity*.
 - (b) An *individual within the practice* having a close relationship with a potential purchaser of an insolvent's assets and/or business.

In this regard a close relationship includes both a close professional relationship and a close personal relationship.

16. Examples of circumstances that may create intimidation threats include:
- (a) The threat of dismissal or replacement being used to :
 - (i) Apply pressure not to follow regulations, this Code, any other applicable code, technical or professional standards.
 - (ii) Exert influence over an *insolvency appointment* where the *Insolvency Practitioner* is an employee rather than a principal of the practice.
 - (b) Being threatened with litigation.
 - (c) The threat of a complaint being made to the *Insolvency Practitioner's* authorising body.

Evaluation of threats

17. An *Insolvency Practitioner* should take reasonable steps to evaluate any threats to compliance with the fundamental principles that he has identified.



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18. In particular, an *Insolvency Practitioner* should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat, would conclude to be acceptable.

Possible safeguards

19. Having identified and evaluated a threat to the fundamental principles an *Insolvency Practitioner* should consider whether there are any safeguards that may be available to reduce the threat to an acceptable level.

Insolvency Code of Ethics

The relevant safeguards will vary depending on the circumstances. Generally safeguards fall into two broad categories. Firstly, safeguards created by the profession, legislation or regulation. Secondly, safeguards in the work environment. In the insolvency context safeguards in the work environment can include safeguards specific to an *insolvency appointment*. These are considered in paragraphs 20 to 39 below. In addition, safeguards can be introduced across the practice. These safeguards seek to create a work environment in which threats are identified and the introduction of appropriate safeguards is encouraged. Some examples include:

- (a) Leadership that stresses the importance of compliance with the fundamental principles.
- (b) Policies and procedures to implement and monitor quality control of engagements.
- (c) Documented policies regarding the identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are trivial, to an acceptable level.
- (d) Documented internal policies and procedures requiring compliance with the fundamental principles.
- (e) Policies and procedures to consider the fundamental principles of this Code before the acceptance of an *insolvency appointment*.
- (f) Policies and procedures regarding the identification of interests or relationships between individuals within the practice and third parties.

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- (g) Policies and procedures to prohibit individuals who are not members of the insolvency team from inappropriately influencing the outcome of an *insolvency appointment*.
- (h) Timely communication of a practice's policies and procedures, including any changes to them, to all individuals within the practice, and appropriate training and education on such policies and procedures.
- (i) Designating a member of senior management to be responsible for overseeing the adequate functioning of the safeguarding system.
- (j) A disciplinary mechanism to promote compliance with policies and procedures.
- (k) Published policies and procedures to encourage and empower *individuals* within the *practice* to communicate to senior levels within the *practice* and/or the *Insolvency Practitioner* any issue relating to compliance with the fundamental principles that concerns them.

SPECIFIC APPLICATION OF THE CODE

Insolvency appointments

- 20. The *practice* of insolvency is principally governed by statute and secondary legislation and in many cases is subject ultimately to the control of the Court. Where circumstances are dealt with by statute or secondary legislation, an *Insolvency Practitioner* must comply with such provisions. An *Insolvency Practitioner* must also comply with any relevant judicial authority relating to his conduct and any directions given by the Court.
- 21. An *Insolvency Practitioner* should act in a manner appropriate to his position as an officer of the Court (where applicable) and in accordance with any quasi-judicial, fiduciary or other duties that he may be under.
- 22. Before agreeing to accept any *insolvency appointment* (including a joint appointment), an *Insolvency Practitioner* should consider whether acceptance would create any threats to compliance with the fundamental principles. Of particular importance will be any threats to the fundamental principle of objectivity created by conflicts of interest or by any significant professional or personal relationships. These are considered in more detail below.
- 23. In considering whether objectivity or integrity may be threatened, an *Insolvency Practitioner* should identify and evaluate any professional or personal relationship (see paragraphs 40 to 48 below) which may affect

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compliance with the fundamental principles. The appropriate response to the threats arising from any such relationships should then be considered, together with the introduction of any possible safeguards.

24. Generally, it will be inappropriate for an *Insolvency Practitioner* to accept an *insolvency appointment* where a threat to the fundamental principles exists or may reasonably be expected might arise during the course of the *insolvency appointment* unless:
 - (a) disclosure is made, prior to the *insolvency appointment*, of the existence of such a threat to the Court or to the creditors on whose behalf the *Insolvency Practitioner* would be appointed to act and no objection is made to the *Insolvency Practitioner* being appointed; and
 - (b) safeguards are or will be available to eliminate or reduce that threat to an acceptable level. If the threat is other than trivial, safeguards should be considered and applied as necessary to reduce them to an acceptable level, where possible.
25. The following safeguards may be considered:
 - (a) Involving and/or consulting another *Insolvency Practitioner* from within the practice to review the work done.
 - (b) Consulting an independent third party, such as a committee of creditors, an authorising body or another *Insolvency Practitioner*.
 - (c) Involving another *Insolvency Practitioner* to perform part of the work, which may include another *Insolvency Practitioner* taking a joint appointment where the conflict arises during the course of the *insolvency appointment*.
 - (d) Obtaining legal advice from a solicitor or barrister with appropriate experience and expertise.
 - (e) Changing the members of the insolvency team.
 - (f) The use of separate *insolvency practitioners* and/or staff.
 - (g) Procedures to prevent access to information by the use of information barriers (e.g. strict physical separation of such teams, confidential and secure data filing).
 - (h) Clear guidelines for individuals within the practice on issues of security and confidentiality.
 - (i) The use of confidentiality agreements signed by individuals within the practice.

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- (j) Regular review of the application of safeguards by a senior individual within the practice not involved with the *insolvency appointment*.
 - (k) Terminating the financial or business relationship that gives rise to the threat.
 - (l) Seeking directions from the court.
26. As regards joint appointments, where an *Insolvency Practitioner* is specifically precluded by this Code from accepting an *insolvency appointment* as an *individual*, a joint appointment will not be an appropriate safeguard and will not make accepting the *insolvency appointment* appropriate.
27. In deciding whether to take an *insolvency appointment* in circumstances where a threat to the fundamental principles has been identified, the *Insolvency Practitioner* should consider whether the interests of those on whose behalf he would be appointed to act would best be served by the appointment of another *Insolvency Practitioner* who did not face the same threat and, if so, whether any such appropriately qualified and experienced other *Insolvency Practitioner* is likely to be available to be appointed.
28. An *Insolvency Practitioner* will encounter situations where no safeguards can reduce a threat to an acceptable level. Where this is the case, an *Insolvency Practitioner* should conclude that it is not appropriate to accept an *insolvency appointment*.
29. Following acceptance, any threats should continue to be kept under appropriate review and an *Insolvency Practitioner* should be mindful that other threats may come to light or arise. There may be occasions when the *Insolvency Practitioner* is no longer in compliance with this Code because of changed circumstances or something which has been inadvertently overlooked. This would generally not be an issue provided the *Insolvency Practitioner* has appropriate quality control policies and procedures in place to deal with such matters and, once discovered, the matter is corrected promptly and any necessary safeguards are applied. In deciding whether to continue an *insolvency appointment* the *Insolvency Practitioner* may take into account the wishes of the creditors, who after full disclosure has been made have the right to retain or replace the *Insolvency Practitioner*.
30. In all cases an *Insolvency Practitioner* will need to exercise his judgment to determine how best to deal with an identified threat. In exercising his

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judgment, an *Insolvency Practitioner* should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and the safeguards applied, would conclude to be acceptable. This consideration will be affected by matters such as the significance of the threat, the nature of the work and the structure of the *practice*.

Conflicts of interest

31. An *Insolvency Practitioner* should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles. Examples of where a conflict of interest may arise are where:
 - (a) An *Insolvency Practitioner* has to deal with claims between the separate and conflicting interests of entities over whom he is appointed.
 - (b) There are a succession of or sequential *insolvency appointments* (see paragraphs 76 to 88 below).
 - (c) A significant relationship has existed with the *entity* or someone connected with the *entity* (see paragraphs 40 to 48 below)
32. Some of the safeguards listed at paragraph 25 may be applied to reduce the threats created by a conflict of interest to an acceptable level. Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance; therefore, the safeguards used should generally include the use of effective information barriers.

Practice mergers

33. Where *practices* merge, they should subsequently be treated as one for the purposes of assessing threats to the fundamental principles. At the time of the merger, existing *insolvency appointments* should be reviewed and any threats identified. *Principals* and employees of the merged *practice* become subject to common ethical constraints in relation to accepting new *insolvency appointments* to clients of either of the former *practices*. However existing *insolvency appointments* which are rendered in apparent breach of the Code by such a merger need not be determined automatically, provided that a considered review of the situation by the *practice* discloses no obvious and immediate ethical conflict.

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34. Where an *individual within the practice* has, in any former *practice*, undertaken work upon the affairs of an *entity* in a capacity that is incompatible with an *insolvency appointment* of the new *practice*, the *individual* should not work or be employed on that assignment.

Transparency

35. Both before and during an *insolvency appointment* an *Insolvency Practitioner* may acquire personal information that is not directly relevant to the insolvency or confidential commercial information relating to the affairs of third parties. The information may be such that others might expect that confidentiality would be maintained.
36. Nevertheless an *Insolvency Practitioner* in the role as office holder has a professional duty to report openly to those with an interest in the outcome of the insolvency. An *Insolvency Practitioner* should always report on his acts and dealings as fully as possible given the circumstances of the case, in a way that is transparent and understandable. An *Insolvency Practitioner* should bear in mind the expectations of others and what a reasonable and informed third party would consider appropriate.

Professional competence and due care

37. Prior to accepting an *insolvency appointment* the *Insolvency Practitioner* should ensure that he is satisfied that the following matters have been considered:
- (a) Obtaining knowledge and understanding of the *entity*, its owners, managers and those responsible for its governance and business activities.
 - (b) Acquiring an appropriate understanding of the nature of the *entity's* business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
 - (c) Acquiring knowledge of relevant industries or subject matters.
 - (d) Possessing or obtaining experience with relevant regulatory or reporting requirements.
 - (e) Assigning sufficient staff with the necessary competencies.
 - (f) Using experts where necessary.
 - (g) Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

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38. The fundamental principle of professional competence and due care requires that an *Insolvency Practitioner* should only accept an *insolvency appointment* when the *Insolvency Practitioner* has sufficient expertise. For example, a self interest threat to the fundamental principle of professional competence and due care is created if the *Insolvency Practitioner* or the insolvency team does not possess or cannot acquire the competencies necessary to carry out the *insolvency appointment*. Expertise will include appropriate training, technical knowledge, knowledge of the *entity* and the business with which the *entity* is concerned.
39. Maintaining and acquiring professional competence requires a continuing awareness and understanding of relevant technical and professional developments, including:
- (a) Developments in insolvency legislation.
 - (b) Statements of Insolvency Practice.
 - (c) The regulations of their authorising body, including any continuing professional development requirements.
 - (d) Guidance issued by their authorising body or the Insolvency Service.
 - (e) Technical issues being discussed within the profession.

Professional and personal relationships

40. The environment in which *insolvency practitioners* work and the relationships formed in their professional and personal lives can lead to threats to the fundamental principle of objectivity.

Identifying relationships

41. In particular, the principle of objectivity may be threatened if any *individual within the practice*, the close or *immediate family* of an *individual within the practice* or the *practice* itself, has or has had a professional or personal relationship which relates to the *insolvency appointment* being considered.
42. Professional or personal relationships may include (but are not restricted to) relationships with:-
- (a) the *entity*;
 - (b) any director or shadow director or former director or shadow director of the *entity*;

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- (c) shareholders of the *entity*;
- (d) any principal or employee of the *entity*;
- (e) business partners of the *entity*;
- (f) companies or entities controlled by the *entity*;
- (g) companies which are under common control;
- (h) creditors (including debenture holders) of the *entity*;
- (i) debtors of the *entity*;
- (j) close or immediate family of the *entity* (if an individual) or its officers (if a corporate body);
- (k) others with commercial relationships with the practice

43. Safeguards within the *practice* should include policies and procedures to identify relationships between *individuals* within the *practice* and third parties in a way that is proportionate and reasonable in relation to the *insolvency appointment* being considered.

Is the relationship significant to the conduct of the insolvency appointment?

44. Where a professional or personal relationship of the type described in paragraph 41 has been identified the *Insolvency Practitioner* should evaluate the impact of the relationship in the context of the *insolvency appointment* being sought or considered. Issues to consider in evaluating whether a relationship creates a threat to the fundamental principles may include the following:
- (a) The nature of the previous duties undertaken by a practice during an earlier relationship with the *entity*.
 - (b) The impact of the work conducted by the practice on the financial state and/or the financial stability of the *entity* in respect of which the *insolvency appointment* is being considered.
 - (c) Whether the fee received for the work by the practice is or was significant to the practice itself or is or was substantial.
 - (d) How recently any professional work was carried out. It is likely that greater threats will arise (or may be seen to arise) where work has been carried out within the previous three years. However, there may still be instances where, in respect of non-audit work, any threat is

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at an acceptable level. Conversely, there may be situations whereby the nature of the work carried out was such that a considerably longer period should elapse before any threat can be reduced to an acceptable level.

- (e) Whether the *insolvency appointment* being considered involves consideration of any work previously undertaken by the practice for that *entity*.
 - (f) The nature of any personal relationship and the proximity of the *Insolvency Practitioner* to the individual with whom the relationship exists and, where appropriate, the proximity of that individual to the *entity* in relation to which the *insolvency appointment* relates.
 - (g) Whether any reporting obligations will arise in respect of the relevant individual with whom the relationship exists (e.g. an obligation to report on the conduct of directors and shadow directors of a company to which the *insolvency appointment* relates).
 - (h) The nature of any previous duties undertaken by an individual within the practice during any earlier relationship with the *entity*.
 - (i) The extent of the insolvency team's familiarity with the *individuals* connected with the *entity*.
45. Having identified and evaluated a relationship that may create a threat to the fundamental principles, the *Insolvency Practitioner* should consider his response including the introduction of any possible safeguards to reduce the threat to an acceptable level.
46. Some of the safeguards which may be considered to reduce the threat created by a professional or personal relationship to an acceptable level are considered in paragraph 25. Other safeguards may include:
- (a) Withdrawing from the insolvency team.
 - (b) Terminating (where possible) the financial or business relationship giving rise to the threat.
 - (c) Disclosure of the relationship and any financial benefit received by the *practice* (whether directly or indirectly) to the *entity* or to those on whose behalf the *Insolvency Practitioner* would be appointed to act.
47. An *Insolvency Practitioner* may encounter situations in which no or no reasonable safeguards can be introduced to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level.

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In such situations, the relationship in question will constitute a significant professional relationship ("Significant Professional Relationship") or a significant personal relationship ("Significant Personal Relationship"). Where this is the case the *Insolvency Practitioner* should conclude that it is not appropriate to take the *insolvency appointment*.

48. Consideration should always be given to the perception of others when deciding whether to accept an *insolvency appointment*. Whilst an *Insolvency Practitioner* may regard a relationship as not being significant to the *insolvency appointment*, the perception of others may differ and this may in some circumstances be sufficient to make the relationship significant.

Dealing with the assets of an entity

49. Actual or perceived threats (for example self interest threats) to the fundamental principles may arise when during an *insolvency appointment*, an *Insolvency Practitioner* realises assets.
50. Save in circumstances which clearly do not impair the *Insolvency Practitioner's* objectivity, *insolvency practitioners* appointed to any *insolvency appointment* in relation to an *entity*, should not themselves acquire, directly or indirectly, any of the assets of an *entity*, nor knowingly permit any *individual within the practice*, or any close or *immediate family member* of the *Insolvency Practitioner* or of an *individual within the practice*, directly or indirectly, to do so.
51. Where the assets and business of an insolvent company are sold by an *Insolvency Practitioner* shortly after appointment on pre-agreed terms, this could lead to an actual or perceived threat to objectivity. The sale may also be seen as a threat to objectivity by creditors or others not involved in the prior agreement. The threat to objectivity may be eliminated or reduced to an acceptable level by safeguards such as obtaining an independent valuation of the assets or business being sold, or the consideration of other potential purchasers.
52. It is also particularly important for an *Insolvency Practitioner* to take care to ensure (where to do so does not conflict with any legal or professional obligation) that his decision making processes are transparent, understandable and readily identifiable to all third parties who may be affected by the sale or proposed sale.

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Obtaining specialist advice and services

53. When an *Insolvency Practitioner* intends to rely on the advice or work of another, the *Insolvency Practitioner* should evaluate whether such reliance is warranted. The *Insolvency Practitioner* should consider factors such as reputation, expertise, resources available and applicable professional and ethical standards. Any payment to the third party should reflect the value of the work undertaken.
54. Threats to the fundamental principles (for example familiarity threats and self interest threats) can arise if services are provided by a regular source independent of the *practice*.
55. Safeguards should be introduced to reduce such threats to an acceptable level. These safeguards should ensure that a proper business relationship is maintained between the parties and that such relationships are reviewed periodically to ensure that best value and service is being obtained in relation to each *insolvency appointment*. Additional safeguards may include clear guidelines and policies within the *practice* on such relationships. An *Insolvency Practitioner* should also consider disclosure of the existence of such business relationships to the general body of creditors or the creditor's committee if one exists.
56. Threats to the fundamental principles can also arise where services are provided from within the *practice* or by a party with whom the *practice*, or an *individual within the practice*, has a business or personal relationship. An *Insolvency Practitioner* should take particular care in such circumstances to ensure that the best value and service is being provided.

Fees and other types of remuneration

Prior to accepting an *insolvency appointment*

57. Where an engagement may lead to an *insolvency appointment*, an *Insolvency Practitioner* should make any party to the work aware of the terms of the work and, in particular, the basis on which any fees are charged and which services are covered by those fees.
58. Where an engagement may lead to an *insolvency appointment*, *insolvency practitioners* should not accept referral fees or commissions unless they have established safeguards to reduce the threats created by such fees or commissions to an acceptable level.

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59. Safeguards may include disclosure in advance of any arrangements. If after receiving any such payments, an *Insolvency Practitioner* accepts an *insolvency appointment*, the amount and source of any fees or commissions received should be disclosed to creditors.

After accepting an insolvency appointment

60. During an *insolvency appointment*, accepting referral fees or commissions represents a significant threat to objectivity. Such fees or commissions should not therefore be accepted other than where to do so is for the benefit of the insolvent estate.
61. If such fees or commissions are accepted they should only be accepted for the benefit of the estate; not for the benefit of the *Insolvency Practitioner* or the *practice*.
62. Further, where such fees or commissions are accepted an *Insolvency Practitioner* should consider making disclosure to creditors.

Obtaining insolvency appointments

63. The special nature of *insolvency appointments* makes the payment or offer of any commission for or the furnishing of any valuable consideration towards, the introduction of *insolvency appointments* inappropriate. This does not, however, preclude an arrangement between an *Insolvency Practitioner* and an employee whereby the employee's remuneration is based in whole or in part on introductions obtained for the *Insolvency Practitioner* through the efforts of the employee.
64. When an *Insolvency Practitioner* seeks an *insolvency appointment* or work that may lead to an *insolvency appointment* through advertising or other forms of marketing, there may be threats to compliance with the fundamental principles.
65. When considering whether to accept an *insolvency appointment* an *Insolvency Practitioner* should satisfy himself that any advertising or other form of marketing pursuant to which the *insolvency appointment* may have been obtained is or has been:
- (a) Fair and not misleading.
 - (b) Avoids unsubstantiated or disparaging statements.



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(c) Complies with relevant codes of *practice* and guidance in relation to advertising.

66. Advertisements and other forms of marketing should be clearly distinguishable as such and be legal, decent, honest and truthful.
67. If reference is made in advertisements or other forms of marketing to fees or to the cost of the services to be provided, the basis of calculation and the range of services that the reference is intended to cover should be provided. Care should be taken to ensure that such references do not mislead as to the precise range of services and the time commitment that the reference is intended to cover.
68. An *Insolvency Practitioner* should never promote or seek to promote his services, or the services of another *Insolvency Practitioner*, in such a way, or to such an extent as to amount to harassment.
69. Where an *Insolvency Practitioner* or the *practice* advertises for work via a third party, the *Insolvency Practitioner* is responsible for ensuring that the third party follows the above guidance.

Gifts and hospitality

70. An *Insolvency Practitioner*, or a close or *immediate family member*, may be offered gifts and hospitality. In relation to an *insolvency appointment*, such an offer will give rise to threats to compliance with the fundamental principles. For example, self-interest threats may arise if a gift is accepted and intimidation threats may arise from the possibility of such offers being made public.
71. The significance of such threats will depend on the nature, value and intent behind the offer. In deciding whether to accept any offer of a gift or hospitality the *Insolvency Practitioner* should have regard to what a reasonable and informed third party having knowledge of all relevant information would consider to be appropriate. Where such a reasonable and informed third party would consider the gift to be made in the normal course of business without the specific intent to influence decision making or obtain information the *Insolvency Practitioner* may generally conclude that there is no significant threat to compliance with the fundamental principles.

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72. Where appropriate, safeguards should be considered and applied as necessary to eliminate any threats to the fundamental principles or reduce them to an acceptable level. If an *Insolvency Practitioner* encounters a situation in which no or no reasonable safeguards can be introduced to reduce a threat arising from offers of gifts or hospitality to an acceptable level he should conclude that it is not appropriate to accept the offer.

73. An *Insolvency Practitioner* should also not offer or provide gifts or hospitality where this would give rise to an unacceptable threat to compliance with the fundamental principles.

Record keeping

74. It will always be for the *Insolvency Practitioner* to justify his actions. An *Insolvency Practitioner* will be expected to be able to demonstrate the steps that he took and the conclusions that he reached in identifying, evaluating and responding to any threats, both leading up to and during an *insolvency appointment*, by reference to written contemporaneous records.

75. The records an *Insolvency Practitioner* maintains, in relation to the steps that he took and the conclusions that he reached, should be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of his actions.

THE APPLICATION OF THE FRAMEWORK TO SPECIFIC SITUATIONS

Introduction

76. The following examples describe specific circumstances and relationships that will create threats to compliance with the fundamental principles. The examples may assist an *Insolvency Practitioner* and the members of the insolvency team to assess the implications of similar, but different, circumstances and relationships.

77. The examples are divided into three parts. Part 1 contains examples which do not relate to a previous or existing *insolvency appointment*. Part 2 contains examples that do relate to a previous or existing *insolvency appointment*. Part 3 contains some examples under Scottish law. The examples are not intended to be exhaustive.



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Examples that do not relate to a previous or existing insolvency appointment

78. The following situations involve a professional relationship which does not consist of a previous *insolvency appointment*:

79. Insolvency appointment following audit related work

Relationship: The *practice* or an *individual within the practice* has previously carried out audit related work within the previous 3 years.

Response: A Significant Professional Relationship will arise: an *Insolvency Practitioner* should conclude that it is not appropriate to take the *insolvency appointment*.

Where audit related work was carried out more than three years before the proposed date of the appointment of the *Insolvency Practitioner* a threat to compliance with the fundamental principles may still arise. The *Insolvency Practitioner* should evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by the existence or introduction of safeguards.

This restriction does not apply where the *insolvency appointment* is in a members' voluntary liquidation; an *Insolvency Practitioner* may normally take an appointment as liquidator. However, the *Insolvency Practitioner* should consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles. Further, the *Insolvency Practitioner* should satisfy himself that the directors' declaration of solvency is likely to be substantiated by events.

80. Appointment as investigating accountant at the instigation of a creditor

Previous relationship: The *practice* or an *individual within the practice* was instructed by, or at the instigation of, a creditor or other party having a financial interest in an *entity*, to investigate, monitor or advise on its affairs.

Response: A Significant Professional Relationship would not normally arise in these circumstances provided that:-

- (a) there has not been a direct involvement by an individual within the practice in the management of the *entity*; and

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(b) the practice had its principal client relationship with the creditor or other party, rather than with the company or proprietor of the business; and

(c) the *entity* was aware of this.

An *Insolvency Practitioner* should however consider all the circumstances before accepting an *insolvency appointment*, including the effect of any discussions or lack of discussions about the financial affairs of the company with its directors, and whether such circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Where such an investigation was conducted at the request of, or at the instigation of, a secured creditor who then requests an *Insolvency Practitioner* to accept an *insolvency appointment* as an administrator or administrative receiver, the *Insolvency Practitioner* should satisfy himself that the company, acting by its board of directors, does not object to him taking such an *insolvency appointment*. If the secured creditor does not give prior warning of the *insolvency appointment* to the company or if such warning is given and the company objects but the secured creditor still wishes to appoint the *Insolvency Practitioner*, he should consider whether the circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Examples relating to previous or existing *insolvency appointments*

81. The following situations involve a prior professional relationship that involves a previous or existing *insolvency appointment*:-
82. **Insolvency appointment following an appointment as administrative or other receiver**

Previous appointment: An *individual within the practice* has been administrative or other receiver.

Proposed appointment: Any *insolvency appointment*.

Response: An *Insolvency Practitioner* should not accept any *insolvency appointment*.

This restriction does not, however, apply where the *individual within the practice* was appointed a receiver by the Court. In such circumstances,

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the *Insolvency Practitioner* should however consider whether any other circumstances which give rise to an unacceptable threat to compliance with the fundamental principles.

83. Administration or liquidation following appointment as supervisor of a voluntary arrangement

Previous appointment: An *individual within the practice* has been supervisor of a company voluntary arrangement.

Proposed appointment: Administrator or liquidator.

Response: An *Insolvency Practitioner* may normally accept an appointment as administrator or liquidator. However the *Insolvency Practitioner* should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

84. Liquidation following appointment as administrator

Previous appointment: An *individual within the practice* has been administrator.

Proposed appointment: Liquidator.

Response: An *Insolvency Practitioner* may normally accept an appointment as liquidator provided he has complied with the relevant legislative requirements. However, the *Insolvency Practitioner* should also consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

85. Conversion of members' voluntary liquidation into creditors' voluntary liquidation

Previous appointment: An *individual within the practice* has been the liquidator of a company in a members' voluntary liquidation.

Proposed appointment: Liquidator in a creditors' voluntary liquidation, where it has been necessary to convene a creditors' meeting.

Response: Where there has been a Significant Professional Relationship, an *Insolvency Practitioner* may continue or accept an appointment (subject to creditors' approval) only if he concludes that the company will eventually be able to pay its debts in full, together with interest.

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However, the *Insolvency Practitioner* should consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

86. **Bankruptcy following appointment as supervisor of an individual voluntary arrangement**

Previous appointment: An *individual within the practice* has been supervisor of an *individual* voluntary arrangement.

Proposed appointment: Trustee in bankruptcy.

Response: An *Insolvency Practitioner* may normally accept an appointment as trustee in bankruptcy. However, the *Insolvency Practitioner* should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

Examples in respect of cases conducted under Scottish Law

87. **Sequestration following appointment as trustee under a trust deed for creditors**

Previous appointment: An *individual within the practice* has been trustee under a trust deed for creditors.

Proposed appointment: Interim trustee or trustee in sequestration.

Response: An *Insolvency Practitioner* may normally accept an appointment as an interim trustee or trustee in sequestration. However, the *Insolvency Practitioner* should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

88. **Sequestration where the Accountant in Bankruptcy is trustee following appointment as trustee under a trust deed for creditors**

Previous appointment: An *individual within the practice* has been trustee under a trust deed for creditors.

Proposed appointment: Agent for the Accountant in Bankruptcy in sequestration.

Response: An *Insolvency Practitioner* may normally accept an appointment as agent for the Accountant in Bankruptcy. However, the *Insolvency Practitioner* should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

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1.3 INSOLVENCY CODE OF ETHICS TRANSPARENCY AND CONFIDENTIALITY: A GUIDANCE NOTE

A. INTRODUCTION

1. This document relates to the Insolvency Code of Ethics ("the Code"). This document is to be read in conjunction with the Code.
2. This document has been prepared in order to supplement the principles contained within the Code. To the extent that there is any conflict between the contents of this document and the provisions of the Code, the provisions of the Code will take precedence.
3. The purpose of this document is to:
 - 1) Emphasise the importance of the requirement that members should take care to ensure, where to do so does not conflict with any legal or professional obligation, that their acts, dealings and decision making processes are transparent, understandable and readily identifiable (as to which see Section B below); and
 - 2) Offer some further guidance in relation to the fundamental principle of confidentiality (as to which see Section C below).

B. THE IMPORTANCE OF TRANSPARENCY

4. Paragraph 36 of the Code provides that an *Insolvency Practitioner* in his role as an office holder:

"...has a professional duty to report openly to those with an interest in the outcome of the insolvency. An *Insolvency Practitioner* should always report on his acts and dealings as fully as possible given the circumstances of the case, in a way that is transparent and understandable. An *Insolvency Practitioner* should bear in mind the expectations of others and what a reasonable and informed third party would consider appropriate."
5. The Council regards this provision of the Code to be of fundamental importance. It is imperative that all members ensure that, except where to do so would conflict with any legal or professional obligation, their acts, dealings and decision making processes are transparent, understandable and readily identifiable. All members should endeavour to deal with third parties fairly in relation to the provision of information.

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6. In particular, members in their capacity as office holders should maintain appropriate communication with creditors and such other persons who may be interested in the outcome of the insolvency in order to keep them informed of progress.
7. In this regard, office holders should take care to ensure that any reports prepared for creditors or other persons interested in the outcome of the insolvency are clear and understandable. Where appropriate, a full explanation should be given of any significant decisions or material events that have taken place in the insolvency and the reasons for them.
8. Where a report or information is provided in relation to the approval of any matter (for example the office holder's fees) the office holder should be particularly mindful to provide sufficient supporting information to enable those responsible for the approval to form a judgement as to whether approval is appropriate having regard to all the circumstances of the case.
9. The requirement for members to act transparently is particularly important where the assets and business of an insolvent company are sold shortly after appointment on pre-agreed terms. It is in the nature of such sales that creditors at large are not given the opportunity to consider the sale of the business or assets before it takes place. It is therefore particularly important that creditors are provided with a detailed explanation and justification of why a pre-agreed sale was undertaken, so that they can be satisfied that the office holder has acted with due regard to the interests of those affected.
10. Similar principles to those described above apply in relation to correspondence by members with third parties. Such correspondence should be clear, and understandable. Where the correspondence relates to a decision taken by the member in his capacity as an office holder or otherwise it should normally provide a full explanation of the relevant decision together with the reasons for it.
11. There may be circumstances in which it is not possible for a member to provide information relating to a particular matter because of a conflicting legal or professional obligation. Examples of such situations include where the relevant information is commercially sensitive or where there is a legal obligation not to disclose. In such circumstances, the member should still consider whether some details of the relevant matter can be provided that

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do not conflict with the legal or professional obligation. This is particularly so where the relevant matter may be of significance to creditors or other persons interested in the outcome of the insolvency. Where the member is in doubt as to whether disclosure is appropriate in all the circumstances it may be appropriate for him to seek legal advice.

C. CONFIDENTIALITY

12. Paragraph 4 of the Code sets out five fundamental principles which an *Insolvency Practitioner* is required to comply with. The fundamental principle of confidentiality requires that:

“An *Insolvency Practitioner* should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the *Insolvency Practitioner* or third parties.”

13. In order for a party to be held liable for breach of confidence it must be usually be shown that: (1) the material communicated to him had the necessary quality of confidence; (2) it was communicated or became known to him in circumstances entailing an obligation of confidence; and (3) there was an unauthorised use of that material. For material to be protected as confidential its availability to the public must be restricted.
14. A member may acquire information which he is obliged to keep confidential. In particular, a member should be alert to the possibility of inadvertent disclosure of such confidential information, particularly in relation to any person with whom the member has had a long or close professional or personal relationship. Confidential information acquired by a member in the course of an assignment must not be used otherwise than for the proper performance of his professional duties.
15. The fundamental principle of confidentiality did not appear in the previous *Insolvency Ethical Guide*. Some concern was expressed during the consultation period that the inclusion of this fundamental principle may be inconsistent with an insolvency practitioner’s duty or obligation, in certain circumstances, to disclose confidential information. This is not considered to be the case.

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As drafted, the fundamental principle of confidentiality makes it clear that where an insolvency practitioner has a legal or professional right or duty to disclose he may do so.

16. When considering the application of the principle of confidentiality it is also important that members recognise that the circumstances in which obligations of confidence will arise are likely to be different where they have been appointed as an office holder to those where the member acts as an adviser. Where a member has been appointed as an office holder a client/professional relationship will not arise between the office holder and the entity in respect of which he has been appointed. Indeed, following the appointment of an office holder the rights of confidentiality formerly held by the entity will often vest in or fall under the control of the office holder (at least in the insolvency of a corporate body).
17. As emphasised in Section B above, where obligations of confidentiality do not exist and where to do so does not conflict with any other legal or professional obligation members will be required to ensure that their acts, dealings and decision making processes are transparent.
18. Members should be especially careful not to enter into new obligations of confidence that might have an impact on transparent communication with interested parties, other than for proper commercial reasons. A particular risk of this arises with non-disclosure agreements included in contracts for the sale of the business or assets of an entity in the circumstances outlined in paragraph 9 above.

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2.1 STATEMENT OF INSOLVENCY PRACTICE 1

AN INTRODUCTION TO STATEMENTS OF INSOLVENCY PRACTICE

PURPOSE AND PRINCIPLES

1. The purpose of Statements of Insolvency Practice (SIPs) is to promote and maintain high standards by setting out required practice and harmonising the approach of insolvency practitioners to particular aspects of insolvency practice. They apply in parallel to the prevailing statutory framework.
2. SIPs should be read in conjunction with the wider fundamental principles embodied in the Insolvency Code of Ethics and should be applied in accordance with the spirit of that Code. A literal interpretation of a SIP may not be appropriate where it would be contrary to the fundamental principles of the Code.
3. The fundamental principles are:

Integrity

An Insolvency Practitioner should be straightforward and honest in all professional and business relationships.

Objectivity

An Insolvency Practitioner should not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

Professional competence and due care

An Insolvency Practitioner has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. An Insolvency Practitioner should act diligently and in accordance with applicable technical and professional standards when providing professional services.

Confidentiality

An Insolvency Practitioner should respect the confidentiality of information acquired as a result of professional and business relationships and should

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not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the Insolvency Practitioner or third parties.

Professional behaviour

An Insolvency Practitioner should comply with relevant laws and regulations and should avoid any action that discredits the profession. Insolvency Practitioners should conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

4. In addition, Insolvency Practitioners should ensure that their acts, dealings and decision making processes are transparent, understandable and readily identifiable, where to do so does not conflict with any legal or professional obligation.

REGULATORY STATUS

5. SIPs set principles and key compliance standards with which Insolvency Practitioners are **required** to comply. Failure to observe the principles and/or maintain the standards set out in a SIP is a matter that may be considered by a practitioner's regulatory authority for the purposes of disciplinary or regulatory action in accordance with that authority's membership and disciplinary rules.
6. Insolvency Practitioners should evidence their compliance with SIPs and should, therefore, document their strategies and decision making processes appropriately.
7. SIPs set out required practice, but they are not statements of the law or the obligations imposed by insolvency legislation itself. Where an Insolvency Practitioner is in doubt about any obligation imposed upon them by a SIP, they should obtain appropriate guidance.
8. SIPs are issued to Insolvency Practitioners under procedures agreed between the insolvency regulatory authorities, acting through the Joint Insolvency Committee. They apply to practitioners authorised by each of the bodies listed below:

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Recognised Professional Bodies:

- The Association of Chartered Certified Accountants
- The Insolvency Practitioners Association
- The Institute of Chartered Accountants in England and Wales
- The Institute of Chartered Accountants in Ireland
- The Institute of Chartered Accountants of Scotland
- The Law Society
- The Law Society of Northern Ireland
- The Law Society of Scotland

Competent Authorities:

- The Insolvency Service for the Secretary of State
- The Insolvency Service Northern Ireland for the Department

9. No liability attaches to any body or person that prepares, issues or distributes SIPs. The obligation to comply with SIPs rests solely upon the Insolvency Practitioner, as does any liability arising from any failure to do so.

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CLYDE&CO

Unravelling legal complexity

Clyde & Co's insolvency and reorganisation team provides focused, timely and commercial advice to insolvency practitioners, creditors and debtors on:

- debt for equity swaps
- administrations and CVAs
- all forms of receivership and liquidation
- advice in relation to directors' duties
- solvent and insolvent restructurings
- cross-border insolvency issues
- Insolvency Act claims
- tracing claims and fraud

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2.2 STATEMENT OF INSOLVENCY PRACTICE 2

INVESTIGATIONS BY OFFICE HOLDERS IN ADMINISTRATIONS AND INSOLVENT LIQUIDATIONS

INTRODUCTION

1. In any corporate insolvency there may be concerns regarding the way in which the business was conducted, how trading was controlled, whether proper decisions were made at the time, and whether assets have been sold at an under-value or otherwise dissipated. The way in which directors have acted may also be criticised by third parties. Also, an office holder has a duty to investigate what assets there are (including potential claims against third parties including the directors) and what recoveries can be made.
2. Each of the above matters gives rise to the need for an office holder to carry out appropriate investigations, in order to address the specific duties of the office holder and to allay if possible the legitimate concerns of creditors and other interested parties.
3. This statement deals specifically with the circumstances of an administration or insolvent liquidation.

PRINCIPLES

4. This statement has been produced in recognition of the principles that:
 - An office holder should carry out investigations that are proportionate to the circumstances of each case.
 - An office holder should report clearly on the steps taken in relation to investigations, and the outcomes.

KEY COMPLIANCE STANDARDS

Seeking information

5. The information available to an office holder upon appointment will vary from case to case depending on the extent of the office holder's prior involvement with the company, the publicity surrounding the insolvency, the quality and completeness of the company's books and records, and whether there has been a meeting of creditors. The office holder should locate the company's books and records (in whatever form), and ensure that they are secured, and listed as appropriate.

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6. In every case, the office holder should invite creditors to provide information on any concerns regarding the way in which the company's business has been conducted, and on potential recoveries for the estate, both:
 - at any meeting of creditors at which the office holder's appointment is made or confirmed, or, in other cases, at any later meeting convened by the office holder; and
 - in the first communication sent to creditors by the office holder.
7. A similar invitation should also be extended to the members of any creditors' committee, upon or soon after the formation of the committee, and to any predecessor in office.
8. An office holder should always have in mind the need to ascertain, and if necessary investigate, what assets can be realised. Enquiries should encompass whether prior transactions by the company, or the conduct of any person involved with the company, could give rise to an action for recovery under the relevant legislation.

Initial assessment

9. Notwithstanding any shortage of funds, an office holder should consider the information acquired in the course of appraising and realising the business and assets of a company, together with any information provided by creditors or gained from other sources, and decide whether any further information is required or appropriate. The office holder should make enquiries of the directors and senior employees, by sending questionnaires and/or interviewing them, as appropriate.
10. In every case, an office holder should make an initial assessment of whether there could be any matters that might lead to recoveries for the estate and what further investigations may be appropriate.
11. An office holder should determine the extent of the investigations in the circumstances of each case, taking account of the public interest, potential recoveries, the funds likely to be available to fund an investigation, and the costs involved.

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Further steps to be taken

12. An office holder may conclude that there are matters (for example, the conduct of management, prior transactions susceptible to challenge, or the consequences of possible criminal offences) that require early investigation, either as a matter of public policy or because there are real prospects of recoveries for the estate. It is for the office holder to decide whether investigation and subsequent legal action should proceed as quickly as possible, without consultation with, or sanction by, creditors or a creditors' committee (but subject to any statutory requirement to obtain sanction).
13. In other cases, the office holder may decide that further investigation and legal action should be carried out only after consultation or with sanction, in particular where the office holder concludes that the outcome is uncertain and the costs that would be incurred would materially affect the funds available for distribution. In such cases, the office holder may consult with major creditors (if that is appropriate) or convene a meeting of the creditors' committee or the creditors to discuss any proposals for investigation and/or action. Alternatively, approval can be sought by written resolution.
14. Any proposals should include sufficient information (subject to considerations of privilege and confidentiality) to enable an informed decision to be made by those consulted, and are likely to include the costs that could be incurred and the possible range of returns to creditors.
15. There may be circumstances where there are clearly insufficient funds to carry out a detailed investigation or to take action for recovery of assets, and an office holder should consider whether it is appropriate to seek funding from creditors or other interested parties.

Reporting to creditors

16. Creditors should be given information regarding investigations, any action being taken, and whether funding is being provided by third parties; disclosure would be subject to considerations of privilege and confidentiality and whether investigations and litigation might be compromised.
17. The times at which information is provided to creditors will vary from case to case, but as a minimum an office holder should:

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- include within the first annual or progress report a statement dealing with the office holder's initial assessment, whether any further investigations or action were considered, and the outcome; and
- include within subsequent reports a statement dealing with investigations and actions concluded during the period, and those that are continuing.

Other reporting requirements

18. An office holder should be mindful of the impact of the outcome of investigations on reports on the conduct of directors and others, and possible offences, to the relevant authorities.

Record keeping

19. An office holder should document, at the time, initial assessments, investigations and conclusions, including any conclusion that further investigation or action is not required or feasible, and also any decision to restrict the content of reports to creditors.

Effective Date: 2 May 2011

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2.3 STATEMENT OF INSOLVENCY PRACTICE 3 (E&W) VOLUNTARY ARRANGEMENTS

AMENDMENT NOTE

At the meeting of the Joint Insolvency Committee held on 20 June 2011, the Recognised Professional Bodies, the Insolvency Service and the Insolvency Service Northern Ireland agreed that, as an interim measure pending issue of revised SIPs, certain provisions of SIP 3 should be relaxed to allow for changes in practice.

The details are:

Paragraph 3.8 requires a copy of the R3 booklet "Is a voluntary arrangement right for me?" to be sent to debtors. However, it is now common practice (and expected by OFT) for debt management companies to provide the Insolvency Service booklet "In Debt – Dealing With Your Creditors".* As a result, there could be circumstances where a debtor receives both booklets.

It has been agreed that it would be appropriate for either booklet to be used by insolvency practitioners.

The position of practitioners

With immediate effect, the Insolvency Practitioners Association and the other licensing bodies will interpret SIP 3 for monitoring purposes as if it had been amended to take account of the above matter.

Members are also reminded that the following SIP should be read in conjunction with SIP 1 (dated 2 May 2011).

* Reproduced at page 380

19 July 2011

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1. INTRODUCTION

- 1.1 *[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]*
- 1.2 The Insolvency Act 1986 (IA 1986) and associated Rules (as amended) set out a procedure which enables the directors of a company to make a proposal for a voluntary arrangement (CVA) with its creditors. A similar procedure is set out which enables a debtor to make a proposal for a voluntary arrangement (IVA) with his creditors. In the latter case the debtor has the option of applying for an Interim Order (IO) to provide a stay on actions by creditors. However, this is not a mandatory requirement, and a proposal may be put forward without the prior need to obtain an IO. In either case the debtor may or may not be an undischarged bankrupt. Where the debtor is an undischarged bankrupt the IO may contain provision as to the conduct of the bankruptcy and the administration of the estate.

The CVA procedure is also available to insolvent partnerships.

In the case of both CVAs and IVAs the arrangement must take the form of a composition in satisfaction of the company's or individual's debts or a scheme of arrangement of their affairs.

- 1.3 Members should refer to the relevant legislation which, for a CVA, is contained in sections 1-7B (inclusive) of the IA 1986, Schedule A1 to the IA 1986 and rules 1.1-1.54 (inclusive) of the Rules, as amended. IVAs are dealt with at sections 252-263 (inclusive) of the IA 1986 and rules 5.1-5.38 (inclusive) of the Rules, as amended.

In relation to CVAs for insolvent partnerships members should refer specifically to Part II of The Insolvent Partnerships Order 1994, as amended, which applies Part I of the Act (Company Voluntary Arrangements) with appropriate modifications.

- 1.4 The objective of this statement is to set out best practice in relation to the work carried out by members in connection with voluntary arrangements (VAs). Due to the similarities in the law and practice of CVAs and IVAs, this statement is intended to apply to both types of VA, except where otherwise specifically indicated. The statement does not apply to "fast-track" IVAs under sections 263A-263G IA 1986.

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The statement has been prepared primarily to address the circumstances where a proposal for a VA is made by the directors of a company or by an individual debtor, but it should also be applied as appropriate where the proposal is made by an administrator or liquidator.

- 1.5 In many cases the member's role will change during the conduct of the case, for example from adviser to nominee to supervisor. These roles will involve different responsibilities: for example, when acting as adviser the member's role will be to consider the best course of action for the company/debtor in the light of their particular circumstances; when he becomes nominee his duty will be to the creditors and the court; and when acting as supervisor his responsibilities will be governed by the terms of the arrangement. The member should be mindful of possible conflicts of duty arising from these changes of role. He should ensure that his case records distinguish between these functions and that his remuneration in respect of each function is separately identified.

2. BASIS OF THE ARRANGEMENT

- 2.1 The terms of the VA will be contained in the proposal, with or without modifications, which is approved by the creditors. A comprehensive and accurately drafted proposal is therefore fundamental to the arrangement. In view of the importance of the proposal the member should, where the circumstances are complex, consider whether it should be prepared or approved by a lawyer. The contents of the proposal are given further consideration in section 5 and the Appendix.
- 2.2 In dealing with a VA the member should bear in mind his overriding duty to ensure a fair balance between the interests of the company/debtor, the creditors and any other parties involved. In considering whether to accept appointment as either nominee or supervisor the member should have regard to the ethical guidelines of his authorising body.

3. INITIAL CONTACT WITH THE DIRECTORS/DEBTOR

- 3.1 **[IVA]** On initial contact with the debtor, the member should offer to meet personally, or arrange for a suitably experienced member of his staff to meet the debtor. If the debtor declines the offer, the member or a suitably

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experienced member of his staff may conduct the initial interview on the telephone. However, if during the telephone interview, the interviewer forms the opinion that either the debtor does not fully understand the matters described in paragraphs 3.2 to 3.5 or that the debtor has not adequately disclosed his financial circumstances, the member should insist that a meeting in person be conducted. In view of the complex nature of VAs involving trading individuals or companies, a meeting in person should always be conducted.

- 3.2 At the initial interview the member should explain to the directors/debtor the different roles he will perform during the conduct of the case and the different duties and responsibilities that they entail. He should point out to the directors/debtor the need for the nominee and supervisor to maintain independence.
- 3.3 **[IVA]** The member should consider the need for separate representation of any third parties who intend to inject funds or who are otherwise affected by the VA. Where there is a possibility that a VA may adversely affect a spouse, or a co-owner or other occupier of a dwelling house or other property, the potentially affected party should be advised to take independent advice.
- 3.4 **[IVA]** The member should take all necessary steps to familiarise himself with the debtor's financial circumstances. He should exercise his professional judgement to satisfy himself that the debtor has received appropriate advice on his position and that the options available to him and the consequences of his decision to propose a VA have been fully explained to him. The Association of Business Recovery Professionals has produced a booklet entitled "Is a Voluntary Arrangement Right for Me?" explaining the IVA procedure and setting out the alternatives available to insolvent debtors.
- 3.5 The member should explain his role as nominee in relation to the directors'/debtor's proposal and of his duty to perform an independent, objective review and assessment of the proposal for the purposes of reporting his opinion to the court and generally balancing the interests of the company/debtor and the creditors. This duty of independence and objectivity arises irrespective of the extent of the member's involvement in drafting the directors'/debtor's proposals. The member should make it clear to the directors/debtor that his duties as nominee cannot be fettered by any instructions of the directors/debtor or any third party.

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- 3.6 Where consideration is being given to obtaining a moratorium under section 1A IA 1986 the member should explain to the directors the additional duties which fall on the nominee and the responsibilities which fall on the directors during the moratorium.
- 3.7 **[IVA]** Before recommending an IVA to a debtor, the member should be reasonably satisfied, on the basis of an assessment of the debtor's income from all declared sources and his stated expenditure needs, that the debtor has sufficient income to sustain the payments proposed under the IVA.
- 3.8 The member should keep a contemporaneous and full file note of all matters discussed with the directors/debtor, including the matters referred to in paragraphs 3.2 to 3.6. A copy of the file note should be sent or the advice confirmed in full in a letter to the directors/debtor, together with the Association of Business Recovery Professionals booklet "Is a Voluntary Arrangement Right for Me?". This is to provide the directors/debtor with written information on the IVA procedure and the alternatives available, so that the directors/debtor can raise with the member any points or issues that are not understood. The directors/debtor should confirm that they/he understands and accepts the course of action that is being proposed.
- 3.9 The member should also send a letter of engagement to the directors/debtor setting out in writing their respective duties and responsibilities in relation to the proposal in order to minimise the scope for misunderstandings.
- 3.10 The member should give consideration to the most appropriate entry route into a VA having regard to the degree of protection which may be required in the circumstances of the case.

4. STATEMENT OF AFFAIRS AND OBTAINING ADDITIONAL INFORMATION

- 4.1 The statement of affairs should detail the nature and amount of all the company's/debtor's assets and liabilities, including the liabilities set out in paragraph 4.3(a)(i) - (vii) below. A misstatement of the amount of the assets and liabilities can constitute a "material irregularity" (within the meaning of sections 6 and 262, and paragraph 38 of Schedule A1, IA 1986) being a ground on which an approved VA may be challenged by an aggrieved creditor. In addition, a director/debtor commits an offence if he makes any false representations or commits any other fraud for the purpose of obtaining the approval of the creditors to the proposed arrangement. The directors/debtor should be informed of these dangers.

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4.2 **[IVA]** Where the debtor is an undischarged bankrupt and has already delivered a statement of affairs under section 272 or 288 he need not deliver a further statement unless so required by the nominee.

4.3 The member's approach should, *inter alia*, cover the points listed below:

(a) Creditors

The member should require the directors/debtor to provide details of all known or possible liabilities including:

- (i) claims which are fully or partly secured: the status of the accounts and the existence of any arrears should be established;
- (ii) preferential claims;
- (iii) guarantee liabilities;
- (iv) claims for breach of contract, including claims in respect of faulty and incomplete work and hire purchase and leasing agreements;
- (v) creditors who are:

[CVA] persons connected with the company ('connected persons') (as defined in section 249 IA 1986);

[IVA] 'associates' (as defined in section 435 IA 1986);

- (vi) guarantors of the company's/debtor's debts, including connected persons/associates;
- (vii) debts for an unliquidated amount or any debt whose value is unascertained, including particularly:
 - contingent liabilities;
 - the potential for liabilities arising under property leases (of both present and past tenancies);

He should also:

- (viii) identify any creditors who have commenced execution or any other legal process;
- (ix) identify any creditors with special rights which may require special consideration in the proposal (for example insured claims or matrimonial debts);
- (x) consider the possibility of early informal discussions with the key creditors, including government departments, to establish their views;
- (xi) obtain independent confirmation from any bank or other financial

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institution of their intention to continue to provide financial support to the company/debtor where this is necessary for the purpose of the arrangement;

- (xii) establish whether connected persons/associates may consider withdrawing or deferring their claims;

(b) Assets

The member should take steps to satisfy himself that the value of the assets is appropriately reflected in the statement of affairs. Where the value of an asset is material to the outcome of the arrangement consideration should be given to obtaining corroborative evidence as to its value. The member should also ensure that a comprehensive schedule of non-trading assets in which the company/debtor has an interest has been prepared together with explanatory notes. If there is a business, the member should consider, in conjunction with the directors/debtor, the manner in which that business is to be dealt with.

If the business is to be continued by the company/debtor, a “business plan” should be produced to justify this decision stating the assumptions on which it is based, and in appropriate detail having regard to the circumstances and size of the undertaking. The member should satisfy himself that the plan has a reasonable chance of success.

(c) Antecedent Transactions

The member should enquire as to:

- (i) possible transactions at an undervalue (sections 238, 339 and 423 IA 1986);
- (ii) payments which may be preferences (sections 239, 340 IA 1986);
- (iii) **[CVA]** floating charges which would be invalid in the event of administration or liquidation (section 245 IA 1986);
- (iv) **[CVA]** charges which would be void against a liquidator, administrator or creditor in the event of liquidation or administration (section 395 CA 1985);
- (v) liabilities which may be extortionate credit transactions, both those outstanding and paid (sections 244, 343 IA 1986);

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(d) General

The member should also consider:

- (i) whether the person(s) making the proposal are/is credible and making a full disclosure. The member should explain the consequences of making false representations;
- (ii) whether (any of) the directors/debtor has been involved in any previous business failure, either individual or corporate, and if so the details of that failure and the person's responsibility for it;
- (iii) the timetable for the VA.

The extent of the member's enquiries into these issues is likely to vary according to the particular circumstances of the case but should be such as will enable the member to properly discharge his duty to report to the court as nominee (see section 6 below).

5. CONSIDERATION OF THE PROPOSAL

5.1 Throughout his consideration of the above factors the member should be forming his opinion of the appropriate method of dealing with the company's/debtor's affairs. Although this will be partly a subjective review of the factors already referred to, the member should take into account:

- (a) the directors'/debtor's attitude;
- (b) the likelihood of the company/debtor adhering to the terms of the proposal;
- (c) the extent of the control over the assets exercised by the company/debtor as opposed to the supervisor of the proposal, bearing in mind that in a VA the assets do not automatically vest in the supervisor by operation of law;
- (d) the removal/absence of the restrictions otherwise imposed by formal winding up/ bankruptcy.

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5.2 In considering the proposal the member should bear in mind the following questions:

- Is it feasible?
- Is it fair to the creditors?
- Is it an acceptable alternative to formal insolvency?
- Is it fit to be considered by the creditors?
- Is it fair to the company/debtor?
- Where the debtor/company has previously put forward a proposal which has been rejected by the creditors, are there good reasons why the creditors should be asked to consider the current proposal?

In view of the importance of the contents of the proposal the member should, prior to submitting his report and supporting comments to the court, satisfy himself that the proposal (with any modifications) is structured and drafted in such a way that the terms of the VA can be clearly understood and that the arrangement is likely to proceed to a successful conclusion.

5.3 The member should ensure that the proposal addresses all those matters prescribed by the Rules. The member should also consider the inclusion of appropriate other provisions in order to facilitate the practical implementation of the arrangement (see Appendix) but should bear in mind that the terms of a proposal cannot extend or fetter the jurisdiction of the court. The proposal should specify clearly whether the arrangement is to be a composition in satisfaction of the company's/debtor's debts or whether it is to be a scheme of arrangement. It should also set out what action is to be taken in the event of deviation from, or failure of, the arrangement. The use of the standard terms issued by the Association of Business Recovery Professionals will assist in ensuring that these matters are adequately dealt with.

5.4 The following information should also be provided, either in the proposal or in the nominee's comments:

- The source of any referrals to the nominee or his firm in relation to the proposed VA.

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- Any payments made, or proposed to be made, to the source of such referrals.
- Any payments made, or proposed to be made, to the nominee or his firm by the company/debtor whether in connection with the proposed VA or otherwise.
- An estimate of the total fee to be paid to the supervisor together with a statement of the assumptions made in producing the estimate.

6. THE NOMINEE'S STATEMENT/REPORT AND COMMENTS

6.1 The nominee is required to state whether, in his opinion:

- the proposed arrangement has a reasonable prospect of being approved and implemented, and
- a meeting of creditors (and [CVA] the company) should be held to consider the proposal.

In cases where the directors intend to obtain a moratorium under section 1A IA 1986 this statement must form part of the statement which the nominee is required to submit to the directors and which they in turn are required to file in court. In all other cases it must be included in the nominee's report to the court.

Where a moratorium is in force under section 1A IA 1986 the nominee is required as part of his monitoring duties to keep under review the question of whether the proposal has a reasonable prospect of being approved and implemented, and must withdraw his consent to act if he forms the view that it no longer does.

6.2 In the case of *Re A Debtor* (No 140 IO of 1995), *Greystoke v Hamilton-Smith and Others* ([1996] 2 BCLC 429; [1997] BPIR 24) the court set out three tests which the nominee should apply before concluding that a meeting should or should not be summoned and held that he should satisfy himself on all three counts. They are:

- (a) that the company's/debtor's true position as to assets and liabilities is not materially different from that which it is represented to the creditors to be;

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(b) that the directors'/debtor's proposal has a real prospect of being implemented in the way it is to be represented it will be;

(c) that there is no already-manifest yet unavoidable prospective unfairness

6.3 Test (b) is effectively the same as that which is now required by statute. If the nominee cannot satisfy himself that the other two conditions are met but still recommends that a meeting should be held, he should explain in his comments the basis on which he is making that recommendation and qualify his comments so that the fact that the conditions are not met is conspicuously brought to the attention of the court.

6.4 Where the nominee reports in the affirmative on the matters referred to in paragraph 6.1, he is required to set out his comments on the proposal and to annex them to his statement or report. The matters upon which the nominee will wish to comment will vary from case to case but they should normally include:

- (a) the extent to which the nominee has investigated the company's/debtor's circumstances;
- (b) the basis upon which assets have been valued;
- (c) the extent to which the nominee considers that reliance can be placed upon the directors'/debtor's estimate of the liabilities to be included in the VA;
- (d) information on the attitude adopted by the directors/debtor with particular reference to instances of failure to co-operate with the nominee;
- (e) the result of any discussions between the nominee and secured creditors or other interested parties upon whose co-operation the performance of the VA will depend;
- (f) information on the attitude of any major unsecured creditor which may affect the approval of the arrangement by creditors;
- (g) details of any previous history of failures in which (any of) the directors/debtor has been involved, in so far as they are known to the nominee;

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- (h) an estimate of the result for the creditors if the VA is approved, explaining why it is more beneficial for creditors than any alternative insolvency proceeding;
- (i) the likely effect of the proposal's rejection by the creditors;
- (j) details of any claims which have come to his attention which might be capable of being pursued by a liquidator/administrator/trustee in bankruptcy if one were appointed;
- (k) where the conditions set out in paragraph 6.2 above have not been met, the basis on which the nominee is recommending that a meeting be held.

6.5 If not already dealt with in the proposal, the nominee's comments should include the information referred to in paragraph 5.4 above.

6.6 If the debtor/company has, within the previous twelve months, put forward a proposal that has been rejected, the nominee's comments should include a statement to that effect, and an explanation of why it is considered appropriate for the creditors to consider and vote on the current proposal.

6.7 If the nominee reports that the proposed arrangement does not have a reasonable prospect of being approved and implemented or that meetings should not be held he must give his reasons for that opinion.

7. THE MEETING OF CREDITORS (AND [CVA] OF MEMBERS)

7.1 Notice of the meeting must be given to all creditors of whose claim the person summoning the meeting is aware, in strict accordance with the Rules. The minimum notice period of fourteen days excludes the day of sending the notice and the day of the meeting.

7.2 It should be noted that although an approved arrangement will be binding on creditors who did not receive notice of the meeting, such creditors have the right, on becoming aware that the meeting has taken place, to apply to the court on the grounds that the arrangement unfairly prejudices their interests or that there has been a material irregularity in relation to the meeting. It is unacceptable for notice to be deliberately withheld from a creditor.

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7.3 Before the creditors' meeting the nominee should take the following steps:

- (a) record all proxies received in advance of the meeting, and details of claims;
- (b) complete the meeting record as far as possible detailing the names and voting value of creditors;
- (c) discuss with the directors/debtor any modifications suggested by creditors prior to the meeting;
- (d) review the proposal in the light of creditors' responses and possible changes in circumstances;
- (e) prepare a report for presentation at the meeting, summarising the proposal, outlining the likely effects of acceptance and rejection and giving details of any changes in circumstances which have arisen since the proposal was sent to creditors;
- (f) consider voting rights and requisite majority.

7.4 The chairman must decide the amount for which creditors are to be allowed to vote, and must have regard to the provisions of the Rules. Proxies and statements of claim to be used at the meeting may be lodged at any time, even during the course of the meeting (although the courts have taken the view that they have discretion to make orders varying the statutory provisions if the circumstances of the case require).

7.5 After the chairman has presented his report to the creditors' meeting he should allow creditors an opportunity to make comments, ask questions or propose modifications to the proposal.

7.6 **[IVA]** The nominee should request the debtor to attend the creditors' meeting in order to answer questions and to give consideration to proposed modifications. If the debtor is not available to consider modifications which are proposed, the meeting will have to be adjourned as his consent to them is required by law.

7.7 **[CVA]** Although it is not a statutory requirement for directors to consent to modifications, it is recommended that the nominee should find out and report to the meeting their views on any proposed modifications which they may be required to implement if approved.

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- 7.8 If modifications are proposed by a creditor the chairman should give careful consideration to the manner in which he will use specific instructions given to him by creditors to vote for either the acceptance or the rejection of the original proposal. If the words in the proxy form allowing the exercise of discretion in the absence of specific instructions have not been deleted so as to entitle the proxy holder to vote only as directed, the proxy holder is entitled to vote or abstain on any modification at his discretion.
- 7.9 However, the chairman should consider most carefully the impact of the exercise of his discretion upon the expressed intentions of any creditor who has completed a proxy requiring a vote on any particular resolution. He should bear in mind that, if a creditor is aggrieved that a vote on proposed modifications has been taken and a decision reached which might have been different if creditors represented by proxy had been present at the meeting or had been given the opportunity of amending their proxy, the aggrieved creditor may challenge the decision by an application to the Court (sections 6 and 262 IA 1986). Accordingly, the chairman should consider an adjournment or suspension of the meeting to give him an opportunity to explain the circumstances to the creditor or creditors from whom he holds a proxy and to obtain their further instructions.
- 7.10 If a majority for approval of the VA is not obtained at the creditors' meeting, the chairman may adjourn the meeting, and must adjourn it if it is so resolved. The maximum period for adjournment allowed by the Rules is 14 days from the original meeting date, but in the case of an IVA this period may be extended by the court. Within this period there can be more than one adjournment. The chairman must give notice to the court that the meeting is adjourned. He should also consider the need to inform creditors of the adjournment and, where substantial modifications are proposed, of those modifications.
- 7.11 **[IVA]** In the event of an adjournment the chairman should consider the need to apply for an extension of any IO.
- 7.12 **[CVA]** If the decision taken by the creditors' meeting differs from that taken by the company, the chairman of the meeting should draw creditors' attention to the provisions of section 4A IA 1986, which gives any member of the company the right to apply to the court within 28 days and allows the court to order the decision of the company meeting to prevail over that of the creditors.

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8. IMPLEMENTATION FOLLOWING THE MEETING OF CREDITORS

- 8.1 The supervisor's main duty is to ensure that the VA proceeds in accordance with the terms of the agreed proposal. In order to do this he should maintain regular contact with the directors/debtor, obtaining reports as may be appropriate to the case. If the supervisor or directors/debtor consider that the terms of the arrangement may not be achieved then the supervisor should take steps to discuss the situation with the directors/debtor. If actual events suggest a deviation from the terms of the arrangement, the supervisor should take appropriate action. Such action should correspond to further detailed provisions of the proposal. If he is authorised to exercise discretion in any area, and that discretion is exercised, the member should explain the circumstances to creditors (and **[CVA]** members) at the next available opportunity.
- 8.2 If it becomes clear to the supervisor that the fee payable to him will exceed the estimate provided in accordance with paragraph 5.4 above or this paragraph he must, in his next report to creditors:
- notify the creditors of that fact, and
 - explain why the estimate has been exceeded, and
 - provide a revised estimate.

9. CONCLUSION/TERMINATION OF THE ARRANGEMENT

- 9.1 Where the arrangement has been fully implemented the supervisor should conclude his administration as expeditiously as possible.
- 9.2 In circumstances of likely failure or default it will be necessary to consider how matters should proceed. The term "failure of the scheme" or "failure of the arrangement" is not an expression found in the Act or Rules and it is essential, as stated in paragraph 5.3 above, that the proposal should have set out in specific terms the circumstances in which it shall be deemed to have failed and state what action the supervisor is required to take in the event of failure. Where failure has occurred the supervisor should notify the creditors accordingly and advise them what action he has taken or proposes to take. The standard terms and conditions produced by The Association of Business Recovery Professionals contain comprehensive provisions for dealing with breach of the arrangement.

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9.3 **[IVA]** Where the debtor commits an act of “default” (within the meaning of section 276(1) IA), the supervisor is empowered by the Act to initiate bankruptcy proceedings against the debtor. Whilst “failure” and “default” will often be synonymous, this will not always be the case.

9.4 In the event of failure particular care must be taken to ascertain who is entitled to the remaining assets, and in the event of the presentation of a winding-up or bankruptcy petition, whether disposal of the assets would be void under section 127 or 284 of the Insolvency Act 1986. In the case of *Shierson and Another v Tomlinson and Another (Re N T Gallagher & Son Limited)* ([2002] 2 BCLC 133; [2002] BPIR 565) the Court of Appeal held that:

- where a VA provides for monies or other assets to be paid to or transferred or held for the benefit of VA creditors, this will create a trust of those monies or assets for those creditors;
- the effect of the liquidation of the company or the bankruptcy of the debtor on a trust created by the VA will depend on the provisions of the VA relating thereto;
- if the VA provides what is to happen on liquidation or bankruptcy (or a failure of the VA), effect must be given thereto;
- if the VA does not so provide, the trust will continue notwithstanding the liquidation, bankruptcy or failure and must take effect according to its terms.

9.5 Where a supervening winding-up/bankruptcy order is made against the company/debtor, the member should advise the official receiver of the circumstances. If the effect of the order is that the VA is terminated, the member should arrange for the prompt handover of assets, funds, books and records to the official receiver or liquidator/trustee in bankruptcy as appropriate.

10. IMPLEMENTATION

This SIP applies to all cases in which the proposal is dated on or after the effective date.



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APPENDIX

Voluntary Arrangements: Contents of the Proposal

In drafting the proposal, it is helpful to follow the order in which the contents are listed in the Rules.

The proposal should include sections covering the following:

- (a) the nature of the arrangement: i.e. whether it is a composition in full and final settlement of debts, or a scheme of arrangement;
- (b) the background to the arrangement, including details of the circumstances in which the company/debtor has become insolvent and including any relevant personal circumstances of the directors/debtor;
- (c) the statement of affairs, which should include full details of assets and liabilities (including in an IVA both business and personal assets and liabilities);
- (d) a realistic comparison of the estimated outcomes of the VA and of winding up/bankruptcy including comparative costs;
- (e) the actual financial proposal to be put to the creditors. This section should include:
 - (i) details of assets to be realised for the benefit of creditors and details of those which are to be excluded from the proposal, together with the reasons for the exclusion and whether alternatives are to be suggested;
 - (ii) proposals regarding after-acquired assets and windfall gains;
 - (iii) proposals regarding future profit/ income over a specific period;
 - (iv) details of any contributions from the debtor (e.g. from future earnings) including the amounts (or the basis on which they are to be computed) and frequency;
 - (v) whether third party funds are to be injected;
 - (vi) **[IVA]** the debtor's specific proposals with regard to any interest he may have in his dwelling house;
- (f) the intentions with regard to any business operated by the company/debtor stating in particular whether the business is to be continued, and if so, the extent, if any, to which the supervisor shall exercise any degree of control over the business. If the supervisor is not to exercise any degree of control,

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this should be specifically stated in the proposal. The purpose or aim of continued trading should be stated: have new opportunities been created that will generate profits to pay creditors; is the trade being wound down to generate funds from asset realisations or is the business being marketed (and if so, how) as a going concern? Consideration should be given to including a summary cash flow projection;

- (g) the powers, duties and responsibilities of the supervisor. This will need to deal with the question of admission or rejection of claims, the manner in which funds are to be distributed to creditors and the basis on which the supervisor is to report to creditors;

- (h) miscellaneous matters which under the Act or Rules need to be included.

Other matters which the member should consider in order to facilitate the practical implementation of the proposal:

- (i) whether a committee of creditors is to be appointed and if so what will be its powers, duties and responsibilities;
- (j) what will happen to surplus funds arising, for example, from more beneficial trading than was originally envisaged, when the VA is concluded;
- (k) confirmation that when the terms of the VA have been successfully completed the creditors will no longer be entitled to pursue the company/debtor for the balance of their claim: that the VA is in full and final settlement of their liabilities;
- (l) what will happen to unclaimed dividends or unpresented cheques when the VA is concluded;
- (m) how to deal with creditors who have not made claims;
- (n) the power of the supervisor to summon meetings of the VA creditors for the purpose of obtaining their views and in particular for obtaining their approval to any modifications to the VA.
- (o) the requisite majorities required to pass resolutions at meetings of creditors (and **[CVA]** members) summoned during the course of the VA.

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- (p) **[IVA]** the position with regard to matrimonial or family orders or attachment of earnings orders, and with regard to fines;
- (q) in view of the fact that the assets do not automatically vest in the supervisor it may be advisable for the proposal to provide for such vesting or for the supervisor to be granted a charge over assets, or to be given some other suitable form of security or for a declaration of trust or power of attorney to be executed;
- (r) the attitude to be adopted with regard to contingent creditors;
- (s) the situation with regard to overseas creditors;
- (t) the circumstances in which the supervisor is to present a petition for a winding-up/bankruptcy order;
- (u) the situation with regard to tax liabilities arising on disposal of the company's/debtor's assets, or the future income of or gifts to the company/debtor from a third party, that are applied towards the payment of creditors' claims;
- (v) the inclusion of power for the supervisor or any creditor's committee to be able to determine that a VA has no future and petition for winding up/bankruptcy and authority to retain and use funds from the VA for such costs.

When considering these issues the member should have regard to any relevant decisions of the court which have clarified points of law where the statutory provisions are either silent or ambiguous.

Many of these matters are dealt with in the standard terms and conditions produced by the Association of Business Recovery Professionals.

Effective Date: 1 April 2007 Version 3 (E&W)

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The Guidance Notes for the Completion of Statutory Reports and Returns have been updated and are available on our website.

The changes include:

- Updated legislative references;
- Requests for better contact details for Practitioners and directors and details of attempts to contact directors;
- Requests for more information about director responsibilities, explanations obtained, and on directors' benefits/liabilities so that we can assess materiality;
- Accounting records – schedule, location, attempts to collect, electronic passwords;
- Requests for full bank details/VAT/PAYE references;
- Guidance on disclosure of information, legal professional privilege and DPA;
- SIP 2 changes.

See Dear IP Chapter 10, article 25 which sets out the process by which we target cases and article 26 which invites practitioners to contact us to arrange a presentation which includes more on what the Insolvency Service is looking for in D reports.

Enquiries may be directed to:
intelligence.insolvent@insolvency.gsi.gov.uk in the first instance or to Jeremy Hawksley on 020 7291 6818

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2.4 STATEMENT OF INSOLVENCY PRACTICE 4 (E&W) DISQUALIFICATION OF DIRECTORS

INTRODUCTION

1. “[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]”
2. This statement has been prepared for the guidance of members on their statutory obligations under the Company Directors Disqualification Act 1986 and related legislation. It applies to England and Wales only.
3. The law relating to the obligations of insolvency office holders in relation to disqualification matters is contained in the Company Directors Disqualification Act 1986 (‘The Act’) and associated statutory instruments, of which the most significant for practitioners is The Insolvent Companies (Reports on Conduct of Directors) Rules 1996 (‘the Rules’). In addition to companies which may be wound up under the provisions of the Insolvency Act 1986, the Act applies to building societies and incorporated friendly societies. By virtue of Article 16 of the Insolvent Partnerships Order 1994 certain sections of the Act also apply to insolvent partnerships where they are wound up as unregistered companies under Part V of the Insolvency Act 1986. In this statement references to companies should be read as references to any body corporate or partnership to which the Act applies. The DTI issue guidance notes, which are updated from time to time, elaborating on the requirements, to which practitioners should refer.

SUBMISSION OF REPORTS AND RETURNS

4. Insolvency practitioners who are appointed to a company as administrative receiver, administrator, or liquidator in a creditors’ voluntary liquidation are required to submit information on the conduct of the directors of the company to the Disqualification Unit of the Department of Trade and Industry. The information must be submitted on the appropriate statutory form (Form D1 or Form D2, known colloquially as ‘D Forms’) appended to the Rules, or in a form which is substantially similar.
5. Form D1 (subsequently referred to as a ‘report’) is used to report conduct which may render the director unfit to be concerned in the management of a company. Form D2 (subsequently referred to as a ‘return’) may be either an ‘interim return’ or a ‘final return’, the appropriate designation being

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made on the front page of the form. An interim return is used where the practitioner expects to be able to submit either a report or a final return at a later date. A final return is used where the practitioner has not become aware of any matters which would require him to submit a report.

6. The practitioner is required to submit a report forthwith to the Secretary of State where it appears that the conduct of a director makes him unfit to be concerned in the management of a company. If such a report has not been submitted before the expiry of six months from the 'relevant date' or, if he vacates office earlier than one week before the expiry of the six month period, within 14 days of vacating office, he must submit a return (either interim or final). The 'relevant date' is:
 - where there has been no declaration of solvency, the date of the winding-up resolution;
 - where there has been a declaration of solvency, the date when the liquidator formed the view that the company was insolvent;
 - the date of the appointment of an administrative receiver; or
 - the date of the administration order.

Except in the case of joint appointments, where there is more than one office holder either concurrently or consecutively, a report or return is required from each one appointed within six months less one week of the relevant date. The Secretary of State does not require more than one report or return from joint office holders. In compulsory liquidations there is no requirement for an office holder to submit a report or return.

7. The submission of a report or final return within the six month period will discharge the practitioner's statutory obligation (except that he may be required to provide information or otherwise assist the Secretary of State). Where this is not possible, and an interim return is submitted, the practitioner is required to indicate on the return the date by which he expects to be able to submit a report or final return. When fixing this date the practitioner should bear in mind that any proceedings against a director must be commenced within two years of the company's becoming insolvent (see paragraph 9 below) and that the Disqualification Unit needs time to evaluate cases and prepare papers, including affidavits, where action is to be taken. For this reason the Unit hopes to receive reports within one year whenever it is not possible for them to be submitted within the six month period. If for any reason the practitioner finds that he is not able to

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submit his report or final return by the date specified in the interim return, he should notify the Disqualification Unit accordingly as soon as possible.

8. Members should bear in mind that the effective operation of the disqualification procedures depends on practitioners fulfilling their obligations in a timely manner and maintaining proper communication with the Disqualification Unit in cases of difficulty. Practitioners should not routinely await deadlines before submitting reports or returns where they can be submitted earlier, and should not routinely submit interim returns where a report or final return can be submitted within the initial six month period.
9. For the purposes of the two year time limits for bringing proceedings a company becomes insolvent when:
 - it goes into liquidation (as defined in section 247(2) of the Insolvency Act 1986);
 - an administration order is made; or
 - an administrative receiver is appointed.

Where there are successive events in respect of the same company the two year limit runs from the date of the first event.

EXTENT OF WORK

10. The practitioner is expected to base his report, or decision that only a return is necessary, on information coming to light in the ordinary course of his work and is not required to carry out investigations specifically for the purpose of fulfilling his duties under the Act. The Statement of Insolvency Practice entitled 'A Liquidator's Investigation into the Affairs of an Insolvent Company' describes the extent of the investigation work that is expected in a liquidation.
11. Since the submission of a report may lead to proceedings in which he may be called to act as a witness, the practitioner should take care to ensure that the basis of his opinion that a report should be submitted is properly documented. Where a practitioner has formed a preliminary view that the conduct of a director renders him unfit to be concerned in the management of a company he should normally, if he has not already interviewed him in the course of his duties, consider the advisability of seeking a meeting with the director concerned, with a view to confirming his understanding of the

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facts upon which he based his preliminary view that the submission of a report was appropriate.

CONTENT OF REPORTS

12. Schedule 1 to the Act lists matters to which the courts shall have regard when considering a disqualification case, and practitioners should have regard to the matters listed there when considering whether a report is appropriate. However, these matters are not exhaustive and the practitioners should include in his report other matters which he believes to be relevant. The Disqualification Unit attaches particular importance to the following:
 - attempted concealment of assets or cases where assets have disappeared or a deficiency is unexplained;
 - appropriation of assets to other companies for no consideration, at an undervalue, or on the basis of unreasonable charges for services;
 - preferences;
 - personal benefits obtained by directors;
 - overvaluing assets in accounts for the purpose of obtaining loans, or other financial accommodation, or to mislead creditors;
 - loans to directors in making share purchases;
 - dishonoured cheques;
 - use of delaying tactics;
 - non payment of Crown debts to finance trading;
 - phoenix operations;
 - misconduct in relation to operation of a factoring account;
 - taking of deposits for goods or services ultimately not supplied; and
 - cases where criminal convictions have resulted.
13. Practitioners should not take a pedantic view of isolated minor compliance failures, but should form an overall view of a director's conduct when deciding whether a report is appropriate.
14. Details of the conduct giving rise to the decision to submit a report should be included, and specific examples of alleged failings should be given wherever possible. It is recognised that in some cases substantive information may not be available, but the report, in the light of other information already held by the Disqualification Unit, may reveal a course or pattern of unfit

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conduct. Accordingly in these cases the practitioner should report on the basis of such evidence as does exist. This may help the Disqualification Unit in deciding whether to recommend to the Secretary of State that it is in the public interest for an action to be brought in the event of the director being involved in other insolvencies.

15. The following matters should be dealt with within the body of the report:
 - the position on any civil recovery actions;
 - the adequacy of the accounting records;
 - evidence available in support of insolvent trading;
 - professional advice taken by the directors, and specific correspondence which sheds light on directors' conduct, for example with banks, solicitors, accountants or creditors.

Where the practitioner has been unable to quantify, or otherwise comment on the amounts involved in the alleged conduct due to cost or other considerations then an explanation to that effect should be included in the report.
16. The following items should be appended to every report, where the information is available:
 - a copy of the statement of affairs: where none has been submitted the report should include an estimate of the financial position of the company by listing known assets and liabilities;
 - notes issued for purposes of the creditors' meeting (liquidations only), any original notes signed by directors from which the final issued note was prepared and any record of the proceedings at the meeting;
 - section 48 report to creditors (receivership);
 - copy accounts as available - last statutory accounts and any other draft, management, or interim accounts;
 - a summary of asset realisations, unrealised assets yet to be dealt with and claims notified;
 - dividend prospects;
 - aged creditor analysis - if readily available from the company's records.

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17. When fulfilling his reporting duties, a practitioner should have regard to the laws of defamation and should ensure that he has followed the procedures set out in paragraph 11 above. A defamation action, even if it has no prospect of success, can be time-consuming to deal with. He should bear in mind that if disqualification proceedings are brought the report will form the basis of the affidavit evidence and may be subject to discovery by the respondent director in the proceedings.
18. Dictation of the report to, or its discussion with, members of the practitioner's staff is protected by qualified privilege. Practitioners should stress to staff the need to maintain strict confidentiality and not to discuss the contents of reports with people not involved in their preparation. Certain forms of communication within the practitioner's own office (such as e-mail) may also amount to 'publication' which might lead a director to consider a defamation claim.
19. The Disqualification Unit encourages approaches from practitioners who require assistance or clarification regarding their investigations or the completion of a report or return. However, such contact is informal and does not diminish the practitioner's responsibility for preparing the return or report in accordance with his own judgement.

FURTHER ASSISTANCE

20. The Disqualification Unit aims to let practitioners know within three months of the submission of a report whether the case has been targeted for further investigation and, if not, the reason why. If a case is targeted the Unit will give the practitioner the name of the chief examiner dealing with it, who will act as a contact point.
21. Where proceedings are instituted the evidence will be by affidavit. Although there is no statutory obligation for a practitioner to swear an affidavit he will normally be the most appropriate person to do so, as he will be the best witness as to facts.
22. The practitioner who swears the affidavit is a witness of fact and is not an expert witness. It is for the Disqualification Unit to draw inferences as to a director's conduct from the practitioner's evidence as to the facts. Phrases in the practitioner's affidavit such as 'in my view' or 'in my opinion' may lead to confusion as to the role of the practitioner; such phrases should therefore be avoided.

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23. The case of *Re Pinemoor Limited* [[1997] BCC 708] contained judicial comment on the purpose of the practitioner's evidence and the preparation of the affidavit evidence. The judge noted that the purpose of the practitioner's evidence is, first, to place before the court the facts which the practitioner had established as a result of holding his office; and, secondly, to draw to the attention both of the court and of the respondent those matters upon which the Secretary of State relied in support of his allegation of unfitness. He went on to observe that in the course of that exercise it was not unusual for the Secretary of State, through his deponents, to invite the court to draw inferences of secondary fact from the primary facts established by the practitioner's evidence. He added that it would be preferable if those preparing and swearing affidavits in disqualification proceedings were careful to distinguish between the facts which they were able to establish by direct evidence, the inferences which they invited the court to draw from those facts, and the matters which were said to amount to unfitness on the part of the respondent.
24. The contents of the practitioner's affidavit should be confined to matters of fact and simple conclusions drawn therefrom. The practitioner should ensure that he only deposes to matters within his knowledge and belief. Where the affidavit prepared by the Disqualification Unit includes matters which have come to light as a result of the Unit's investigations, the practitioner should satisfy himself that the matters stated therein are within his own knowledge and are consistent with the other matters stated. It is important that the practitioner's affidavit should deal with all evidence which he considers to be relevant to the court's consideration of the directors' conduct, and should not omit evidence which might favour the director. If he is dissatisfied with any aspect of the affidavit he should discuss his concerns with the Unit as soon as possible.
25. There is no requirement for an affidavit to be sworn by the office holder himself if there is another member of his staff with the appropriate knowledge to do so. However, members should be aware that any person swearing an affidavit may be called upon to give oral evidence in the proceedings.
26. Practitioners should bear in mind that under section 7(4) of the Act the Secretary of State has power to require office holders, or former office holders, to furnish him with such information, and produce and permit inspection of such records, as he may reasonably require. In receivership

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cases, where the practitioner is proposing to return the company's records to the directors, he should notify the Disqualification Unit accordingly.

COSTS

27. The submission of reports or returns is one of many statutory duties that automatically fall upon the practitioner accepting an appointment in one of the categories to which the requirement applies. As such it does not attract any specific entitlement to remuneration.
28. However, payment will be made to the practitioner for work done by him and his staff in agreeing and swearing affidavits, or for work done by way of further investigation over and above the normal standard of reporting set out in paragraphs 12 to 16 above. The likely extent of the work and level of costs should be discussed with the Disqualification Unit before the work is undertaken. Solicitors acting for the Unit can be contacted to provide assistance to the practitioner on points of difficulty or concern which he may have in relation to his affidavit.
29. The Unit will not pay for any additional work required to address any omissions from the report of the matters referred to in paragraphs 12 to 16 above.

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2.5 STATEMENT OF INSOLVENCY PRACTICE 5 (E&W) NON PREFERENTIAL CLAIMS BY EMPLOYEES DISMISSED WITHOUT PROPER NOTICE BY INSOLVENT EMPLOYERS

Withdrawn by the Society of Practitioners of Insolvency in August 1999.*

See Technical Release 5.

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* The Society of Practitioners of Insolvency is the former name of R3: Association of Business Recovery Professionals.

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2.6 STATEMENT OF INSOLVENCY PRACTICE 6 (E&W) TREATMENT OF DIRECTOR'S CLAIMS AS "EMPLOYEES" IN INSOLVENCY

Withdrawn by the Society of Practitioners of Insolvency in August 1999.*

See Technical Release 6.

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2.7 STATEMENT OF INSOLVENCY PRACTICE 7 PRESENTATION OF FINANCIAL INFORMATION IN INSOLVENCY PROCEEDINGS

INTRODUCTION

An office holder is required to report regularly to creditors and other interested parties¹, and those reports should be clear and informative. Reports should be produced with the interests of the reader in mind and the office holder should consider what the reader might reasonably regard as appropriate or significant in the circumstances of each case.

Because payments made by an office holder should be appropriate and reasonable in all the circumstances of the case, an office holder should report in a way that will assist creditors and other interested parties properly to exercise their rights under the insolvency legislation.

PRINCIPLES

1. Information provided by an office holder, including information about receipts and payments, should be presented in a manner which is transparent, consistent and useful to creditors and other interested parties, whilst being proportionate to the circumstances of the case.
2. The information provided within receipts and payments accounts and any accompanying documents should be sufficient to enable creditors and other interested parties to understand the nature and amounts of the receipts and payments.
3. Requests for additional information, including on expenses, should be viewed upon their individual merits and treated by an office holder in a fair and reasonable way. The provision of additional information should be proportionate to the circumstances of the case.

¹ "other interested parties" means those parties with rights pursuant to the prevailing insolvency legislation to information about the office holders' receipts and payments. This may include the creditors' committee, the members (shareholders) of a company, or in personal insolvency, the debtor.

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KEY COMPLIANCE STANDARDS

Form and general presentation of accounts

4. In addition to any statutory requirement to provide an account in a specified form, receipts and payments accounts should provide figures both for the period under review and on a cumulative basis.
5. Information provided in accordance with this statement may be in a separate document issued with the receipts and payments account or given by way of note.
6. Receipts and payments accounts should show categories of items under headings appropriate for the case, where practicable following headings used in any prior statements of affairs or estimated outcome statements. Alternatively, an analysis should be provided to enable comparison with the “estimated to realise” figures in any prior document.
7. A “statement of expenses incurred” should adopt, as far as possible, the principles of this statement but need only provide information for the period under review.

Further information on the form and presentation of receipts and payments accounts is set out below.

Payments to Insolvency office holders and their associates

8. The following should be disclosed, either separately in the receipts and payments account or by way of note:
 - a) Office holder’s remuneration, showing the amounts paid on each basis;
 - b) Amounts paid to the office holder out of the estate in respect of pre-appointment costs;
 - c) Sums paid to the office holder in respect of the supervision of trading;
 - d) All other amounts required to be approved in the same manner as remuneration;
 - e) Amounts paid to sub-contractors for work that would otherwise have to be carried out by the office holders or their staff;
 - f) Any remuneration or disbursements paid to the office holder other than out of the estate, giving the amounts paid, the name of the payor, its relationship to the insolvent estate and the nature of the payment.

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9. These disclosures should always be made whenever reporting on remuneration and/or expenses, whether incurred, accrued or paid.

Reports to creditors and other interested parties

10. Where expenditure has been incurred that is significant in the context of the case, the office holder should report and explain why the expenditure was incurred.
11. Unless there is statutory provision to the contrary, this SIP does not require the repetition of information previously provided.

Requests for additional information

12. Creditors and other interested parties may have the statutory right to seek further information about payments made by the office holder. Such rights extend to the general expenses of administering the estate as well as the office holder's remuneration and disbursements. They may also have the right to apply to the court if they consider these costs to be excessive in all the circumstances. The office holder should provide creditors and other interested parties with sufficient information to enable them to consider whether to exercise those rights.
13. Adequate steps should be taken to bring the rights of creditors and other interested parties to their attention. Information on how to access a suitable explanatory note setting out the rights of creditors should be given, when appropriate in reports that present financial information.

Other presentational matters

14. Receipts

- a) Realisations by or on behalf of the office holder should be shown gross, with the costs of realisation shown separately as payments.
- b) Realisations by or on behalf of the office holder of assets subject to charges should be shown as above with the amounts accounted for to the charge holder shown separately as payments.
- c) When assets subject to charges are sold by or on the instructions of the charge holder (or other person with a legal right to do so), the net amount received should be shown in the account (even if "nil") with the gross realisation(s), costs of realisation and the amount retained by the charge holder shown separately by way of note.

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15. Payments

Payments should be stated by category, distinguishing payments made under duress, in settlement of reservation of title claims, to secured creditors, and to preferential creditors and unsecured creditors as dividends. The dates and amounts of dividends (pence in the £) should also be stated.

16. Trading under office holder's control

A separate trading receipts and payments account should be provided, and the balance should be shown as a single item in the main receipts and payments account. The office holder should also provide, by way of note or in the accompanying report, details of:

- a) The assets in existence upon appointment (e.g. stock and work in progress) that have been used in trading.
- b) Any uncollected debts and unpaid liabilities in respect of trading.
- c) Trading assets (e.g. stock and work in progress) still to be realised.

17. Hive-downs

- a) Funds received from a hive-down company as consideration for the sale of the business or its assets should be shown in the account classified according to the categories of assets transferred and apportioned as provided for in the hive-down agreement. The proceeds of sale of the shares in the hive-down company should be shown separately. Funds received in respect of the hive-down company should not be shown simply as the proceeds of sale of the hive-down company.
- b) A trading account for a hive-down company should be prepared adopting the same principles as set out in paragraph 16 above.

18. Third party funds

Where any monies are held which do not form part of the estate and are due to be paid to third parties, the amount should be noted. Any agreed fee charged to the person entitled to the monies should be disclosed.

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19. Statement of funds held

Disclosure should be made of where the balance of the funds is held, distinguishing between funds held on non-interest bearing accounts and interest bearing accounts in the office holder's or the insolvent estate's name, amounts held in the Insolvency Services Account and in Treasury Bills, and other forms of investments.

An office holder may present multiple receipts and payments accounts in more than one currency where bank accounts are maintained in those currencies (with details of the transfers between each currency), but should explain:

- a) Why funds have been held in currencies other than sterling;
- b) The impact of currency holdings on the estate;
- c) An indication of the sterling value as at the date of the account.

20. Value added tax (VAT)

The treatment of VAT adopted within an account should be consistent and the implications of that treatment made clear.

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2.8 STATEMENT OF INSOLVENCY PRACTICE 8 (E&W) SUMMONING AND HOLDING MEETINGS OF CREDITORS CONVENED PURSUANT TO SECTION 98 OF THE INSOLVENCY ACT 1986

INTRODUCTION

1. *[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]*
2. This statement has been prepared for the sole use of members in connection with liquidations of companies registered in England and Wales. The statement concentrates on creditors' meetings held under section 98 of the Insolvency Act 1986 (IA 1986), and does not purport to cover the practice to be adopted in respect of all creditors' meetings. Throughout this statement the member who has received instructions from the company's directors to advise in relation to the convening of the creditors' meeting will be referred to as the 'advising member'. An advising member is reminded that he must have regard to the relevant primary and secondary legislation; and that if he intends seeking nomination as liquidator he must be qualified to act as an insolvency practitioner in relation to the company.
3. All members and their staff should conduct themselves in a professional manner at all meetings of creditors.

INSTRUCTIONS TO CONVENE MEETING

4. It is the responsibility of the company's directors to convene the creditors' meeting and to ensure that arrangements are made for the meeting to be held in accordance with current legislation. The advising member must therefore satisfy himself that the directors are aware of their responsibilities. He should also obtain written instructions from the board of directors which clearly define the matters on which he is to advise.
5. If the advising member receives instructions which would require him to act in a manner materially contrary to the Statements of Insolvency Practice, he should only accept those instructions after careful consideration of the implications of acceptance in that particular case. Where the directors act contrary to the guidance contained in this statement the advising member may be called upon to show that the directors' actions were undertaken either without his knowledge or against his advice.

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6. A member who is unable to accept an appointment as liquidator of a company because he or his firm has had a material professional relationship with the company during the preceding three years may act as an advising member. However, he should only do so after careful consideration of the implications of so acting in the light of his professional body's most recent guide to professional ethics.
7. A member who is asked to act as advising member in relation to any company should not agree to act unless he is satisfied that he is competent to provide the level of advice needed by the company in question, or is able to recommend where to obtain the appropriate level of advice if he himself is not able to provide it.
8. It is most undesirable that shareholders should pass a resolution for the winding up of a company unless a liquidator is also appointed and accordingly no member should accept instructions to act as advising member unless he has good grounds for believing that such appointment will be made. If, having accepted instructions, the advising member concludes that although a winding up is desirable, a voluntary winding up is inappropriate, he should advise the directors and shareholders that steps leading to a compulsory winding up should be taken. Such a situation could arise where a liquidator is unlikely to be appointed under the voluntary winding up, or where there is a strong case in favour of the liquidation commencing before a meeting of shareholders can be held.

VENUE AND TIME OF MEETING

9. When choosing the venue for the meeting, the advising member should not only fulfil the legal requirement to choose a place which is convenient for persons who are invited to attend, but he should also ensure that the accommodation is adequate for the number of persons likely to attend. Subject thereto, there is no objection to an advising member arranging for the meeting to be held at his own offices, provided that the requirements of Rule 4.60(1) are satisfied. He may make a reasonable charge for the use of the room.
10. The date and time of the meeting must be fixed with the convenience of creditors in mind and having regard to their geographical location. As an example, notices of a meeting should not normally be despatched shortly before the commencement of a known holiday period with the meeting taking place immediately after the holiday.

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11. It is for the advising member to advise the directors whether, in all the circumstances of a particular case, it would be preferable for the members' and creditors' meetings to be held on the same or different days.

NOTICE OF THE MEETING

12. The notice convening the meeting should, where possible, be sent simultaneously to all classes of known creditors (including employees and secured creditors). The advising member should take all reasonable steps to ensure that the list of creditors provided by the directors is complete. Thus, for example, he should advise the company to identify and send notices to such creditors as hire purchase companies, lessors and former lessors and public utilities.
13. Although the legal requirement is that notices of the meeting must be sent not less than seven days before the day on which the meeting is to be held, this is often insufficient time to enable creditors to arrange representation. For the convenience of creditors, the advising member should ensure that notices of the meeting are despatched as early as possible having regard to the circumstances of the case. This should be no later than the date when the notices are despatched to shareholders. Note that the reference to seven days means seven clear days, i.e. it excludes the day on which the notices are sent and the day on which the meeting is held.
14. The notice advertised in the Gazette and local newspapers should appear as soon as possible and should not be deferred until shortly before the meeting. The advertised notice should meet the requirements of Section 98 (2) IA 1986.
15. Copies of the notice convening the shareholders' meeting should not be circulated to creditors. However, in order to reflect the provisions of section 183(2)(a) IA 1986, the notice of the creditors' meeting may contain a note of the convening of the shareholders' meeting.
16. A copy of the notice of the shareholders' meeting should be sent to all Under Sheriffs, Sheriff's Officers and County Courts known by the advising member to be interested in the company's affairs. In addition, notice of the creditors' meeting should be sent where practicable to solicitors or debt collection agencies acting for creditors.

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17. When dealing with the issue of notices of the meeting, members should have regard to the provisions of Statement of Insolvency Practice 9 (E&W) by ensuring that creditors are notified of the possibility that resolutions may be passed at the meeting to determine the amount of fees payable from the company's assets and, where relevant, by providing creditors with explanatory notes setting out the manner in which the remuneration of liquidators is fixed.
18. Where the name of the company has been changed sufficiently recently for there to be any risk that creditors might not be aware of the new name, it is advisable to include reference to the former name or names both in the notices sent to creditors and in those inserted in the Gazette and local newspapers.
19. Section 98 IA 1986 requires that at least seven days' notice of the creditors' meeting shall be given. Occasions may arise when for the general benefit of creditors, a liquidator can be appointed before the day fixed for the creditors' meeting. Where the company is to be placed in liquidation and the creditors' meeting is held later, the advising member should, if possible, ensure that the secretary or a director of the company signs the notices of the creditors' meeting before the resolution to wind up is passed by the shareholders.

PROVISION OF INFORMATION PRIOR TO CREDITORS' MEETING

20. Where the directors have decided to arrange for an authorised insolvency practitioner to provide information to creditors under section 98(2)(a) IA 1986, the creditors are to be given 'such information concerning the company's affairs as they may reasonably require'. The information which it is reasonable to request will normally include information contained in the statement of affairs and the list of creditors, when available. Requests for information need not be made in writing. However, oral requests should be treated with caution and information should not be supplied unless the caller can show that he is a creditor or a representative of a creditor. The advising member may decline to comply with a particular request for information if:
 - (a) it is unreasonable to expect him to be in a position to supply such information within the time remaining before the meeting; or
 - (b) the information requested ought to remain confidential on the grounds that its release would be prejudicial to the company or its creditors.

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21. If the directors have decided to make a list of creditors available for inspection under section 98(2)(b) IA 1986, the advising member should take steps to ensure that:

- (a) the list provides details of the names and addresses of all known creditors but not necessarily the amounts due to them;
- (b) the names are arranged in alphabetical order;
- (c) it is available at least between the hours of 10 a.m. and 4 p.m. on the two business days before the date of the meeting;
- (d) sufficient copies are available for inspection to avoid undue delays to creditors' representatives; and
- (e) the place where the list is to be made available is, in all the circumstances, reasonably convenient for creditors.

PROXIES AND OTHER REPRESENTATION

22. The forms of proxy accompanying the notice should conform to the Rules and should incorporate the name of the company and the date of the meeting before despatch in order to reduce the possibility of errors by creditors in completing the forms. The proxy must not be sent out with the name or description of any other person inserted on it.
23. Proxies to be used at the meeting are valid only if they are lodged by the time stated in the notice convening the meeting to the place specified in the notice. Faxed proxies should not be treated as invalid solely on the basis that they have been transmitted by fax.
24. Proxies which are lodged out of time should be treated as invalid. Proxies which are incorrectly completed in a material way will be invalid. There is a requirement for proxies to be signed by the principal or by a person authorised by him, in which case the nature of the authority must be stated. Proxies which are unsigned or which do not explain the authority under which they are signed will, therefore, be invalid. However, proxies should not be rejected simply because of a minor error in their completion provided:
- (a) the form of proxy sent with the notice of the meeting (or a substantially similar form) has been used;
 - (b) the identity of the creditor and the proxy holder, the nature of the proxy holder's authority and any instructions given to the proxy holder are clear.

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25. When advising the chairman of the meeting on the validity of proxies, a member should bear in mind that he has a personal interest if he has been appointed liquidator at the shareholders' meeting and seeks to retain office following the creditors' meeting or intends to seek appointment as liquidator at that meeting. Where circumstances so demand, he should suggest prior to the meeting that the chairman takes advice on the validity of proxies from an independent source, for example the company's solicitors.
26. There is no requirement for proxies which are considered invalid to be returned to the creditors who have lodged them.
27. A person may be authorised to represent a creditor which is a body corporate under section 375 of the Companies Act 1985. Where a person is so authorised he must produce to the Chairman a copy of the resolution from which he derives his authority. The copy must be under the seal of the corporation or certified by the secretary or a director of the corporation to be a true copy. Where Customs and Excise is represented at a meeting by a Customs officer attending in person, the officer's commission constitutes sufficient authority for him to act on Customs' behalf without the need for the submission of a proxy.

PROOFS OF DEBT

28. Creditors may submit proofs at any time before voting, even during the course of the meeting itself. The admission or rejection of proofs for voting purposes is the responsibility of the chairman of the meeting. A proof should be accepted as valid for voting purposes, provided it identifies both the creditor and the amount claimed by him with sufficient clarity. The amount for which the chairman should be advised to admit the proof for voting purposes should normally be the lower of:
 - (a) the amount stated in the proof; and
 - (b) the amount considered by the company to be due to the creditor.

The advising member may assist the chairman to decide the amounts for which claims should be admitted but if he intends to seek appointment as liquidator he should bear in mind that his own personal interests might create a conflict, in which case the chairman should be advised independently.

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The amount for which the proof is admitted for voting purposes should be set out in writing and signed by the chairman. In most instances it is expected that the chairman will do this prior to the meeting.

AVAILABILITY OF PROXIES AND PROOFS FOR INSPECTION

29. Any person entitled to attend the meeting may inspect the proxies and proofs, either immediately before or during the meeting. Notwithstanding that a form of proxy submitted is ruled by the chairman to be invalid or a proof is rejected in whole or in part these documents should be made available for inspection.

ATTENDANCE AT THE CREDITORS' MEETING

30. A liquidator appointed by the shareholders before the creditors' meeting takes place is required to attend the meeting of creditors personally. He must report to the meeting on any exercise of his powers under sections 112, 165 or 166 IA 1986. Such attendance is required even if the shareholders' appointment was made only shortly before the creditors' meeting. He must also attend any adjourned meeting. He is liable to a fine if he fails to comply without reasonable excuse. He should in such a case document at the time the reason for non-attendance and ensure that a suitably experienced colleague attends in his place.
31. One of the directors of the company will have been nominated to act as chairman of the meeting and he must attend. In addition, the advising member should consider whether any other director or employee of the company will be able to provide information which is relevant to the meeting and if so, he should advise that that person be invited to attend the meeting.
32. Creditors and their authorised representatives are entitled to attend. In addition, a person who holds himself out as representing a creditor should, in the absence of evidence to the contrary, be allowed admittance and to raise questions, but he may be unable to vote.
33. The chairman of the meeting should be advised that he must decide whether to allow any third parties, such as shareholders, the press or the police, to attend, after taking into account the views of the creditors present.

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INFORMATION TO BE PROVIDED TO THE MEETING

34. The advising member should ensure that a summary or a copy of the directors' sworn statement of affairs is handed to all those attending the meeting. This summary will normally be expected to include a list of the names of the major creditors and of the amounts owing to them. Sufficient copies of the full list of creditors should be available to facilitate its inspection by those attending the meeting. The meeting should be told that the sworn statement of affairs is available for inspection at the meeting.
35. Information to be given to the meeting should include:
- (a) details of any prior involvement with the company or its directors by the advising member or, if a different person, the proposed liquidator;
 - (b) a report of the previously held shareholders' meeting, stating the date the notice of the meeting was issued, the date and time that the meeting was held and, if it was held at short notice, the reasons therefore and the fact that the required consents were received. The resolutions passed at the meeting should be reported and if the liquidator has not yet consented to act, that fact should be stated. If the shareholders' meeting was adjourned without a resolution for voluntary winding up being passed, there should be reported:
 - (i) the date and time to which the meeting had been adjourned; and
 - (ii) the fact that any resolutions passed at the section 98 meeting will come into effect if and when the winding-up resolution is passed;
 - (c) the date on which the directors gave instructions for the meeting of creditors to be convened and the date on which the notices were despatched;
 - (d) the details of the costs paid by the company or on its behalf in connection with:
 - (i) the preparation of the statement of affairs;
 - (ii) the arrangements for the creditors' meeting; and
 - (iii) advice to the company or its directors in the period from the time the advising members was first consulted by or on behalf of the company or its directors;

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the details for each category should include the name of the recipient, the amount, the source of the payment; and, in the case of (iii), the nature of the advice given.

If no payments have been made in respect of these costs prior to the meeting, the estimated amount of the costs should be stated. If any of the costs have been or are proposed to be paid to someone other than the advising member, the nature of the relationship of the company or its directors to that person (e.g. auditor, solicitor, financial adviser) should be stated.

- (e) a report on the company's relevant trading history which should include:
 - (i) date of incorporation and registered number;
 - (ii) names of all persons who have acted as directors of the company or as its company secretary at any time during the three years preceding the meeting;
 - (iii) names of major shareholders together with the details of their shareholdings;
 - (iv) details of all classes of shares issued;
 - (v) nature of the business conducted by the company;
 - (vi) location of the business and the address of the registered office;
 - (vii) details of parent, subsidiary and associated companies;
 - (viii) the directors' reasons for the failure of the company;
 - (ix) extracts from any formal or, if none, draft accounts produced for periods covering the previous three years or for any earlier period which is relevant to the failure of the company. The extracts should include details of turnover, net result, directors' remuneration, shareholders' funds, dividends paid, reserves carried forward at year end and the date of the auditors' report. Creditors should also be advised if the accounts have been qualified by the auditors;
 - (x) a deficiency account reconciling the position shown by the most recent balance sheet to the deficiency in the statement of affairs;
 - (xi) the names and professional qualifications of any valuers whose valuations have been relied upon for the purpose of

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the statement of affairs, together with the basis or bases of valuation;

(xii) such other information as the advising member considers necessary to give the creditors a proper appreciation of the company's affairs;

(f) if a receiver has been appointed over any assets of the company, the meeting should be provided with a report on the conduct of the receivership to date, including a summary of the receiver's receipts and payments, unless disclosure would be in breach of the receiver's duty to his appointor, for example where market sensitive information was involved. In such circumstances, a receipts and payments account only should be provided, together with an explanation of the circumstances which prevent further information being given. Where any member is an authorised practitioner and is a receiver of a company whose shareholders pass a resolution for voluntary winding up, that member should assist the advising member by providing this information;

(g) an explanation of the contents of the statement of affairs.

36. There should also be provided to the meeting details of any transactions (other than in the ordinary course of business) between the company, any of its subsidiaries or any other company in which it has or had an interest (together 'the company') and any one or more of its directors or any other associate of him or them (as defined in section 435 of the Insolvency Act 1986) during the period of one year prior to the resolution of the directors that the company be wound up specifying -

- the assets acquired and the consideration therefore together with the date(s) of the acquisition(s) and the date(s) the consideration for their acquisition was paid
- the names and qualifications of any person who advised independently on the value of any assets the subject of such transactions
- the dates on which any resolutions of the company authorising any such transactions were passed

There should also be reported to the creditors whether (or not) the advising

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member or the proposed liquidator or any partner or employee of either of them acted in any capacity either for the company (as defined above) or any other party to any transaction subject to the disclosure requirements set out above.

37. The advising member should take all practicable steps to ensure that there are available to hand to those attending the meeting a written summary of the more important financial information which is contained in a report given orally to the meeting.
38. In assisting in the preparation of a report to be presented to the meeting, the advising member may rely upon information contained in the company's accounts and records and also upon information provided by directors and employees. He is not expected to conduct an investigation to ensure that the information is accurate, but should provide the creditors with any material conflicting information of which he is aware.

CONDUCT OF THE MEETING

39. Although the chairman of the meeting must be a director of the company and his identity must be made clear at the outset, there is no reason why the meeting should not be conducted by the advising member or some other professional adviser. It should be explained to the meeting that, although this is being done on behalf of the directors, the report is their responsibility and is based upon information supplied by them. The chairman is the arbiter on all procedural matters but may seek advice from the advising member.
40. Creditors and their representatives attending the meeting are required to sign an attendance list. This list should be made available for inspection to anyone attending the meeting. In addition, any creditor or creditor's representative wishing to speak, ask questions, or make a nomination, should be asked to identify himself and the creditor he represents.
41. Creditors and their representatives should be given the opportunity to ask questions. Whilst every effort should be made to give a reasonable answer to such questions within the context of the meeting, the chairman may be advised to refuse a question to be put if, for example:
 - the questioner refuses to give the name of the creditor he represents and his own name or that of his firm;
 - the questioner does not claim to be or to represent a creditor;

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or may decline to answer it if, for example:

- the answer could prejudice the successful outcome of the liquidation or creditors' interests;
- the answer could be construed as slanderous if subsequently proved incorrect.

The chairman should be advised to state the grounds on which he refuses to allow a question. Creditors are entitled to information on the causes of the company's failure but it is not appropriate for a detailed investigation of the company's affairs to be undertaken at a meeting of creditors.

42. Nominations for the appointment of a liquidator should be requested before any vote is taken. The holder of a proxy requiring him to vote for the appointment of a particular liquidator is required to nominate that person, and it is therefore possible that the chairman or any other holder of such proxies may need to make more than one nomination.
43. The chairman must accept all nominations and put them to the meeting, unless he has good grounds for supposing that the person nominated is not qualified or is unwilling to act as an insolvency practitioner in relation to the company.
44. The procedure to be followed when voting for the appointment of a liquidator should be explained to the meeting. It is acceptable in the first instance for a vote to be taken on an informal show of hands and if the result is accepted by all interested parties, the chairman of the meeting may conclude that a resolution has been passed. If a formal vote becomes necessary it should be conducted by stating the names of all those nominated and by the issue of voting papers on which those wishing to vote will be required to show their name, the name of the creditor they are representing, the amount of the creditor's claim and the name of the nominated person for whom they wish to vote. It is the advising member's responsibility to ensure that voting papers are available.
45. When all votes have been counted, the chairman should announce the result to the meeting, giving details of the total value of votes cast in favour of each nomination. He should also give details of votes which have been rejected, either in whole or in part, and should also state which nomination those creditors supported and the reasons for the rejection.

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46. An absolute majority is required and if the first poll is not conclusive, the nominee receiving the least value of votes is excluded on the next poll where no other nominee has withdrawn. In the event of the withdrawal of at least one nominee, then the nominee with the least value of votes remains in the next poll. The same procedure should be followed in all successive polls.
47. If a proxy-holder has been instructed to vote for a particular person as liquidator and that person is eliminated or withdraws, then, if the second set of words in square brackets on the proxy form (Form 8.5) allowing him to vote or abstain at his discretion has not been deleted, the proxy-holder will be able to vote for such other person as he thinks fit. If the second set of words in square brackets has been deleted, the proxy-holder will have to abstain on any further ballot.
48. The meeting should be told of its right to appoint a liquidation committee and of the nature of the committee's functions, including its rights in relation to the liquidator's remuneration. The committee must consist of not less than three and not more than five creditors (not being fully secured) who have lodged proofs which have not been wholly disallowed for voting purposes or rejected. The meeting should be advised of any shareholders' nominations to the committee and of the creditors' right to veto them (subject to court order) and the voting procedure should be explained. When the constitution of the committee is not contentious, a resolution may be passed on a show of hands and may also appoint a committee en bloc. If there are more than five nominations for appointment to the liquidation committee, it is recommended that voting papers should be issued on which each person voting should enter his own name, the name of the creditor he represents and the amount of the claim. Each such person should be allowed to vote for up to five members of the committee and in doing so may vote for his own appointment (if he is a creditor) or that of the creditor he represents. The provision of voting papers is the responsibility of the advising member.
49. When declaring the result the chairman should follow the same procedures as those outlined in paragraph 46 above. The five creditors receiving the greatest value of votes will form the committee, together with any shareholders' nominations which have not been vetoed.
50. Voting papers should be made available for inspection by any creditor or creditor's representative whose claim has been admitted for voting

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purposes at any time during the meeting or during normal business hours on the business day following the meeting.

51. Apart from the appointment of a liquidator and the establishment of a liquidation committee, the only other resolutions which may be taken by the meeting are:
 - (unless it has been resolved to establish a liquidation committee) a resolution specifying the terms on which the liquidator is to be remunerated, or to defer consideration of that matter;
 - in the event of two or more persons being appointed to act jointly as liquidators, a resolution specifying whether acts are to be done by both or all of them, or by only one;
 - a resolution to adjourn the meeting for not more than three weeks;
 - any other resolution which the chairman thinks it right to allow for special reasons.

52. A record of the meeting should be prepared in accordance with Statement of Insolvency Practice 12 (E&W).

PROVISION OF INFORMATION TO LIQUIDATOR

53. In instances where the advising member has not been appointed to be the liquidator of the company, he must provide reasonable assistance to the liquidator. This will include handing over such of the company's books and papers as are held by him, together with documents he has received in relation to the meeting of creditors (e.g. proofs, proxies, statement of affairs, shareholders' resolutions, attendance lists and record of the creditors' meeting). It is expected that this information will be handed over as quickly as possible and, in any event, within seven days of the conclusion of the creditors' meeting. Likewise, all sums received by the advising member from the company or on its behalf, less any proper disbursements which he has made, duly vouched, should also be handed over.

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REPORT TO CREDITORS FOLLOWING THE MEETING

54. The liquidator shall send to creditors and contributories a report of the proceedings at the meeting, together with a copy or summary of the statement of affairs. If a list of creditors is not supplied, the liquidator should undertake to supply or make available a copy to any creditor on request. The report to creditors should include the name and address of the liquidator and of the creditors appointed to the liquidation committee. Details of other resolutions passed at the meeting should also be supplied. It is not necessary to supply a detailed report on all that transpired at the meeting, but matters of particular relevance should be mentioned. Creditors should be asked to bring the liquidator's attention to any matter of which they consider he should be aware.

SOLICITATION TO OBTAIN NOMINATION

55. Members are reminded of the provisions of section 164 IA 1986 (corrupt inducement), Rule 4.150 of the Insolvency Rules 1986 (solicitation) and their professional body's most recent guide to professional ethics.

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2.9 STATEMENT OF INSOLVENCY PRACTICE 9 (E&W) PAYMENTS TO INSOLVENCY OFFICE HOLDERS AND THEIR ASSOCIATES

INTRODUCTION

1. The particular nature of an insolvency office holder's position renders transparency and fairness in all dealings of primary importance. Creditors and other interested parties with a financial interest in the level of payments from an insolvent estate should be confident that the rules relating to charging have been properly complied with.

PRINCIPLES

2. Payments to an office holder or his or her associates should be appropriate, reasonable and commensurate reflections of the work necessarily and properly undertaken.
3. Those responsible for approving the basis or bases upon which payments to an office holder are to be calculated should be provided with sufficient information to make an informed judgement about the reasonableness of the office holder's requests.
4. Requests for additional information about payments to an office holder or his or her associates should be viewed upon their individual merits and treated by an office holder in a fair and reasonable way. The provision of additional information should be proportionate to the circumstances of the case.

KEY COMPLIANCE STANDARDS

PROVISIONS OF GENERAL APPLICATION

5. The information provided and the way in which the approval of payments to insolvency office holders and their associates for remuneration is sought should enable creditors and other interested parties to exercise properly their rights under the insolvency legislation.

¹ "other interested parties" means those parties with rights pursuant to the prevailing insolvency legislation to information about the office holder's receipts and payments. This may include creditors' committee, the members (shareholders) of a company, or in personal insolvency, the debtor.

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6. An office holder should disclose:
 - a) payments, remuneration and expenses arising from an insolvency appointment to the office holder or his or her associates;
 - b) any business or personal relationships with parties responsible for approving his or her remuneration or who provide services to the office holder in respect of the insolvency appointment where the relationship could give rise to a conflict of interest.
7. An office holder should inform creditors and other interested parties of their rights under insolvency legislation. Information on how to find a suitable explanatory note setting out the rights of creditors should be given in the first communication with creditors following appointment and in each subsequent report to creditors.

SUGGESTED FORMAT

8. A suggested format for the provision of information is in the Appendix, including the suggested levels at which the provision of further information may be appropriate.

PROVISION OF INFORMATION WHEN FIXING THE BASES OF REMUNERATION

9. When seeking approval for the basis or bases of remuneration, an office holder should provide sufficient supporting information to enable the approving body, having regard to all the circumstances of the case, to make an informed judgement as to whether the basis or bases sought is/are appropriate. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought.
10. If any part of the remuneration is sought on a time costs basis, an office holder should provide details of the minimum time units used and current charge-out rates, split by grades of staff, of those people who have been or who are likely to be involved in the time costs aspects of the case.
11. An office holder should also provide details and the cost of any work that has been or is intended to be sub-contracted out that could otherwise be carried out by the office holder or his or her staff.

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12. If work has already been carried out, an office holder should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed and whether the proposed charge is reasonable in the circumstances of the case. Where the proposed charge is calculated on a time costs basis, the office holder should disclose the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. An office holder should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the office holder or his or her staff.

PROVISION OF INFORMATION AFTER THE BASES OF REMUNERATION HAVE BEEN FIXED

13. The requirements in this section are in addition to reporting requirements under insolvency legislation.
14. When reporting periodically to creditors, an office holder should provide an explanation of what has been achieved in the period under review and how it was achieved, sufficient to enable the progress of the case to be assessed. Creditors should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the office holder must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate).
15. Where any remuneration is on a time costs basis, an office holder should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity.
16. If there have been any changes to the charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable.
17. An office holder should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the office holder or his or her staff.

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DISBURSEMENTS

18. Costs met by and reimbursed to an office holder in connection with an insolvency appointment should be appropriate and reasonable. Such costs will fall into two categories:
 - a) Category 1 disbursements: These are costs where there is specific expenditure directly referable both to the appointment in question and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the office holder or his or her staff.
 - b) Category 2 disbursements: These are costs that are directly referable to the appointment in question but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the appointment on a proper and reasonable basis, for example, business mileage.
19. Category 1 disbursements can be drawn without prior approval, although an office holder should be prepared to disclose information about them in the same way as any other expenses.
20. Category 2 disbursements may be drawn if they have been approved in the same manner as an office holder's remuneration. When seeking approval, an office holder should explain, for each category of expense, the basis on which the charge is being made.
21. The following are not permissible:
 - a) a charge calculated as a percentage of remuneration;
 - b) an administration fee or charge additional to an office holder's remuneration;
 - c) recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges.
22. If an office holder has obtained approval for the basis of category 2 disbursements, that basis may continue to be used in a sequential appointment where further approval of the basis of remuneration is not required, or where the office holder is replaced.

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PRE-APPOINTMENT COSTS

23. When approval is sought for the payment of outstanding costs incurred prior to an office holder's appointment, disclosure should follow the principles and standards contained in this statement.

PAYMENTS TO ASSOCIATES

24. Where services are provided from within the practice or by a party with whom the practice, or an individual within the practice, has a business or personal relationship, an office holder should take particular care to ensure that the best value and service is being provided. An office holder should also have regard to relationships where the practice is held out to be part of a national or international association.
25. Payments that could reasonably be perceived as presenting a threat to the office holder's objectivity by virtue of a professional or personal relationship should not be made unless approved in the same manner as an office holder's remuneration or category 2 disbursements.

PROVISION OF INFORMATION TO SUCCESSIVE OFFICE HOLDERS

26. When an office holder's appointment is followed by the appointment of another insolvency practitioner, whether or not in the same proceedings, the prior office holder should provide the successor with information in accordance with the principles and standards contained in this statement.

PROVISION OF INFORMATION TO INTERESTED PARTIES

27. Where realisations are sufficient for payment of creditors in full with interest, the creditors will not have the principal financial interest in the level of remuneration. An office holder should provide the beneficiaries of the anticipated surplus, on request, with information in accordance with the principles and standards contained in this statement.

Effective Date: This SIP applies to insolvency appointments starting on or after **1 November 2011**. However, insolvency practitioners are encouraged to apply the SIP to all cases regardless of the starting date where to do so would not be onerous or give rise to excessive costs.

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APPENDIX**SUGGESTED FORMAT FOR PROVISION OF INFORMATION****INTRODUCTION**

1. Information provided by an office holder should be presented in a manner that is transparent, consistent and useful to the recipient, whilst being proportionate to the circumstances of the case. The level of disclosure suggested below may not be appropriate in all instances and the office holder may take account of proportionality considerations. In larger or more complex cases the circumstances of each case may dictate the information provided and its format.
2. It is a matter for each office holder to decide what detailed information and explanations are required, having regard to the circumstances of the case. However, the importance of consistency and clarity should be recognised, and this Appendix sets out suggestions in relation to the presentation of information in a standard way. Those receiving the information ought to be able to make an informed judgement about the reasonableness of the office holder's request. The information provided should facilitate comparisons between cases.

A NARRATIVE OVERVIEW OF THE CASE

3. In all cases, reports on remuneration should provide a narrative overview of the case. Matters relevant to an overview are:
 - a) the complexity of the case;
 - b) any exceptional responsibility falling on the office-holder;
 - c) the office-holder's effectiveness;
 - d) the value and nature of the property in question.
4. The information provided will depend upon the basis or bases being sought or reported upon, and the stage at which it is being provided. An overview might include:
 - a) an explanation of the nature, and the office-holder's own initial assessment, of the assignment (including the anticipated return to creditors) and the outcome (if known);

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- b) initial views on how the assignment was to be handled, including decisions on staffing or subcontracting and the appointment of advisers;
- c) any significant aspects of the case, particularly those that affect the remuneration and cost expended;
- d) the reasons for subsequent changes in strategy;
- e) the steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, and fee drawing;
- f) any existing agreement about remuneration;
- g) details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees;
- h) in a larger case, particularly if it involved trading, considerations about staffing and managing the assignment and how strategy was set and reviewed;
- i) details of work undertaken during the period;
- j) any additional value brought to the estate during the period, for which the office holder wishes to claim increased remuneration.

TIME COST BASIS

5. Where any part of the remuneration is or is proposed to be calculated on a time costs basis, requests for and reports on remuneration should provide:
 - a) An explanation of the office-holder's time charging policy, clearly stating the units of time that have been used, the grades of staff and rates that have been charged to the assignment, and the policy for recovering the cost of support staff. There is an expectation that time will be recorded in units of not greater than 6 minutes.
 - b) A description of work carried out, which might include:
 - details of work undertaken during the period, related to the table of time spent for the period;

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- an explanation of the grades of staff used to undertake the different tasks carried out and the reasons why it was appropriate for those grades to be used;
- any comments on any figures in the summary of time spent accompanying the request the office-holder wishes to make.

c) Time spent and charge-out summaries, in an appropriate format.

6. It is useful to provide time spent and charge-out value information in a tabular form for each of the time periods reported upon, with work classified (and sub-divided) in a way relevant to the circumstances of the case, in particular to facilitate comparisons between cases:

Classification of work function	Hours						
	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost £	Average hourly rate £
Administration and planning							
Investigations							
Realisation of assets							
Trading							
Creditors							
Case specific matters (Specify the matters)							
Total hours							
Total fees claimed (£)							

7. The level of disclosure suggested by the standard format will not be appropriate in all instances and the office holder should take account of proportionality considerations:
- a) where the cumulative time costs are, and are expected to be, less than £10,000 the office holder should, as a minimum, state the number of hours and average rate per hour and explain any unusual features of the case;

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- b) where cumulative time costs are, or are expected to be, between £10,000 and £50,000, a time and charge-out summary similar to that shown above will usually provide the appropriate level of detail (subject to the explanation of any unusual features);
- c) where cumulative time costs exceed, or are expected to exceed, £50,000, further and more detailed analysis or explanation will be warranted.

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2.10 STATEMENT OF INSOLVENCY PRACTICE 10 (E&W) PROXY FORMS

1. *[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]*
2. This statement applies to England and Wales only.
3. Rule 8.2 of the Insolvency Rules 1986 stipulates that, when notice is given of a meeting to be held in insolvency proceedings and forms of proxy are sent out with the notice, no form so sent out shall have inserted in it the name or description of any person. No proxy form, therefore, should have inserted in it the name or description of any person for appointment as an insolvency office holder, either solely or jointly, or for appointment as a member of a committee, or as proxy-holder.
4. Members who send out proxy forms should ensure that no part of the form is pre-completed with the name or description of any person (except for the title of the proceedings, which may be inserted for the convenience of the person completing the form).
5. When a member advises on the sending out of proxy forms he is required to take all reasonable steps to ensure that no part of the form is pre-completed with the name or description of any person. If the person whom a member is advising refuses to accept the member's advice in this regard the member should ensure that he has put his advice in writing so that he can demonstrate that he has given advice consistent with the law.

Issued: August 1996

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2.11 STATEMENT OF INSOLVENCY PRACTICE 11 (E&W) THE HANDLING OF FUNDS IN FORMAL INSOLVENCY APPOINTMENTS

1. INTRODUCTION

1.1 *[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]*

2. STATEMENT OF INSOLVENCY PRACTICE

2.1 This statement of insolvency practice concerns the handling of funds by insolvency office holders in the administration of insolvency cases. It applies to England and Wales only.

2.2 Members should ensure that records are maintained to identify the funds (including any interest earned thereon) and other assets of each case for which they have responsibility as insolvency office holder. Such funds and assets must be maintained separately from those of the office holder or his firm. Subject to the rules relating to the payment of monies into the Insolvency Services Account, case funds should be held in a bank account(s) which meet the following criteria to ensure that these principles are adhered to:

- all money standing to the credit of the account(s) is held by the office holder as case money and the bank is not entitled to combine the account with any other account (including any global, omnibus, master, hub, nominee, sub accounts or similar) or exercise any right to set off or counterclaim against money in that account in respect of any money owed to it on any other account (including any global, omnibus, master, hub, nominee, sub accounts or similar) of the office holder or his firm;
- interest payable on the money in the account(s) must be credited to that account(s);
- the bank must describe the account(s) in its records to make it clear that the money in the account does not belong to office holder or his firm;
- no individual case funds/account(s) can be set off against any overdrawn case funds/accounts (including any global, omnibus, master, hub, nominee, sub accounts or similar).

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- 2.3 Where funds relating to a case are received by cheque payable to the office holder or his firm which cannot be endorsed to the insolvent estate, such cheques may be cleared through an account maintained in the name of the office holder or his firm. Such accounts should be operated on a trust basis and should be maintained separately from the practitioner's office accounts. Funds paid into such accounts should be paid out to the case to which they relate as soon as possible.
- 2.4 Monies coming into the hands of practitioners which are the property of individuals or companies for which they are acting otherwise than in the capacity of insolvency office holder must be held in an account operated on trust principles and subject to any applicable client money rules.

Effective date: 1 June 2007

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2.12 STATEMENT OF INSOLVENCY PRACTICE 12 (E&W) RECORDS OF MEETINGS IN FORMAL INSOLVENCY PROCEEDINGS

1. INTRODUCTION

- 1.1 *[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]*
- 1.2 This statement of insolvency practice concerns the keeping of records of meetings of creditors, committees of creditors, and members or contributories of companies in formal insolvency proceedings. The statement is in two parts. The first summarises the statutory provisions regarding the keeping of such records in the various types of insolvency appointment. The second sets out the minimum standards which should be observed with regard to such records in all cases as a matter of best practice.
- 1.3 The statement applies to England and Wales only. References to the Act are to the Insolvency Act 1986, and references to the Rules are to the Insolvency Rules 1986.

2. THE STATUTORY PROVISIONS

2.1 Meetings of creditors – administration

The chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book. The minutes shall include a list of the creditors who attended (personally or by proxy) and, if a creditors' committee has been established, the names and addresses of those elected to be members of the committee. (Rule 2.28)

2.2 Meetings of creditors - administrative receivership

The chairman of the meeting shall cause a record to be made of the proceedings and kept as part of the records of the receivership. The record shall include a list of the creditors who attended (personally or by proxy) and, if a creditors' committee has been established, the names and addresses of those elected to be members of the committee. (Rule 3.15)

2.3 Meetings of creditors and contributories - liquidation

At any meeting of creditors or contributories the chairman shall cause minutes of the proceedings to be kept. The minutes shall be signed by him

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and retained as part of the records of the liquidation. The chairman shall also cause to be made up and kept a list of all the creditors or, as the case may be, contributories who attended the meeting. The minutes of the meeting shall include a record of every resolution passed. In the case of compulsory liquidations, it is the chairman's duty to see to it that particulars of all such resolutions, certified by him, are filed in court not more than 21 days after the date of the meeting. (Rule 4.71)

2.4 Meetings of creditors - bankruptcy

The chairman at any creditors' meeting shall cause minutes of the proceedings at the meeting, signed by him, to be retained by him as part of the records of the bankruptcy. He shall also cause to be made up and kept a list of all the creditors who attended the meeting. The minutes of the meeting shall include a record of every resolution passed. It is the chairman's duty to see to it that the particulars of all such resolutions, certified by him, are filed in court not more than 21 days after the date of the meeting. (Rule 6.95)

2.5 Meetings of creditors and members - voluntary arrangements

Where, in the case of a company, meetings of the company and its creditors are held under section 3 of the Act, or, in the case of an individual, a meeting of creditors is held under Section 257 of the Act, a report of the meeting or meetings shall be prepared by the chairman. The report shall -

- state whether the proposal for a voluntary arrangement was approved or rejected, and, if approved with what (if any) modifications;
- set out the resolutions which were taken at the meetings, and the decision on each one;
- list the creditors and, in the case of a company, the members of the company, (with their respective values) who were present or represented at the meetings, and how they voted on each resolution; and
- include such further information (if any) as the chairman thinks it appropriate to make known to the court.

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2.6 Meetings of committees of creditors

- 2.6.1 At all meetings of committees of creditors established under the Act every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. A record of each resolution shall be signed by the chairman and kept with the records of the proceedings (or, in the case of administrations, placed in the company's minute book). (Rules 2.42 (administration); 3.26 (administrative receivership); 4.165 (compulsory liquidation); 4.166 (creditors' voluntary liquidation); 6.161 (bankruptcy))
- 2.6.2 Where resolutions of the committee are taken by post, a copy of every resolution passed, and a note that the committee's concurrence was obtained, shall be kept with the records of the proceedings (or, in the case of administrations, placed in the company's minute book). (Rules 2.43 (administration); 3.27 (administrative receivership); 4.167 (liquidation); 6.162 (bankruptcy))
- 2.6.3 The Act contains no provisions for the establishment of committees in voluntary arrangements, but the terms of a proposal may provide for the establishment of a committee and may lay down procedures for keeping a record of its proceedings.

2.7 Minutes as evidence of proceedings

A minute of proceedings at a meeting of creditors, or the members or contributories of a company, held under the Act or Rules, signed by a person describing himself as or appearing to be the chairman of the meeting, is admissible in insolvency proceedings without further proof. The minute is prima facie evidence that –

- the meeting was duly convened and held,
- all resolutions passed at the meeting were duly passed, and
- all proceedings at the meeting duly took place (Rule 12.5)

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3. BEST PRACTICE

3.1 Records should be kept of all meetings of creditors, committees of creditors, or members or contributories of companies, held under the Act or Rules or under provisions contained in a voluntary arrangement approved by the creditors. The record should include, as a minimum, the following information:

- The title of the proceedings
- The date, time and venue of the meeting
- The name and description of the chairman and any other person involved in the conduct of the meeting
- A list, either incorporated into the report or appended to it, of the creditors, members or contributories attending or represented at the meeting
- The name of any officer or former officer of the company attending the meeting if not attending in one of the above capacities
- The exercise of any discretion by the chairman in relation to the admissibility or value of any claim for voting purposes
- The resolutions taken and the decision on each one and, in the event of a poll being taken, the value or number (as appropriate) of votes for and against each resolution
- Where a committee is established, the names and addresses of the members
- Such other matters as are required by the statutory provisions applicable to the relevant insolvency procedure as set out in section 2 above or, in the case of a voluntary arrangement, by the terms of the proposal

Where a meeting has been asked to approve an office holder's remuneration, the information provided to the meeting in support of that request should form part of, or be retained with, the record of the proceedings.

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- 3.2 The record should be signed by the chairman and be either
- retained with the record of the proceedings, or
 - entered in the company's minute book, with a copy retained with the record of the proceedings, whichever is appropriate. In the case of committee meetings a copy of the record should be sent to every person who attended, or was entitled to attend, the meeting.
- 3.3 Forms of proxy retained under Rule 8.4 and, where a poll is taken, the poll cards, should be kept with the record of the proceedings.
- 3.4 Where a member is the office holder or is appointed office holder as a result of the proceedings at the meeting and has not himself acted as chairman of the meeting, he should endeavour to ensure that the record is signed by the chairman and complies with the above principles. If the member is not satisfied that the record signed by the chairman is an accurate record of the proceedings, he should either prepare his own record for his files or prepare a note for his files explaining in what respects he disagrees with the chairman's record.

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2.13 STATEMENT OF INSOLVENCY PRACTICE 13 (E&W) ACQUISITION OF ASSETS OF INSOLVENT COMPANIES BY DIRECTORS

1. INTRODUCTION

1.1 *[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]*

1.2 The purpose of this statement of insolvency practice is to:

- ensure that members are familiar with the legal obligations of directors in relation to the acquisition of assets of companies by them or persons connected with the company (as defined by section 249 of the Insolvency Act 1986) (together in this statement referred to as “directors”) and the statutory provisions relating to such acquisitions;
- ensure that members are aware of their legal obligations as insolvency office holders in relation to the disposal of assets to directors and of relevant statutory provisions;
- set out best practice with regard to the disposal of assets to, and their acquisition by, directors;
- set out best practice with regard to the disclosure of such transactions.

This statement has been produced in recognition of the fact that the acquisition of assets of insolvent and prospectively insolvent businesses by directors may give rise to concerns that assets may have been disposed of at less than market value and that those who have been prejudiced by the insolvency of the disposing company may be exposed to further risk through continued trading by those who have or may have had responsibility for the insolvency of the disposing company. It recognises that connected party transactions may be in the best interests of creditors but requires such transactions to be conducted with the greatest degree of propriety and with disclosure to those interested as soon as reasonably practicable.

2. SCOPE

The statement covers the following:

- legal obligations of directors and related statutory provisions;
- obligations of members acting as:
 - professional adviser to the directors as the people responsible for

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the conduct of the company's affairs;

- insolvency practitioner assisting the directors in the convening of meetings of members and creditors in connection with the winding up of the company as a creditors' voluntary liquidation;
- obligations of members acting as:
 - nominee in relation to a proposed company voluntary arrangement;
 - office holder - as supervisor of such arrangement if approved by members and creditors; as administrator; as receiver or administrative receiver; as provisional liquidator; as liquidator in a winding up by the court or in a creditors' voluntary liquidation.

In this statement the word "director" includes directors by whatever name called and shadow directors, and the word "assets" includes all tangible and intangible assets including the goodwill and the right to use any trading name of the company.

3. THE LEGAL OBLIGATIONS OF DIRECTORS AND STATUTORY PROVISIONS

The following are the principal legal obligations and some of the statutory provisions of particular relevance to directors of a company which is or is prospectively insolvent.

The overriding obligation of directors of a company is to act in the best interests of the company, its creditors and its members. Failure to do so exposes directors to claims for misfeasance or breach of duty.

At any time when the directors knew or ought to have known that insolvent liquidation is unavoidable they have an obligation to take such action as is appropriate to protect the interests of creditors. Failure to do so renders them liable to claims under section 214 of the Insolvency Act 1986.

Transactions at an undervalue and preferences as defined in the Insolvency Act 1986 may be set aside at the instance of a liquidator or administrator.

The acquisition of assets of a company by directors or parties connected with them may require approval by the members of the company by

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resolution (Companies Act 1985 section 320). It is the duty of directors to ensure that when it is required such approval is obtained before any relevant transaction is undertaken. Any transaction requiring approval but undertaken without it will be voidable at the instance of the company unless the conditions set out in subsection 322(2) of the Companies Act 1985 apply, and may give rise to claims against directors on any gains made by them.

The use by any person connected with a company which has gone into insolvent liquidation of the name of that company or of a similar name is only permissible if the provisions of section 216 of the Insolvency Act 1986 are complied with or the circumstance specified in rules 4.228 to 4.230 of the Insolvency Rules 1986 apply. Failure to comply renders the persons concerned liable to prosecution and personal liability for the debts of the company under section 217.

4. THE OBLIGATIONS OF MEMBERS ACTING IN AN ADVISORY CAPACITY

4.1 Members acting as professional advisers to directors

4.1.1 Members acting in an advisory capacity in relation to the affairs of companies in financial difficulties must at all times have regard to the general professional conduct guidance of the body by which they are authorised to act as an insolvency practitioner. Subject to this overriding obligation, an advising member should:

- agree and record the identity of the instructing client. This is particularly important where advice is given in relation to insolvent companies and members should ensure that it is clear whether the instructing party is the company, its board of directors or one or more of its directors individually;
- act in the interests of his client with objectivity, integrity and independence;
- ensure that his client is made aware of the matters set out in paragraph 3 above;
- keep under consideration whether his client has any conflicts of interest or duty and bring any such conflicts to the attention of his client. Where a client persists in disregarding material conflicts of interest or duty, the member should cease to act unless the client agrees to limit the client's retainer to one such duty or interest and to take advice on the other elsewhere;

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- not accept instructions to assist a client in conduct which will undermine public confidence in the proper administration of insolvency procedures.

4.1.2 Members should bear in mind that, when asked to advise in relation to the planning or execution of a transaction, they may incur civil or criminal liability through participation, even in an advisory capacity, and will in any event be acting improperly if they assist directors in any conduct which amounts to misfeasance. A member should cease to act if his advice to an officer that a proposed act or omission would amount to misfeasance is disregarded. However, this does not prejudice any duty of a member to give confidential advice in the interests of a client in relation to events which occurred before the member was instructed.

4.1.3 Members acting in an advisory capacity which may lead to their assisting the directors in relation to the creditors' voluntary liquidation of the company should bear in mind the requirements for disclosure at the section 98 meeting of transactions between the company and its directors (and connected parties) in the period of one year prior to the winding up and the names of those who advised the directors (as such) in relation to such transactions as set out in Statement of Insolvency Practice 8 (E&W).

4.2 Members acting in relation to section 98 meetings

4.2.1 Where a member is assisting the directors in relation to the convening of meetings of members and creditors for the purposes of a creditors' voluntary liquidation he should ensure that his advice to directors as such in the period prior to the commencement of the winding up is given on the same basis as set out in paragraph 4.1 above. There can be circumstances when it is in the best interest of creditors for a connected party transaction to be undertaken with complete propriety but it is essential that such a transaction is not undertaken without a thorough appraisal of its propriety and the benefits expected to accrue to creditors from it.

4.2.2 In paragraph 4.1.3 reference has been made to the disclosure requirements in Statement of Insolvency Practice 8 (E&W). It is the duty of the advising member to inform the directors of the need for full disclosure of connected party transactions.

4.2.3 Members should consider, if any connected party transactions are undertaken at any time when they are acting as advisers to the directors

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whether it is appropriate for them to seek appointment as liquidator bearing in mind the obligations of liquidators to investigate antecedent transactions.

5. MEMBERS ACTING AS OFFICE HOLDERS

- 5.1 The obligations on both directors and office holders in relation to the maximisation of realisations of assets or the optimisation of the position of members and creditors of the company do not in any way preclude disposals by way of connected party transactions. Members should ensure that such transactions are conducted with due regard to their own and the directors' obligations.
- 5.2 There are no requirements of English law which require assets to be disposed of by any particular method. There is an overriding duty to obtain the best price for assets whether sales are effected by private treaty sale, by sale by tender or at auction. While it is recognised that circumstances may arise when full exposure to the market of the availability of assets for purchase is not practicable members are reminded that they should normally, unless sale by auction is the chosen means of disposal, take steps to advertise assets for sale or circularise (for example, by use of mailing lists) known prospective interested parties.
- 5.3 Except in the case of a nominee or in most cases (depending upon the nature of the arrangement) as supervisor of a voluntary arrangement, the member will have the assets of the company under his legal control. It is his duty to ensure that all transactions between the company of which he is acting as office holder and directors and connected parties are conducted on a fully arms length basis and, as regards the value of any assets which are the subject of any such transaction, on the basis of a professional appraisal of the value of those assets. When such appraisal is not conducted by an independent valuer the office holder should ensure that he has conducted all due enquiries as to the value of the assets and retains appropriate documentation in his papers. Where assets are sold without professional valuation the office holder should consider seeking the views of the committee, if there is one. It is his duty to ensure that the value of the assets is maximised but this does not require him to obtain the maximum value for each individual asset if disposal of a parcel of assets or the assets as a whole will, in aggregate, maximise total realisations.

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Since the allocation of the consideration between the constituent assets affects interests of creditors it should be made on a basis which can be justified objectively.

- 5.4 Where a member is acting as provisional liquidator and it is proposed that assets of the company should be acquired by directors the sanction of the court should be obtained.
- 5.5 Where a member is acting as nominee or supervisor in relation to a voluntary arrangement he should ensure that any connected party transactions are in the best interests of the company, its members and creditors, and are only undertaken in accordance with the terms of the arrangement as approved by the members and creditors. When a connected party transaction is proposed as part of an arrangement or has taken place in the year prior to the date of his appointment as nominee he should ensure that it is included in the proposals on a full disclosure basis.

6. DISCLOSURE OF CONNECTED PARTY TRANSACTIONS

- 6.1 The requirement for disclosure of connected party transactions in the reports to meetings of members and creditors in creditors' voluntary winding up proceedings has been referred to above.
- 6.2 Where, prior to the section 98 meeting, directors have indicated that they may wish to make an offer to the liquidator (when appointed) for assets of the company this should normally be disclosed at the meeting and the advising member should advise the creditors that if they form a liquidation committee the liquidator will, unless there are overriding commercial reasons why this should not be done, advise the committee of any offers for assets made by the directors and they will have the opportunity to comment on such offers. While the sanction of the committee is not required for a connected party transaction and full responsibility for it will rest with the liquidator, discussion of the proposed transaction with the committee should assist the liquidator in dispelling any concerns which creditors may have about it. In both voluntary and compulsory liquidations, the liquidator has a statutory obligation to give notice to the committee where he disposes of any property of the company to a person who is connected with the company. If it is not appropriate for there to be prior discussion with the committee the liquidator should report to the committee that he has contracted a disposal by way of connected party transaction as soon as reasonably practicable.

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- 6.3 The liquidator should report any connected party transaction to members and creditors when he first reports to them after the transaction has taken place.
- 6.4 In administration order proceedings a member who is preparing an independent report (as provided for in Rule 2.2 of the Insolvency Rules 1986) should consider whether that report should contain details of any transactions between the company and its directors or other connected parties: any which might bear upon the court's consideration as to whether it is appropriate that an administration order be made should be included. In administration the administrator should include in his proposals under section 23 et seq. of the Insolvency Act 1986 reference to any connected party transaction undertaken in the period of two years prior to the making of the administration order and in the period since the making of that order, or proposed to be undertaken. If a creditors committee is appointed, the members of the committee should be advised of any such transaction undertaken after the meeting of creditors to consider the proposals.
- 6.5 In administrative receivership the administrative receiver should include in his report to creditors at the section 48 meeting information regarding any connected party transaction if this has taken place prior to the meeting and, if it takes place after that meeting, report it to any creditors committee appointed at that meeting.
- 6.6 Any disclosure made in accordance with the requirements set out in paragraphs 6.1 to 6.5 above should provide creditors with sufficient information to have a full appreciation of the nature of the transaction, and should normally include the following information:
- The date of the transaction
 - Details of the assets involved and the nature of the transaction
 - The consideration for the transaction and when it was paid
 - The name of the counterparty
 - The nature of the counterparty's connected party relationship with the vendor
 - If the transaction took place before the appointment of the member as office holder, the name of any adviser to the vendor

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- Whether the purchaser and (if the transaction took place before the appointment of the member as office holder) the vendor were independently advised
- Where the transaction took place before the commencement of liquidation or administration, the scope of the office holder's investigation and the conclusion reached
- Where the disclosure is to a liquidation committee and the committee has not been consulted prior to contract, the reason why such consultation did not take place
- Where, in a liquidation, the disclosure is to creditors, whether the liquidation committee (if there is one) has been consulted and the outcome of such consultation.

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2.14 STATEMENT OF INSOLVENCY PRACTICE 14 (E&W) A RECEIVER'S RESPONSIBILITY TO PREFERENTIAL CREDITORS

1. INTRODUCTION

1.1 *[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]*

1.2 This statement has been prepared to summarise what is considered to be the best practice to be adopted by receivers of the assets of companies where any of those assets are subject to a floating charge so that the office holder has legal obligations to creditors whose debts are preferential. Its purpose is to:

- ensure that members are familiar with the statutory provisions;
- set out best practice with regard to the application of the statutory provisions;
- set out best practice with regard to the provision of information to creditors whose debts are preferential and to responses to enquiries by such creditors.

Whilst this statement does not specifically address the treatment of preferential claims in liquidations, members acting as liquidators (or in any other relevant capacity) should have due regard to the principles which it contains.

1.3 The statement has been produced in recognition of the likelihood that creditors whose debts are preferential may be concerned about the categorisation of assets as between fixed and floating charges and the manner in which costs incurred during a receivership are charged against the different categories of assets.

1.4 The statement is divided into the following sections:

- the statutory provisions
- the categorisation of assets and allocation of proceeds as between fixed and floating charges
- the apportionment of costs incurred in the course of the receivership

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- the determination of claims for preferential debts
- the payment of preferential debts
- disclosure of information and responses to queries raised by creditors whose debts are preferential
- other matters

2. THE STATUTORY PROVISIONS

- 2.1 The rights of creditors whose debts are preferential in a receivership derive from section 40 of the Insolvency Act 1986 ('the Act').

Where a receiver is appointed on behalf of the holders of any debentures of a company secured by a charge which, as created, was a floating charge and the company is not at the time in the course of being wound up, its preferential debts shall be paid out of the assets coming into the hands of the receiver in priority to any claims for principal or interest in respect of the debentures. Where the receiver is appointed under both fixed and floating charges, this requirement does not extend to assets coming into the receiver's hands pursuant to the fixed charge(s).

Preferential debts are defined in section 386 of the Act and are set out in Schedule 6 to the Act (as amended from time to time), which is to be read in conjunction with Schedule 4 to the Pensions Schemes Act 1993. The date at which they are to be ascertained is the date of the appointment of the receiver (section 387(4) of the Act).

- 2.2 Members should note that the statutory provisions give a right to creditors whose debts are preferential to be paid those debts in priority to the claims of floating charge holders, and the corollary of this right is the obligation of the receiver to pay them. Failure by a receiver to pay preferential debts out of available assets is a breach of statutory duty. However it is recognised that circumstances may arise when it is administratively convenient or cost-effective to cooperate with a company's liquidator and arrange for him to pay the receivership preferential debts, and guidance on such arrangements is given in paragraph 6.2 below. It should be noted that such arrangements do not exonerate the receiver from his obligations.

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2.3 There are no statutory provisions requiring creditors with preferential debts in a receivership to prove those debts in any formal manner and no statutory obligation is imposed on a receiver to advertise for claims.

3. CATEGORISATION OF ASSETS AND ALLOCATION OF PROCEEDS

3.1 In order to ascertain what assets are subject to the statutory rights of creditors whose debts are preferential, it is necessary to distinguish, on a proper interpretation of the charging document(s), which assets are subject to a fixed charge and which are subject to a floating charge. In this statement this process is referred to as 'categorisation'.

3.2 The overriding principle, as laid down by the courts, is that it is not of itself sufficient for the charging document to state that an asset is subject to a fixed charge for it to be subject to such a charge. There have been cases where the courts have struck down charges that purported to be fixed and held that they were floating.

3.3 It is the duty of a receiver to effect the right categorisation and legal advice should be taken in cases of doubt. In some instances where there is doubt as to the correct categorisation it may be possible to consult preferential creditors and reach agreement with them and the chargeholder. However, if this is not possible and the receiver, in conjunction with his legal advisers, cannot determine the correct categorisation, it may be necessary to apply to the court for directions.

3.4 Members are reminded that:

- it is the type of charge at the time of its creation which determines whether the assets are available to meet preferential debts. Crystallisation of a floating charge into a fixed charge prior to or upon the appointment of a receiver does not affect the rights of creditors with preferential debts to be paid out of assets subject to a crystallised floating charge;
- the conversion, during receivership, of assets (for example, stock) subject at the date of appointment of the receiver to a floating charge into assets (for example, book debts) subject to a fixed charge, will not remove them from the pool of assets which is available to pay preferential debts.

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3.5 Section 40 of the Act requires that the preferential debts 'shall be paid out of the [floating charge] assets coming to the hands of the receiver in priority to the debenture holder. The effect is that a receiver is under a liability in tort to the preferential creditors if, having had available assets in hand, he fails to apply them in payment of the preferential debts. Where any action which he proposes to take could result in a diminution in the amount available to meet preferential debts the receiver should give the most serious consideration to the risks of such action.

3.6 When assets are sold as part of a going concern (or otherwise in parcels comprising both fixed and floating charge assets) the apportionment of the total consideration suggested by the purchaser (for example for his own financial reasons) may not properly reflect the financial interests of the different classes of creditors in the individual assets or categories of assets. In these circumstances the receiver should ensure that he will be able properly to discharge his obligations to account to holders of fixed charges on the one hand and creditors interested in assets subject to floating charges on the other.

4. APPORTIONMENT OF COSTS

4.1 The amount available to meet preferential debts is the funds realised from the disposal of assets subject to a floating charge net of the costs of realisation. It is dependent, therefore, not only on the correct categorisation of the assets but also on the appropriate allocation of costs incurred in effecting realisations.

4.2 These costs will normally fall into one of three categories:

- liabilities incurred by the company (the receiver being its agent until winding up supervenes) and costs incurred by the receiver and recoverable by him out of the company's assets under his statutory indemnity (other than those referred to below);
- the costs of the receiver in discharging his statutory duties;
- the remuneration and disbursements of the receiver.

4.3 Liabilities incurred by the company and the receiver's reasonable costs are sometimes readily identifiable as applicable to either the fixed charge or floating charge assets, but in other cases may not be so easily allocated between the two categories of assets.

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Where costs are clearly identifiable as having been incurred in the realisation or collecting in of one or other of the two categories they should be recorded as such in the receiver's records so that they can be deducted from realisation proceeds in ascertaining the amount available for each class of creditors.

- 4.4 It is in the nature of receiverships, and particularly receiverships where trading is continued, that there will be continuation of employment of the company's directors and staff, ongoing occupation of its premises, purchase of supplies for manufacturing and other purposes and much of the other expenditure normally associated with a company's operations. In these circumstances it may be difficult to arrive at an appropriate allocation of costs. Many of the activities in a trading receivership will enhance the realisations of assets in both of the categories identified above. They may of necessity be incurred before full categorisation has been completed.

These factors do not affect the duty of a receiver to allocate costs appropriately but that allocation will involve the exercise of professional judgement undertaken with a full appreciation that it must be made with independence of mind and with integrity.

- 4.5 The key principles for a receiver in his consideration of the allocation of costs (including any trading losses) are:
- the statutory rights of preferential creditors as set out in the Insolvency Act 1986 and the decisions of the courts in cases under that Act and predecessor legislation;
 - the provisions of the charging document(s);
 - the maintenance of a proper balance as between the classes of creditors with whose interests he is required to deal in the light of their legal rights.

In order to enable a receiver to allocate costs on an appropriate basis, contemporaneous records of the dominant reasons for incurring costs should be maintained. These will also assist him in providing explanations as to how he arrived at what he considers to be an appropriate allocation and provide evidence should that allocation be challenged by any of the parties involved.

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4.6 In allocating costs a receiver should have regard to:

- the objectives for which costs were incurred, it being recognised that certain types of costs may, properly, be allocated to the fixed charge assets in one case and to the floating charge assets in another.¹ In another case such costs may enhance realisations in both categories.
- the benefits actually obtained for those financially interested in one or other category of asset in terms of protection of those assets or their value and any augmentation of that value.
- whether the benefits to those interested in assets subject to a fixed charge has been enhanced by action which proves to be detrimental to those interested in floating charge assets (for example where trading losses are incurred to protect or enhance the value of property or book debts subject to a fixed charge).
- whether the realisation of the undertaking and assets by means of a going concern sale has resulted in a reduction in the quantum of debts which are preferential due to the transfer of employment contracts.

4.7 A receiver will incur costs in complying with his statutory duties. The extent of those duties depends upon the nature of his appointment and they are more onerous in the case of administrative receivers.

An administrative receivership arises only when there is a floating charge and the charges under which the receiver is appointed are over the whole or substantially the whole of the company's assets. There are no decided cases as to how the additional costs incurred by an administrative receiver (as opposed to a receiver not so designated) should be allocated.

In apportioning the costs of fulfilling their statutory duties and in the absence of any guidance from the courts, members should have regard to the general principle referred to in paragraph 4.5 above of maintaining a proper balance.

4.8 The allocation of a receiver's remuneration and disbursements should be undertaken adopting the same principles as those applicable to costs and he should ensure that he maintains contemporaneous records which will enable him to make an appropriate division of his remuneration and disbursements between the different categories of assets.

¹ For example the payment of rent on a leasehold property may be to preserve the value of the lease or to enable manufacturing to continue and work in progress to be completed.



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5. DETERMINATION OF PREFERENTIAL DEBTS

- 5.1 As stated in paragraphs 2.2 and 2.3 of this statement it is a receiver's obligation to pay preferential debts out of assets available for that purpose and no proof of debt or advertisement for creditors is required.
- 5.2 Following initial notification to potential preferential creditors of his appointment and before beginning the process of determining preferential debts, a receiver should assess whether there are likely to be sufficient floating charge realisations to pay a distribution. Where no payment will be made, it is not necessary to agree preferential claims. However, in such circumstances the receiver should write to creditors whose claims are preferential explaining why he is unable to make a payment to them.
- 5.3 Where there will be a distribution to preferential creditors, the receiver should assist those creditors, where possible, by providing adequate information to enable them to calculate their claims. In the case of all preferential creditors other than employees, the receiver is entitled to assume they have full knowledge of their legal entitlements under the Insolvency Act and should invite them to submit their claims. The receiver should then check those claims, and accept or reject them as appropriate.
- 5.4 In determining the preferential claims of employees, the receiver is not entitled to regard an individual employee as having full knowledge of his rights and entitlements. Accordingly, the receiver should obtain information from either the company's records or from the employee before calculating the claim (other than one which is payable to the Secretary of State by way of subrogation). The employee should be provided with details of the calculation of his claim and any further explanation that he may reasonably require.
- 5.5 Members are reminded that Schedule 6 (paragraph 11) of the Act provides that anyone who has advanced money for the purpose of paying wages, salaries or accrued holiday remuneration of any employee is a preferential creditor to the extent that the preferential claim of the employee is reduced by such advance.
- 5.6 When an employee's preferential debt has been paid out of the National Insurance Fund under the provisions of the Employment Rights Act 1996, the Secretary of State is entitled, by virtue of section 189 of that Act to the benefit of the employee's preferential debt, in priority to any residual claim of

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the employee himself. Members are reminded that a receiver is not obliged to accept the preferential claim of the Secretary of State without satisfying himself that it is correct. If a member is not able to accept the Secretary of State's claim he should contact the Redundancy Payments Service to explain why and attempt to reach agreement on the amount to be admitted.

6. PAYMENT OF PREFERENTIAL DEBTS

- 6.1 As soon as practicable after funds become available and the amount of the preferential debts has been ascertained, members should take steps to pay them. Under the statutory provisions preferential debts do not attract interest and payments to creditors should not be unnecessarily delayed. A receiver who does not comply timeously with his obligations under section 40 and against whom judgment is obtained may find himself ordered to pay interest by the court. While members cannot be expected to bear any financial risk by paying some preferential debts before all such debts are agreed, there are often circumstances when it is possible to make payment either in full or on account before all claims have been agreed and this course of action should be adopted whenever it is practicable to do so.
- 6.2 Situations may arise where, notwithstanding a receiver's statutory duty to pay preferential debts, it may (exceptionally) be administratively convenient or cost-effective for a receiver to make arrangements for the liquidator to make payment of the preferential debts arising in the receivership. Such arrangements are made at the receiver's risk, and should not be on any basis which could result in payment of an amount less than that which would have been available to meet those debts if the receiver had himself paid them, or which would cause delay in paying them.
- 6.3 The receiver should provide preferential creditors with details of any such arrangements and the reason for making them.

7. DISCLOSURE TO CREDITORS WITH PREFERENTIAL DEBTS

- 7.1 When the funds realised from assets subject to a floating charge are inadequate to pay the preferential debts in full, the receiver should (unless he has already written to them as suggested in paragraph 5.2) send those creditors a statement setting out:
 - the assets which have, in accordance with the charging document, been categorised as subject to the floating charge;

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- the costs charged against the proceeds of the realisation of those assets.

7.2 Any further information which a creditor with a preferential debt reasonably requires should be provided promptly.

8. OTHER MATTERS

8.1 Difficulties may arise in determining the rights of creditors to have debts paid preferentially in priority to a prior floating charge holder when the receiver has been appointed under a second or subsequent charge. The law in this area is complex and members should seek legal advice (and if necessary apply to the court for directions) when appointed under such a charge.

8.2 Situations will arise where payments sent out are not encashed and the payee cannot readily be located. The insolvency legislation does not make provision for this eventuality and there have been no reported cases where the courts have decided the matter. Where a receiver decides to account to the next person entitled to such monies he should bear in mind his overriding obligation to pay preferential debts. He should make such arrangements as he considers appropriate to enable him to recover the funds from the party to whom he has paid them so that he will be able to discharge his obligation to any preferential creditor who subsequently asserts his claim to payment.

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2.15 STATEMENT OF INSOLVENCY PRACTICE 15 (E&W) REPORTING AND PROVIDING INFORMATION ON THEIR FUNCTIONS TO COMMITTEES IN FORMAL INSOLVENCIES

1. INTRODUCTION

[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]

2. SCOPE

This Statement concerns:

- Written reporting by insolvency office holders to committees, both where there are statutory requirements to do so and in other cases.
- The provision of information to members of committees about the rights, duties and functions of the committee.

The Statement does not apply to members' voluntary liquidations.

The Statement applies to England and Wales only. References to rules are to the Insolvency Rules 1986 as amended, and references to regulations are to the Insolvency Regulations 1994.

3. LIQUIDATIONS AND BANKRUPTCIES

3.1 Statutory requirements

3.1.1 In liquidations and bankruptcies statutory obligations are laid on the office holder to report to the liquidation committee or creditors' committee. The reporting requirements are set out in rules 4.155 and 4.168 for liquidations, and 6.152 and 6.163 for bankruptcies. In this Part of the Statement the term 'office holder' refers to the liquidator or trustee in bankruptcy, as the case may be.

3.1.2 Rules 4.155(1) and 6.152(1) stipulate that it is the duty of the office holder to report to the members of the committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the winding up or bankruptcy.

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3.1.3 The office holder need not comply with any request for information where it appears to him that the request is frivolous or unreasonable, or the cost of complying would be excessive having regard to the relative importance of the information, or there are insufficient assets or funds in the estate to enable him to comply (rules 4.155(2); 6.152(2)).

3.1.4 Where the committee has come into being more than 28 days after the appointment of the office holder he must report to the members in summary form what actions he has taken since his appointment and answer such questions as they may put to him regarding the conduct of the proceedings (rules 4.155(3); 6.152(3)). A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the office holder, otherwise than in summary form, of any matters previously arising (rules 4.155(4); 6.152(4)). Nothing in rules 4.155 or 6.152 disentitles the committee or any member of it from having access to the office holder's records of the proceedings, or from seeking an explanation of any matter within the committee's responsibility (rules 4.155(5); 6.152(5)).

3.1.5 Rules 4.168(1) and 6.163(1) provide that the office holder shall, as and when directed by the committee (but not more than once every 2 months), send a written report to every member of the committee setting out the position generally as regards the progress of the winding up or bankruptcy, and matters arising in connection with it to which he (the office holder) considers the committee's attention should be drawn. In the absence of such directions by the committee the office holder must send such a report not less than once every 6 months (rules 4.168(2); 6.163(2)).

3.1.6 In addition, regulations 10(4) and 24(3) provide that the office holder shall submit his financial records in respect of the case to the committee when required for inspection.

3.2 Agreeing reporting intervals with committee members

The office holder should discuss with committee members at their first meeting with him their requirements for reports and obtain their directions, having advised them of the statutory provisions set out in Rule

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4.168(1) or 6.163(1) (as applicable) referred to in paragraph 3.1.5 above. These directions are likely to depend on the circumstances of the case and may change during the course of the proceedings. The directions of the committee should be recorded in the minutes of the meeting at which they are given and any changes should be similarly recorded.

3.3 Consideration of matters for inclusion in reports

The office holder should also discuss with committee members at his first meeting with them the type of matters which they wish to have reported to them so that matters of particular concern to them are identified. These should be recorded in the minutes of the meeting.

It is the duty of the office holder to consider whenever he reports what matters (in addition to those already identified) he should include in his report, exercising his professional judgement as to which aspects of the proceedings should be of concern to the committee.

The office holder should bear in mind that the requirements of rules 4.155 and 6.152 to report matters of concern to the committee persist notwithstanding any directions given under rules 4.168 or 6.163. He should therefore ensure that during the conduct of the case he considers matter for report generally so that he is able to fulfil his obligations under rules 4.155 and 6.152 and should ensure that such matters are reported on a timely basis.

4. ADMINISTRATIONS

The rules applicable in administration depend on whether the proceedings are based on a petition presented before 15 September 2003. If they are, then the rules as they stood before the changes introduced by the Enterprise Act 2002 and its associated legislation continue to apply. Otherwise, the rules substituted by the Insolvency (Amendment) Rules 2003 will apply.

In a case subject to the old rules the following requirements apply:

The administrator must send an account of his receipts and payments to each member of the committee (rule 2.52).

If the administrator intends to resign and there is no continuing administrator he must give the committee at least seven days' notice of his intention to do so or to apply for the court's permission to do so (rule 2.53).

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In all other cases the second of these requirements applies regardless of whether there is a continuing administrator (rule 2.120). There is no longer a specific obligation to send a receipts and payments account to each committee member because there is a new requirement to send reports, including a receipts and payments account, to all creditors.

Although there are no further statutory requirements for written reports, members should ensure that any arrangements which are made for reporting to a committee in such cases are properly documented and adhered to.

5. ADMINISTRATIVE RECEIVERSHIPS

In administrative receiverships the following requirements apply:

The receiver must send an account of his receipts and payments to each member of the committee (rule 3.32).

If the receiver intends to resign he must give the committee at least seven days' notice of his intention to do so (rule 3.33).

When a receiver vacates office he must forthwith give notice to the members of the committee (rule 3.35).

Apart from these there are no statutory requirements for written reports. However, members should ensure that any arrangements made for reporting to a committee in such cases are properly documented and adhered to.

6. VOLUNTARY ARRANGEMENTS

Where a committee is established by a meeting held under paragraph 29 of Schedule A1 to the Insolvency Act 1986 or by the terms of an approved voluntary arrangement there are no statutory reporting requirements. Members should ensure that any arrangements made for reporting to a committee in such cases are properly documented and adhered to.

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7. PROVISION OF INFORMATION TO MEMBERS OF COMMITTEES ON THEIR RIGHTS, DUTIES AND FUNCTIONS

The Association of Business Recovery Professionals has produced a series of guides for members of committees for use in formal insolvency proceedings. The texts of the guides are appended to this Statement. In all cases where a committee is established the insolvency office holder should ensure that the guide appropriate to the type of procedure concerned, or the equivalent information in some other suitable format, is made available to the members of the committee, either at the meeting at which the committee is established or as soon as practicable thereafter.

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1. GENERAL

- 1.1 Any meeting of creditors held in an administration may establish a creditors' committee. The function of the committee is to assist the administrator in discharging his functions, and act in relation to him in such manner as may be agreed from time to time. The committee may also require the administrator to attend before it at any reasonable time and furnish it with information relating to the exercise of his functions. **(Sch B1, para 57, r.2.52; Sch B1, para 57)**
- 1.2 The purpose of the committee is to represent the interests of the creditors as a whole, not just the interests of its individual members. In addition to its statutory functions, which are set out in this guidance note, it may also serve to assist the administrator generally and act as a sounding board for him to obtain views on matters pertaining to the administration.
- 1.3 The references in bold and in parenthesis are to the Insolvency Act 1986, The Insolvency Rules 1986 (both as amended), the Insolvency Practitioners Regulations 2005 and Statement of Insolvency Practice 9 issued to all authorised insolvency practitioners.

2. MEMBERSHIP

2.1 General

- 2.1.1 The committee must consist of at least three, and not more than five, creditors. Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote. **(r.2.50)**
- 2.1.2 It is the creditors themselves who are the members of the committee, not the individuals who represent them. Thus a company which is a creditor may be a member of the committee but can only act through a representative appointed in accordance with paragraphs 2.2.1 to 2.2.3 below. **(r.2.50(3))**

2.2 Representatives

- 2.2.1 A member of the committee may be represented by another person duly authorised by him. Such representative must hold a letter of authority entitling him so to act (either generally or specially) signed



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by and on behalf of the committee member, and for this purpose any proxy or any authorisation under section 375 of the Companies Act 1985 in relation to any meeting of creditors of the company shall, unless it contains a statement to the contrary, be treated as such a letter of authority to act generally signed by or on behalf of the committee member. The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient. **(r.2.55)**

- 2.2.2 No member may be represented by - a body corporate, an undischarged bankrupt, a disqualified director, or a person who is subject to a composition or arrangement with his creditors.
- 2.2.3 No person may act as representative of more than one committee member.
- 2.2.4 Where the representative of a committee member signs any documents on the member's behalf, the fact that he so signs must be stated below his signature.

2.3 Resignation and termination of membership

- 2.3.1 A member of the committee may resign by notice in writing delivered to the administrator. A person's membership of the committee is automatically terminated if - he becomes bankrupt or enters into a composition or arrangement with his creditors, or at three consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to be applied in his case), or he ceases to be, or is found never to have been, a creditor. **(r.2.56, r.2.57)**
- 2.3.2 However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.
- 2.3.3 A member of the committee may be removed by resolution at a meeting of creditors, provided at least 14 days' notice has been given of the intention to move that resolution. **(r.2.58)**

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2.4 Vacancies

If there is a vacancy in the membership of the committee it need not be filled if the administrator and a majority of the remaining committee members so agree, provided the number of members does not fall below three. The administrator may appoint any creditor qualified to be a member of the committee to fill the vacancy, provided a majority of the other members of the committee agree and the creditor consents to act. **(r.2.59)**

3. ESTABLISHMENT OF COMMITTEE

3.1 Formalities of establishment

3.1.1 The committee does not come into being, and accordingly cannot act, until the administrator has issued a certificate of its due constitution. **(r.2.51)**

3.1.2 The administrator will not issue the certificate until at least three of the persons who are to be members of the committee have agreed to act. Such agreement may be given by the creditor's proxy-holder or representative under section 375 of the Companies Act 1985 present at the meeting establishing the committee, unless the proxy or authorisation specifically precludes such agreement being given.

3.2 Formal defects

The acts of the committee are valid notwithstanding any defect in the appointment, election or qualifications of any committee member or the representative of any committee member, or in the formalities of its establishment. **(r.2.65)**

4. PROCEEDINGS

4.1 Chairman

Subject to paragraph 4.5.3 below, the chairman at any meeting of the committee will be the administrator, or a person nominated by him in writing to act. A person so nominated must be either - one who is qualified to act as an insolvency practitioner in relation to the company, or an employee of the administrator or his firm who is experienced in insolvency matters. **(r.2.53)**

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4.2 Quorum

A meeting of the committee is duly constituted if due notice of it has been given to all members and at least two members are present or represented. **(r.2.54)**

4.3 Meetings

4.3.1 General

The committee will meet where and when determined by the administrator, subject as follows **(r.2.52)**:

4.3.2 First meeting

The administrator must call the first meeting of the committee not later than six weeks after its first establishment. **(r.2.52)**

4.3.3 Subsequent meetings

Subsequent meetings of the committee must be called by the administrator -

(a) if so requested by a member of the committee or his representative - the meeting must then be held within 14 days of the request being received by the administrator - and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date. **(r.2.52)**

4.4 Notice of venue

The administrator must give 7 day's notice in writing of the venue of any meeting to every member of the committee (or his representative designated for that purpose), unless this requirement has been waived by or on behalf of any member. Such waiver may be signified either at or before the meeting. **(r.2.52)**

4.5 Information from administrator

4.5.1 Where the committee resolves to require the attendance of the administrator under paragraph 57 (3) of Schedule B1 to the Insolvency Act 1986, he must be given at least 7 days' notice. The notice to him must be in writing, signed by a majority of the current

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members of the committee. A member's representative may sign for him. **(r.2.62, Sch B1, para 57(3))**

4.5.2 The meeting at which the administrator's attendance is required must be fixed by the committee for a business day, and held at such time and place as the administrator determines.

4.5.3 Where the administrator attends such a meeting, the members of the committee may elect any one of their number to be chairman of the meeting in place of the administrator or his nominee.

4.6 Voting rights and resolutions

At any meeting of the committee each member (whether present himself or by his representative) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it. **(r.2.60)**

4.7 Records of meetings

Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting. The record must be signed by the chairman and placed in the company's minute book. **(r.2.60)**

4.8 Postal resolutions

4.8.1 It is possible for resolutions to be passed by post. The administrator must send to every member (or his representative designated for the purpose) a copy of the proposed resolution on which a decision is sought, which must be set out in such a way that agreement with, or dissent from, each separate resolution may be indicated by the recipient on the copy so sent. **(r.2.61)**

4.8.2 However, any member of the committee may, within 7 business days from the date of the administrator sending out a resolution, require the administrator to summon a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it.

4.8.3 A copy of every resolution so passed, and a note that the concurrence of the committee was obtained, must be placed in the company's minute book.

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5. ADMINISTRATOR'S REMUNERATION

The committee is responsible for fixing the administrator's remuneration. For details reference should be made to the explanatory note, 'A Creditors' Guide to Administrators' Fees', which is appended to Statement of Insolvency Practice 9 (Remuneration and Disbursements) and should be provided by the administrator.

6. EXPENSES AND DISBURSEMENTS

6.1 General

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the administrator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the administrator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation. **(SIP 9)**

6.2 Court assessment of costs

6.2.1 Where any costs, charges or expenses are payable out of the company's assets (for example, agent's or legal fees), the administrator may agree them with the person entitled to payment. However, if the committee resolves that any such costs, charges or expenses should be determined by the court, the administrator must require the person entitled to payment to deliver his bill of costs for assessment. **(r.7.34)**

6.2.2 Where such costs, charges or expenses are to be assessed, this does not preclude the administrator from making payments on account against an undertaking from the payee to repay any amount which proves, on assessment, to have been overpaid.

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7. REVIEW OF ADMINISTRATOR'S SECURITY

The administrator is required to have in place security for the proper performance of his functions (see Appendix).

It is the duty of the committee to review the adequacy of the administrator's security from time to time. **(r.12.8)**

8. RESIGNATION OF ADMINISTRATOR AND VACANCY IN OFFICE

If the administrator intends to resign, he must give the committee at least seven days' notice of his intention to do so or to apply for the court's permission to do so. **(r.2.120)**

Where an administrator appointed by the court dies, resigns, is removed from office or vacates office because he ceases to be qualified to act, the committee may apply to the court for the administrator to be replaced. **(Sch B1, para 91)**

Where an administrator who leaves office was appointed by the company, the directors or the holder of a floating charge, he is discharged from liability in respect of his actions as administrator at a time appointed by resolution of the committee. **(Sch B1, para 98)**

9. CONFIDENTIALITY OF DOCUMENTS

9.1 Where the administrator considers that any document forming part of the record of the administration -

- (a) should be treated as confidential, or
- (b) is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors, he may decline to allow it to be inspected by a person (including a member of the committee) who would otherwise be entitled to inspect it. **(r.12.13)**

9.2 A person refused inspection may apply to the court for the refusal to be overruled.

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10. CHARGES FOR COPY DOCUMENTS

Where the administrator is requested by a member of the committee to supply copies of any documents, he is entitled to make a charge as follows:

15 pence per A4 or A5 page

30 pence per A3 page **(r.12.15A,r.13.11)**

11. EXPENSES OF COMMITTEE MEMBERS

11.1 Any reasonable travelling expenses directly incurred by committee members or their representatives either in attending meetings of the committee or otherwise on the committee's business will be paid by the administrator out of the assets as an expense of the administration. **(r.2.63)**

11.2 However, such expenses will not be paid in respect of any meeting of the committee held within six weeks of a previous meeting, unless the meeting in question is summoned at the instance of the administrator.

12. COMMITTEE MEMBERS' DEALINGS WITH THE COMPANY

12.1 Membership of the committee does not prevent a person from dealing with the company while the administration order is in force, provided that any transactions in the course of such dealings are in good faith and for value. **(r.2.64)**

12.2 The court may, on the application of any interested party, set aside any transaction which appears to it to be contrary to the above requirement, and may give directions for compensating the company for any loss incurred in consequence.

12.3 Circumstances may occasionally arise where a legal action or dealing involving a member of the committee or a person connected with him make it inappropriate for him to attend discussions on the subject in the committee. In such circumstances the member may be asked not to attend a meeting, or part of a meeting, at which the matter is discussed.

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Administrator's security

The administrator is required to have in place security for the proper performance of his functions. The security takes the form of a bond which provides that -

- a surety undertakes to be jointly and severally liable with the administrator for losses caused by the fraud or dishonesty of the administrator whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the administrator;
- the liability of the surety and the administrator is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;
- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period.

The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the company's assets, but ignoring the value of any assets charged to a third party to the extent of any amount which would be payable to that party, or held on trust to the extent that any beneficial interest in those assets does not belong to the company.

The minimum specific penalty sum is £5,000 and the maximum £5,000,000. If, at any time, the administrator forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000). **(s.390(3), reg.12 & sch 2, IP Regs)**

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GUIDANCE FOR MEMBERS OF CREDITORS' COMMITTEES IN ADMINISTRATIVE RECEIVERSHIPS

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1. GENERAL

- 1.1 Administrative receivership is a remedy available to a creditor holding security created before 15 September 2003, which includes a floating charge, over all (or substantially all) the assets of a company as a means of enforcing security. An administrative receiver is appointed by the holder of the security but normally acts as agent of the company over whose assets he is appointed. The primary duty of an administrative receiver is to his appointor. Whilst he also owes certain duties to the company and is required to provide information to the unsecured creditors, neither the creditors nor any committee appointed by them have any authority to sanction any of his actions.
- 1.2 The administrative receiver must (unless the court directs otherwise) convene a meeting of the unsecured creditors within three months of his appointment and lay before it a report on matters relating to the receivership. The meeting convened to receive the report may also establish a creditors' committee. The function of the committee is to assist the administrative receiver in discharging his functions, and act in relation to him in such manner as may be agreed from time to time. The committee may also require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require. **(s.49, r.3.18)**
- 1.3 The references in bold and in parenthesis are to the Insolvency Act 1986, the Insolvency Rules 1986 (as amended) and the Insolvency Practitioners Regulations 2005.

2. MEMBERSHIP

2.1 General

- 2.1.1 The committee must consist of at least three, and not more than five, creditors. Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote. **(r.3.16)**
- 2.1.2 It is the creditors themselves who are the members of the committee, not the individuals who represent them. Thus a company which is a creditor may be a member of the committee but can only act through a representative appointed in accordance with paragraphs 2.2.1 to 2.2.3 below.

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2.2 Representatives

- 2.2.1 A member of the committee may be represented by another person duly authorised by him. Such representative must hold a letter of authority entitling him so to act (either generally or specially) signed by or on behalf of the committee member, and for this purpose any proxy or any authorisation under section 375 of the Companies Act 1985 in relation to any meeting of creditors of the company shall, unless it contains a statement to the contrary, be treated as a letter of authority to act generally signed by or on behalf of the committee member. The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient. **(r.3.21)**
- 2.2.2 No member may be represented by - a body corporate, an undischarged bankrupt, a person who is subject to a bankruptcy restrictions order or undertaking, or a disqualified director.
- 2.2.3 No person may act as representative of more than one committee member, or as both a member and a representative of another member, on the same committee.
- 2.2.4 Where the representative of a committee member signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

2.3 Resignation and termination of membership

- 2.3.1 A member of the creditors' committee may resign by notice in writing delivered to the administrative receiver. A person's membership of the committee is automatically terminated if -
- (a) he becomes bankrupt, or
 - (b) at three consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to be applied in his case), or
 - (c) he ceases to be, or is found never to have been, a creditor. **(r.3.22, r.3.23)**

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2.3.2 However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

2.3.3 A member of the committee may be removed by resolution at a meeting of creditors, provided at least 14 days' notice has been given of the intention to move that resolution. **(r.3.24)**

2.4 Vacancies

If there is a vacancy in the membership of the committee it need not be filled if the administrative receiver and a majority of the remaining committee members so agree, provided the number of members does not fall below three. The administrative receiver may appoint any creditor qualified to be a member of the committee to fill the vacancy, provided a majority of the other members of the committee agree and the creditor consents to act. **(r.3.25)**

3. ESTABLISHMENT OF COMMITTEE

3.1 Formalities of establishment

3.1.1 The committee does not come into being, and accordingly cannot act, until the administrative receiver has issued a certificate of its due constitution. **(r.3.17)**

3.1.2 The administrative receiver will not issue the certificate until at least three of the persons who are to be members of the committee have agreed to act. Such agreement may be given by the creditor's proxy-holder or representative under section 375 of the Companies Act 1985 present at the meeting establishing the committee, unless the proxy or authorisation specifically precludes such agreement being given.

3.2 Formal defects

The acts of the committee are valid notwithstanding any defect in the appointment, election or qualifications of any committee member or the representative of any committee member, or in the formalities of its establishment. **(r.3.30A)**

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4. PROCEEDINGS

4.1 Chairman

Subject to paragraph 4.5.3 below, the chairman at any meeting of the committee will be the administrative receiver, or a person nominated by him in writing to act. A person so nominated must be either-

- (a) one who is qualified to act as an insolvency practitioner in relation to the company, or
- (b) an employee of the administrative receiver or his firm who is experienced in insolvency matters. **(r.3.19)**

4.2 Quorum

A meeting of the committee is duly constituted if due notice of it has been given to all members and at least two members are present or represented. **(r.3.20)**

4.3 Meetings

4.3.1 General

The committee will meet where and when determined by the administrative receiver, subject as follows **(r.3.18)**:

4.3.2 First meeting

The administrative receiver must call the first meeting of the committee not later than three months after its establishment. **(r.3.18)**

4.3.3 Subsequent meetings

Subsequent meetings of the committee must be called by the administrative receiver-

- (a) if so requested by a member of the committee or his representative - the meeting must then be held within 21 days of the request being received by the administrative receiver - and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date. **(r.3.18)**

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4.4 Notice of venue

The administrative receiver must give 7 days' notice in writing of the venue of any meeting to every member of the committee (or his representative designated for that purpose), unless this requirement has been waived by or on behalf of any member. Such waiver may be signified either at or before the meeting. **(r.3.18)**

4.5 Information from administrative receiver

- 4.5.1 Where the committee resolves to require the attendance of the administrative receiver under section 49(2) of the Insolvency Act 1986, he must be given at least 7 days' notice. The notice to him must be in writing, signed by a majority of the current members of the committee. A member's representative may sign for him. **(r.3.28, s.49)**
- 4.5.2 The meeting at which the administrative receiver's attendance is required must be fixed by the committee for a business day, and held at such time and place as the administrative receiver determines.
- 4.5.3 Where the administrative receiver so attends, the members of the committee may elect any one of their number to be chairman of the meeting in place of the administrative receiver or his nominee.

4.6 Voting rights and resolutions

At any meeting of the committee each member (whether present himself or by his representative) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it. **(r.3.26)**

4.7 Records of meetings

Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting. The record must be signed by the chairman and kept as part of the records of the receivership. **(r.3.26)**

4.8 Postal resolutions

- 4.8.1 It is possible for resolutions to be passed by post. The administrative receiver must send to every member (or his representative designated for the purpose) a copy of the proposed resolution on which a decision is sought, which must be set out in such a way that agreement with, or dissent from, each separate resolution may be indicated by the recipient on the copy so sent. **(r.3.27)**

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4.8.2 However, any member of the committee may, within 7 business days from the date of the administrative receiver sending out a resolution, require the administrative receiver to summon a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrative receiver is notified in writing by a majority of the members that they concur with it.

4.8.3 A copy of every resolution so passed, and a note that the concurrence of the committee was obtained, must be kept with the records of the receivership.

5. REVIEW OF ADMINISTRATIVE RECEIVER'S SECURITY

The administrative receiver is required to have in place security for the proper performance of his functions (see Appendix). It is the duty of the committee to review from time to time the adequacy of the administrative receiver's security. **(r.12.8)**

6. INFORMATION TO BE PROVIDED TO THE COMMITTEE

6.1 Administrative receiver's receipts and payments account

The administrative receiver must send to each member of the committee an account of his receipts and payments:

- within two months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months, and
- within two months after he ceases to act as administrative receiver. **(r.3.32)**

6.2 Resignation of administrative receiver

If the administrative receiver intends to resign he must give the committee at least seven days' notice of his intention to do so. Notice is not necessary if the receiver resigns in consequence of the making of an administration order. **(r.3.33)**

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6.3 Death of administrative receiver

If the administrative receiver dies, the person by whom he was appointed must, as soon as he becomes aware of the death, give notice of it to the members of the committee. **(r.3.34)**

6.4 Vacation of office

When the administrative receiver vacates office he must forthwith give notice of his doing so to the members of the committee. **(r.3.35)**

7. CONFIDENTIALITY OF DOCUMENTS

7.1 Where the administrative receiver considers that any document forming part of the record of the receivership-

- (a) should be treated as confidential, or
- (b) is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors,

he may decline to allow it to be inspected by a person (including a member of the committee) who would otherwise be entitled to inspect it. **(r.12.13)**

7.2 A person refused inspection may apply to the court for the refusal to be overruled.

8. CHARGES FOR COPY DOCUMENTS

Where the administrative receiver is requested by a member of the committee to supply copies of any documents, he is entitled to make a charge as follows:

- 15 pence per A4 or A5 page
- 30 pence per A3 page **(r.12.15A)**

9. EXPENSES OF COMMITTEE MEMBERS

9.1 Any reasonable travelling expenses directly incurred by committee members or their representatives either in attending meetings of the committee or otherwise on the committee's business will be paid by the administrative receiver out of the assets as an expense of the receivership **(r.3.29)**.

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9.2 However, such expenses will not be paid in respect of any meeting of the committee held within three months of a previous meeting, unless the meeting in question is summoned at the instance of the administrative receiver.

10. COMMITTEE MEMBERS' DEALINGS WITH THE COMPANY

10.1 Membership of the committee does not prevent a person from dealing with the company while the receiver is acting, provided that any transactions in the course of such dealings are in good faith and for value. **(r.3.30)**

10.2 The court may, on the application of any interested party, set aside any transaction which appears to it to be contrary to the above requirement, and may give directions for compensating the company for any loss incurred in consequence.

10.3 Circumstances may occasionally arise where a legal action or dealing involving a member of the committee or a person connected with him make it inappropriate for him to attend discussions on the subject in the committee. In such circumstances the member may be asked not to attend a meeting, or part of a meeting, at which the matter is discussed.

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Administrative receiver's security

The administrative receiver is required to have in place security for the proper performance of his functions. The security takes the form of a bond which provides that -

- a surety undertakes to be jointly and severally liable with the administrative receiver for losses caused by the fraud or dishonesty of the administrative receiver whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the administrative receiver;
- the liability of the surety and the administrative receiver is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;
- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period.

The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the company's assets, but ignoring the value of any assets charged to a third party to the extent of any amount which would be payable to that party, or held on trust to the extent that any beneficial interest in those assets does not belong to the company. The minimum specific penalty sum is £5,000 and the maximum £5,000,000. If, at any time, the administrative receiver forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000). **(s.390(3), reg.12 & sch.2, IP Regs)**

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1. INTRODUCTION

1.1 General

- 1.1.1 This guide has been produced to help members of creditors' committees to be aware of:
- the duties and functions of the committee
 - their rights as members of the committee
 - the procedural rules relating to committee business
- 1.1.2 This introduction gives a brief description of the role of the trustee in bankruptcy, and summarises the principal functions of the committee and the trustee's main duties in relation to it. Detailed provisions are set out in the remaining sections of the guide.
- 1.1.3 The references in bold and in parenthesis are to the Insolvency Act 1986, the Insolvency Rules 1986 (as amended), the Insolvency Practitioners Regulations 2005, the Insolvency Regulations 1994, and Statements of Insolvency Practice 9 and 15 issued to all authorised insolvency practitioners.

1.2 The trustee in bankruptcy

Bankruptcy is the administration of the estate of an insolvent individual by a trustee in the interests of his creditors generally. The trustee in bankruptcy has wide powers which are set out in the Insolvency Act 1986. He may use these powers at his discretion, except where the exercise of any power specifically requires sanction, as explained in paragraphs 2.1.1 to 2.1.4 below.

1.3 The creditors' committee

- 1.3.1 A general meeting of the bankrupt's creditors may appoint a creditors' committee. The purpose of the committee is to represent the interests of the creditors as a whole, not just the interests of its individual members. The principal functions of the committee are to sanction the exercise of certain of the trustee's powers and to fix his remuneration. In addition to its statutory functions the committee may also serve to assist the trustee generally and act as a sounding board for him to obtain views on matters pertaining to the bankruptcy. **(s.301)**

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- 1.3.2 The trustee is required to report to the committee on matters relating to the bankruptcy and to submit copies of his accounts when required. Meetings are generally held when determined by the trustee, and voting is by majority in number. Votes may also be taken by post.
- 1.3.3 Committee members are not entitled to remuneration, but they may be reimbursed for reasonable travelling expenses incurred on committee business.
- 1.3.4 Although the trustee should normally have regard to the views of the creditors' committee, he may always refer matters of contention to a general meeting of creditors or to the court. It has been held, in a liquidation case, that the court has a residual discretion not to follow the wishes of a committee where the special circumstances of the case warrant it. **[Re BCCI (No 3), [1993] BCLC 1490]**

2. THE FUNCTIONS OF THE COMMITTEE

2.1 Control of trustee's powers

- 2.1.1 The trustee may, with the sanction of the committee or the court, exercise any of the following powers:
- (a) Carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the trustee is able to do so without contravening any statutory requirements. **[s.314(1), sch.5]**
- Note:** The bankrupt's business may only be carried on if the trustee bona fide and reasonably forms the opinion that this is necessary (in other words, highly expedient) for its beneficial winding up, for example to achieve a higher price for the assets used in the business.
- (b) Bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate.

Note: Where legal proceedings are proposed the committee should consider the probable benefit to the estate before giving permission. If permission is given, the committee should ensure that it is kept informed of the progress of the

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proceedings in case it should become necessary to consider their discontinuance. **(s.314(1), sch.5)**

- (c) Bring legal proceedings for the estate to be recompensed where the bankrupt has:
 - disposed of property for no, or inadequate, consideration;
 - has done something to put one of his creditors in a better position than he would otherwise have been; or
 - has entered into a transaction to put assets beyond the reach of his creditors.
- (d) Accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the court thinks fit. **(s.314(1), sch.5)**
- (e) Mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts. **(s.314(1), sch.5)**
- (f) Where any right, option or other power forms part of the bankrupt's estate, to make payment or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power. **(s.314(1), sch.5)**
- (g) Refer to arbitration, or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt. **(s.314(1), sch.5)**
- (h) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts. **(s.314(1), sch.5)**
- (i) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being

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made on the trustee by any person or by the trustee on any person. **(s.314(1), sch.5)**

- (j) Appoint the bankrupt -
- to superintend the management of his estate or any part of it
 - to carry on his business (if any) for the benefit of his creditors, or
 - in any other respect to assist him in administering the estate in such manner and on such terms as the trustee may direct. **(s.314(2))**

2.1.2 The trustee may, with the permission of the committee, divide in its existing form among the bankrupt's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold. **(s.326(1))**

2.1.3 A permission given for the exercise for any of the above powers must not be a general permission, but must relate to a particular proposed exercise of the power in question. **(s.314(3), s.326(2))**

2.1.4 Where the trustee has done anything which requires the committee's permission without having first obtained it, the committee or the court may, for the purposes of enabling him to meet his expenses out of the bankrupt's estate, ratify what he has done. However, it should not do so unless it is satisfied that the trustee has acted in a case of urgency and has sought its ratification without undue delay. **(s.314(4), s.326(3))**

2.2 Acts requiring notice to the committee

Where the trustee -

- (a) disposes of any property comprised in the bankrupt's estate to any associate of the bankrupt, or
- (b) employs a solicitor,
- he must give notice to the committee of that exercise of his powers. **(s.314(6))**

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2.3 Trustee's remuneration

The committee is responsible for fixing the trustee's remuneration. For details reference should be made to the explanatory note, 'A Creditors' Guide to Fees Charged by Trustees in Bankruptcy', which is appended to Statement of Insolvency Practice 9 (Remuneration of Insolvency Office Holders) and should be provided by the trustee.

2.4 Expenses and disbursements

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the trustee proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the trustee's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation. **(SIP 9)**

2.5 Court assessment of costs

- 2.5.1 Where any costs, charges or expenses are payable out of a bankrupt's estate (for example agent's or legal fees), the trustee may agree them with the person entitled to payment. However, if the committee resolves that any such costs, charges or expenses should be determined by the court, the trustee must require the person entitled to payment to deliver their bill of costs for assessment. **(r.7.34)**
- 2.5.2 Where such costs, charges or expenses are to be assessed, this does not preclude the trustee from making payments on account against an undertaking from the payee to repay any amount which proves, on assessment, to have been overpaid. **(r.7.34)**

2.6 Review of trustee's security

The trustee is required to have in place security for the proper performance of his functions (see Appendix). It is the duty of the committee to review the adequacy of the trustee's security from time to time. **(r.12.8)**

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3. TRUSTEE'S OBLIGATIONS TO COMMITTEE

- 3.1 The trustee has a duty to report to the committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the bankruptcy. **(r.6.152)**
- 3.2 The trustee need not comply with any request for information where it appears to him that the request is frivolous or unreasonable, or the cost of complying would be excessive having regard to the relative importance of the information, or there are insufficient funds in the estate to enable him to comply. **(r.6.152)**
- 3.3 Where the committee has come into being more than 28 days after the appointment of the trustee, he must report to the members in summary form what actions he has taken since his appointment and answer such questions as they may put to him regarding the conduct of the bankruptcy. A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the trustee, otherwise than in summary form, of any matters previously arising. **(r.6.152)**
- 3.4 Nothing in these provisions disentitles the committee or any member of it from access to the trustee's records of the bankruptcy, or from seeking an explanation of any matter within the committee's responsibility. **(r.6.152)**
- 3.5 The trustee must, as and when directed by the committee (but not more than once every two months), send a written report to every member of the committee setting out the position generally as regards the progress of the bankruptcy, and matters arising in connection with it, to which the trustee considers the committee's attention should be drawn. In the absence of such directions by the committee the trustee must send such a report not less than once every six months. **(r.6.163)**
- 3.6 The trustee should, at their first meeting with him, discuss with committee members their requirements for reports and obtain their directions. He should also discuss with committee members at that meeting the types of matters which they wish have to have reported to them so that matters of particular concern to them are identified. **(SIP 15)**

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4. TRUSTEE'S ACCOUNTS

- 4.1 The trustee must prepare and keep financial records in relation to the bankruptcy, and such supporting documents as are necessary to explain the receipts and payments entered in the records, including an explanation of the source of any receipts and the destination of any payments, and must obtain and keep the bank statements relating to any local bank account in the name of the bankrupt. **(reg.24 I Regs)**
- 4.2 If the bankrupt's business is carried on, the trustee must also keep a separate trading account including, where appropriate, details of all local bank account transactions. The total weekly amounts of trading receipts and payments must be incorporated into the financial records. **(reg.26 I Regs)**
- 4.3 The trustee must submit the financial records to the committee as and when the committee requires them for inspection, and if the committee is not satisfied with their contents it may so inform the Secretary of State (giving the reasons for its dissatisfaction). The Secretary of State may then take such action as he thinks fit. **(reg.24 I Regs)**

5. ESTABLISHMENT OF THE COMMITTEE

5.1 Formalities of establishment

- 5.1.1 The committee does not come into being, and accordingly cannot act, until the trustee has issued a certificate of its due constitution. **(r.6.151)**
- 5.1.2 The trustee will not issue the certificate until at least three of the persons elected to be members of the committee have agreed to act. Such agreement may be given by the creditor's proxy-holder at the meeting establishing the committee, unless the proxy specifically precludes such agreement being given. **(r.6.151)**

5.2 Formal defects

The acts of the committee are valid notwithstanding any defect in the appointment, election or qualifications of any committee member or the representative of any committee member. **(s.377, r.6.156)**

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6. MEMBERSHIP

6.1 General

6.1.1 The creditors' committee must consist of not less than three, and not more than five, members. All the members of the committee must be creditors of the bankrupt and any creditor (other than one whose debt is fully secured) may be a member, so long as -

- (a) he has lodged a proof of his debt,
- (b) his proof has neither been wholly disallowed for voting purposes nor wholly rejected for the purposes of distribution or dividend, and
- (c) he has agreed to act as a member of the committee. **(r.6.150, r.6.151)**

6.1.2 It is the creditors themselves who are the members of the committee, not the individuals who represent them. Thus a company which is a creditor may be a member of the committee but can only act through a representative appointed in accordance with paragraph 6.2 below. **(r.6.150(3))**

6.2 Representatives

6.2.1 A member of the committee may be represented by another person duly authorised by him. Such representative must hold a letter of authority entitling him so to act (either generally or specially) signed by or on behalf of the committee member, and for this purpose any proxy in relation to any meeting of creditors of the bankrupt shall, unless it contains a statement to the contrary, be treated as such a letter of authority to act generally signed by or on behalf of the committee member. The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient. **(r.6.156)**

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6.2.2 No member may be represented by -

- a body corporate,
- an undischarged bankrupt,
- a person who is subject to a bankruptcy restrictions order or undertaking, or
- a disqualified director.

6.2.3 No person may act as representative of more than one committee member, or both as a member and as a representative of another member, on the same committee.

6.2.4 Where the representative of a committee member signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

6.3 Resignation and termination of membership

6.3.1 A member of the creditors' committee may resign by notice in writing delivered to the trustee. A person's membership of the committee is automatically terminated if -

- (a) he becomes bankrupt, or
- (b) at three consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to be applied in his case), or
- (c) he ceases to be, or is found never to have been, a creditor.
(r.6.157, r.6.158)

6.3.2 However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.
(r.6.158)

6.3.3 A member of the committee may be removed by resolution at a meeting of creditors, provided at least 14 days' notice has been given of the intention to move that resolution. **(r.6.159)**

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6.4 Vacancies

If there is a vacancy in the membership of the committee it need not be filled if the trustee and a majority of the remaining committee members so agree provided the number of members does not fall below three. If another member is to be appointed he can be appointed either by the trustee (provided the majority of the remaining committee members agree to the appointment and the creditor consents to act) or by a resolution passed at a duly convened meeting of creditors, after at least 14 days' notice of the resolution has been given. **(r.6.160)**

7. PROCEEDINGS

7.1 Chairman

The chairman at any meeting of the committee will be the trustee, or a person appointed by him in writing to act. A person so nominated must be either -

- (a) one who is qualified to act as an insolvency practitioner in relation to the bankrupt, or
- (b) an employee of the trustee or his firm who is experienced in insolvency matters. **(r.6.154)**

7.2 Quorum

A meeting of the committee is duly constituted if due notice of it has been given to all members and at least two members are present or represented. **(r.6.155)**

7.3 Meetings

7.3.1 General

The committee will meet where and when determined by the trustee, subject as follows: **(r.6.153)**

7.3.2 First meeting

The trustee must call the first meeting to take place within 3 months of his appointment or of the committee's establishment (whichever is the later). **(r.6.153)**

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7.3.3 Subsequent meetings

Subsequent meetings of the committee must be called by the trustee

(a) if so requested by a member of the committee or his representative - the meeting must then be held within 21 days of the request being received by the trustee; and

(b) for a specified date, if the committee has previously resolved that a meeting be held on that date **(r.6.153)**

7.4 Notice of venue

The trustee must give 7 days' notice in writing of the venue of any meeting to every member of the committee (or his representative, if designated for that purpose), unless this requirement has been waived by or on behalf of any member. Such waiver may be signified either at or before the meeting. **(r.6.153)**

7.5 Voting rights and resolutions

At any meeting of the committee each member (whether present himself or by his representative) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it. **(r.6.161)**

7.6 Records of meetings

Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting. The record must be signed by the chairman and kept with the records of the bankruptcy. **(r.6.161)**

7.7 Postal resolutions

7.7.1 It is possible for resolutions to be passed by post. The trustee must send to every member (or his representative designated for the purpose) a copy of any proposed resolution on which a decision is sought, which must be set out in such a way that agreement with, or dissent from, each separate resolution may be indicated by the recipient on the copy so sent. **(r.6.162)**



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7.7.2 However, any member of the committee may, within 7 business days from the date of the trustee sending out a resolution, require the trustee to summon a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is deemed to have been carried in the committee if and when the trustee is notified in writing by a majority of the members that they concur with it. **(r.6.162)**

7.7.3 A copy of every resolution so passed, and a note that the concurrence of the committee was obtained, must be kept with the records of the bankruptcy. **(r.6.162)**

8. CONFIDENTIALITY OF DOCUMENTS

8.1 Where the trustee considers that any document forming part of the record of the bankruptcy -

- (a) should be treated as confidential, or
- (b) is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors,

he may decline to allow it to be inspected by a person (including a member of the committee) who would otherwise be entitled to inspect it. **(r.12.13)**

8.2 A person refused inspection may apply to the court for the refusal to be overruled.

9. CHARGES FOR COPY DOCUMENTS

Where the trustee is requested by a member of the committee to supply copies of any documents, he is entitled to make a charge as follows:

15 pence per A4 or A5 page

30 pence per A3 page **(r.12.15A, r.13.11)**

10. EXPENSES OF COMMITTEE MEMBERS

Any reasonable travelling expenses directly incurred by committee members or their representatives either in attending meetings of the committee or otherwise on the committee's business will be paid by the trustee out of the bankrupt's estate in the due order of priority. **(r.6.164)**

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11. DEALINGS BY COMMITTEE MEMBERS AND OTHERS

11.1 The position of all committee members is fiduciary and they must be careful not to expose themselves to a conflict between their duty as members of the committee and their personal interest. Accordingly, no member of the committee, or his representative, or any person who is an associate of a committee member or his representative, or any person who has been a committee member at any time in the previous twelve months, can enter into a transaction whereby he -

- (a) receives out of the bankrupt's estate any payment for services given or goods supplied in connection with the administration of the bankruptcy, or
- (b) obtains any profit from the administration of the bankruptcy, or
- (c) acquires any asset forming part of the estate,

unless -

- (a) he first obtains the leave of the court to the transaction, or
- (b) he enters into the transaction as a matter of urgency or by way of performance of a contract in force before the date of the bankruptcy order and he obtains the leave of the court, having applied for such leave without undue delay, or
- (c) he enters into the transaction with the prior sanction of the committee where the committee is satisfied (after full disclosure of the circumstances) that he will be giving full value in the transaction. **(r.6.165)**

11.2 Where a resolution is proposed in the committee that sanction be given to such a transaction, no member of the committee, and no representative of a member, can vote on the resolution if he is to participate directly or indirectly in the transaction. **(r.6.165)**

11.3 The costs of obtaining the leave of the court are not payable out of the bankrupt's estate unless the court so orders. **(r.6.165)**

11.4 Circumstances may occasionally arise where a legal action or dealing involving a member of the committee or a person connected with him make it inappropriate for him to attend discussions on the subject in the committee. In such circumstances the member may be asked not to attend a meeting, or part of a meeting, at which the matter is discussed.

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Trustee's security

The trustee is required to have in place security for the proper performance of his functions. The security takes the form of a bond which provides that -

- a surety undertakes to be jointly and severally liable with the trustee for losses caused by the fraud or dishonesty of the trustee whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the trustee;
- the liability of the surety and the trustee is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;
- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period.

The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the bankrupt's assets, but ignoring the value of any assets charged to a third party to the extent of any amount which would be payable to that party, or held on trust to the extent that any beneficial interest in those assets does not belong to the bankrupt.

The minimum specific penalty sum is £5,000 and the maximum £5,000,000. In estimating the value of the assets the trustee must have regard to the value of the assets as disclosed in any statement of affairs, and any comments of creditors or the official receiver on that statement. If, at any time, the trustee forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000). **(s.390(3), reg.12 & sch 2, IP Regs)**

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1. INTRODUCTION

1.1 General

1.1.1 This guide has been produced to help members of liquidation committees to be aware of:

- the duties and functions of the committee
- their rights as members of the committee
- the procedural rules relating to committee business.

1.1.2 This introduction gives a brief explanation of the liquidation procedure, and summarises the principal functions of the committee and the liquidator's main duties in relation to it. Detailed provisions are set out in the remaining sections of the guide.

1.1.3 The references in bold and in parenthesis are to the Insolvency Act 1986, the Insolvency Rules 1986 (as amended), the Insolvency Practitioners Regulations 2005, the Insolvency Regulations 1994, and Statements of Insolvency Practice 9 and 15 issued to all authorised insolvency practitioners.

1.2 Liquidation

1.2.1 Liquidation (also termed 'winding up') is the formal winding up of a company's affairs, entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either compulsory, when it is instituted by order of the court, or voluntary, when it is instituted by resolution of the shareholders. An insolvent voluntary liquidation is known as a 'creditors' voluntary liquidation' because its conduct is primarily under the control of the creditors. A solvent voluntary liquidation is known as a 'members' voluntary liquidation', because its conduct is primarily under the control of its members. Members' voluntary liquidations are not covered further in this guidance as there is no committee in such proceedings.

1.2.2 The guidance which follows applies to both compulsory liquidations and creditors' voluntary liquidations unless otherwise indicated.

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1.3 The liquidator

The liquidator appointed to conduct the winding up has wide powers which are set out in the Insolvency Act 1986. He may use these powers at his discretion, except where the exercise of any power specifically requires sanction, as explained in paragraphs 2.2.1 to 2.2.5 below.

1.4 The liquidation committee

- 1.4.1 The committee in liquidations is known as the 'liquidation committee'. In most cases the liquidation committee will consist entirely of creditors of the insolvent company. Past or present members (shareholders) of the company may also be members of the committee in certain circumstances, but this is extremely rare. Appendix B sets out the special rules which apply where there are such members.
- 1.4.2 The purpose of the liquidation committee is to represent the interests of the creditors as a whole, not just the interests of its individual members. The principal functions of the committee are to sanction the exercise of certain of the liquidator's powers and to fix his remuneration. In addition to its statutory functions the committee may also serve to assist the liquidator generally and act as a sounding board for him to obtain views on matters pertaining to the liquidation.
- 1.4.3 The liquidator is required to report to the committee on matters relating to the liquidation and to submit copies of his accounts when required. Meetings are generally held when determined by the liquidator, and voting is by majority in number. Votes may also be taken by post.
- 1.4.4 Committee members are not entitled to remuneration, but they may be reimbursed for reasonable travelling expenses incurred on committee business.
- 1.4.5 Although the liquidator should normally have regard to the views of the liquidation committee, he may always refer matters of contention to a general meeting of creditors or to the court. It has been held that the court has a residual discretion not to follow the wishes of a committee where the special circumstances of the case warrant it. **(Re BCCI (No. 3), [1993] BCLC 1490)**

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2. THE FUNCTIONS OF THE COMMITTEE

2.1 Control of directors' powers

Generally speaking, the directors' powers cease on liquidation. In creditors' voluntary liquidations, however, there is provision for them to continue to the extent that the liquidation committee (or if there is no committee, the creditors) sanction their continuance. **(s.103)**

2.2 Control of liquidator's powers

2.2.1 The extent to which the exercise of the liquidator's powers requires sanction (approval) varies slightly between creditors' voluntary and compulsory liquidation.

In both types of liquidation the liquidator needs the sanction of the committee or the court, to exercise any of the following powers:

- (a) Pay any class of creditors in full.*
- (b) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.
- (c) Compromise on such terms as may be agreed -
 - all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and
 - all questions in any way relating to or affecting the assets or the winding up of the company, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it. **(s.165, s.167, sch.4)**

* In this context the preferential debts do not constitute a separate class of creditor, and accordingly sanction is not required for the payment of preferential claims in full.

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(d) Bring legal proceedings for restitution where:

- there has been fraudulent trading;
- the directors have caused the company to continue trading when there was no reasonable prospect of avoiding insolvent liquidation ('wrongful trading');
- the company has disposed of property for no, or inadequate, consideration;
- the company has done something to put one of its creditors in a better position than it would otherwise have been;
- the company has entered into a transaction to put assets beyond the reach of creditors.

2.2.2 The following powers require sanction in a compulsory liquidation but not in a creditors' voluntary liquidation:

(e) Bring or defend any action or other legal proceedings in the name and on behalf of the company.

Note: Where legal proceedings are proposed the committee should consider the probable benefit to the liquidation before giving permission. If permission is given, the committee should ensure that it is kept informed of the progress of the proceedings in case it should become necessary to consider their discontinuance.

(f) Carry on the business of the company so far as may be necessary for its beneficial winding up.

Note: The company's business may only be carried on if the liquidator bona fide and reasonably forms the opinion that this is necessary (in other words, highly expedient) for a beneficial winding up, for example to achieve a higher price for the assets used in the business.

2.2.3 The liquidator may, with the permission of the committee, divide in its existing form among the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold. **(r.4.183)**

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2.2.4 A permission given for the exercise for any of the powers in paragraphs 2.2.1, 2.2.2 and 2.2.3 must not be a general permission, but must relate to a particular proposed exercise of the power in question. **(r.4.184(1))**

2.2.5 Where the liquidator has done anything which requires the committee's permission without having first obtained it, the committee or the court may, for the purposes of enabling him to meet his expenses out of the company's assets, ratify what he has done. However, it should not do so unless it is satisfied that the liquidator has acted in a case of urgency and has sought its ratification without undue delay. **(r.4184(2))**

2.3 Acceptance of shares etc for sale of company property

In a creditors' voluntary liquidation, where the whole or part of the business or property of the liquidating company is proposed to be transferred or sold to another company, the liquidator may receive, in payment or part payment for the transfer, shares, policies or other like interests in the transferee company for distribution among the members (shareholders) of the transferor company, subject to -

- a special resolution of the company conferring appropriate authority on the liquidator, and
- the sanction of the liquidation committee or the court. **(s.110)**

2.4 Acts requiring notice to the committee

Where the liquidator -

- disposes of any property of the company to a person who is connected with the company, or
- in the case of a compulsory liquidation, employs a solicitor, he must give notice to the committee of that exercise of his powers. **(s.165(6), s.167(2))**

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2.5 Expenses of preparing statement of affairs and convening creditors' meeting

In a creditors' voluntary liquidation any reasonable and necessary expenses of preparing the statement of affairs and convening the creditors' meeting held under section 98 of the Insolvency Act may be paid out of the company's assets as an expense of the liquidation. Such payment may be made either before or after the commencement of the liquidation, but where it is made after the commencement the following provisions apply:

- If the liquidator appointed at the section 98 meeting intends to make such a payment, he must give the liquidation committee at least 7 days' notice of his intention to do so, and
- he may not make such a payment to himself or any associate of his otherwise than with the approval of the liquidation committee, the creditors or the court. **(r.4.38 r.4.62)**

2.6 Liquidator's remuneration

The committee is responsible for fixing the liquidator's remuneration. For details reference should be made to the explanatory note, 'A Creditors' Guide to Liquidators' Fees', which is appended to Statement of Insolvency Practice 9 (Remuneration of Insolvency Office Holders) and should be provided by the liquidator.

2.7 Expenses and disbursements

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the liquidator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the liquidator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation. **(SIP 9)**

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REGULATIONS AND GUIDANCE**2.8 Court assessment of costs**

2.8.1 Where any costs, charges or expenses are payable out of the assets (for example agent's or legal fees), the liquidator may agree them with the person entitled to payment. However, if the committee resolves that any such costs, charges or expenses should be determined by the court, the liquidator must require the person entitled to payment to deliver his bill of costs for assessment. **(r.7.34)**

2.8.2 Where such costs, charges or expenses are to be assessed, this does not preclude the liquidator from making payments on account against an undertaking from the payee to repay any amount which proves, on assessment, to have been overpaid.

2.9 Review of liquidator's security

The liquidator is required to have in place security for the proper performance of his functions (see Appendix A). It is the duty of the committee to review the adequacy of the liquidator's security from time to time. **(r.12.8)**

2.10 Calls on contributories

In a compulsory liquidation, if the liquidator proposes to make a call on the contributories* he may summon a meeting of the liquidation committee for the purpose of obtaining its sanction to the call. The liquidator must give at least 7 days' notice of the meeting to each member of the committee, and the notice must contain a statement of the proposed amount of the call and of its purpose. **(r.4.203)**

2.11 Death of liquidator

In a creditors' voluntary liquidation where the liquidator has died, notice of the fact and of the date of death must be given to the liquidation committee or one of its members. The persons who may give the notice are:

- the liquidator's personal representatives;
- a partner in his firm;
- any person if he delivers with the notice a copy of the death certificate. **(r.4.133)**

* A contributory is a past or present member of the company who is liable to contribute to the assets of the company in its winding up.



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3. LIQUIDATOR'S OBLIGATIONS TO COMMITTEE

- 3.1 The liquidator has a duty to report to the committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the liquidation. **(r.4.155)**
- 3.2 The liquidator need not comply with any request for information where it appears to him that the request is frivolous or unreasonable, or the cost of complying would be excessive having regard to the relative importance of the information, or there are insufficient assets to enable him to comply.
- 3.3 Where the committee has come into being more than 28 days after the appointment of the liquidator, he must report to the members in summary form what actions he has taken since his appointment and answer such questions as they may put to him regarding the conduct of the proceedings. A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the liquidator, otherwise than in summary form, of any matters previously arising.
- 3.4 Nothing in these provisions disentitles the committee or any member of it from access to the liquidator's records of the liquidation, or from seeking an explanation of any matter within the committee's responsibility.
- 3.5 However, documents passing between the liquidator and the Department of Trade and Industry concerning possible disqualification of directors are not documents which are within any of the statutory rights of the liquidation committee to inspect, or in respect of which the committee can put questions to the liquidator and ask him to report to them. (Re W&A Glaser Ltd, **[1994] BCC 199**)
- 3.6 The liquidator must, as and when directed by the committee (but not more than once every two months), send a written report to every member of the committee setting out the position generally as regards the progress of the liquidation, and matters arising in connection with it, to which the liquidator considers the committee's attention should be drawn. In the absence of such directions by the committee the liquidator must send such a report not less than once every six months. **(r.4.168)**
- 3.7 The liquidator should, at their first meeting with him, discuss with committee members their requirements for reports and obtain their directions. He

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should also discuss with committee members at that meeting the types of matters which they wish to have reported to them so that matters of particular concern to them are identified. **(SIP 15)**

4. LIQUIDATOR'S ACCOUNTS

- 4.1 The liquidator must prepare and keep financial records in relation to the liquidation, and such supporting documents as are necessary to explain the receipts and payments entered in the records, including an explanation of the source of any receipts and the destination of any payments, and, in the case of a compulsory liquidation, must obtain and keep the bank statements relating to any local bank account opened in the name of the company. **(reg.10 I Regs)**
- 4.2 If the company's business is carried on, the liquidator must also keep a separate trading account including, where appropriate, in the case of a compulsory liquidation, details of all local bank account transactions. The total weekly amounts of trading receipts and payments must be incorporated into the financial records. **(reg.12 I Regs)**
- 4.3 The liquidator must submit the financial records to the committee as and when the committee requires them for inspection, and, in the case of a compulsory liquidation, if the committee is not satisfied with their contents it may so inform the Secretary of State (giving the reasons for its dissatisfaction). The Secretary of State may then take such action as he thinks fit. **(reg.10 I Regs)**

5. ESTABLISHMENT OF THE COMMITTEE

5.1 Compulsory liquidation

- 5.1.1 In a compulsory liquidation not preceded by an administration the committee will be established by general meetings of the company's creditors and contributories. The committee must consist of at least three, and not more than five, creditors, and in cases where the winding up is on grounds other than insolvency it may also have up to three contributory members. **(s.141, r.4.152)**
- 5.1.2 Where the winding-up order is made immediately on the discharge of an administration order and the court orders that the person acting as administrator be appointed liquidator, then any committee

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established for the purposes of the administration continues in being as the liquidation committee and there is no need to establish another committee. However, this provision does not apply if the number of members at the date of the winding-up order is less than three. Furthermore, any creditor who was a member of the committee immediately before the winding-up order ceases to be a member if his debt is fully secured. Where the winding-up order is made on grounds other than insolvency, the liquidator must convene a meeting of contributories to give them the opportunity to appoint contributory members of the committee. **(r.4.174, r.4.175)**

5.2 Creditors' voluntary liquidation

In a creditors' voluntary liquidation the creditors in general meeting may appoint a committee of not more than five persons. If such a committee is appointed, the shareholders of the company may in general meeting appoint up to a further five persons to the committee. The creditors may, however, resolve to exclude any of the shareholders' nominees from the committee unless the court directs otherwise. The court may appoint someone other than the rejected nominee to the committee in his stead. The minimum number of members of the committee is three. **(s.101, r.4.152)**

Where a creditors' voluntary liquidation is immediately preceded by an administration, any creditors' committee in the administration will become the liquidation committee. **(Sch B1, para 83)**

5.3 Formalities of establishment

- 5.3.1 The committee does not come into being, and accordingly cannot act, until the liquidator has issued a certificate of its due constitution. **(r.4.153)**
- 5.3.2 The liquidator will not issue the certificate until the minimum number of persons required to be members of the committee have agreed to act. Such agreement may be given by the creditor's proxy-holder or representative under section 375 of the Companies Act 1985 present at the meeting establishing the committee, unless the proxy or authorisation specifically precludes such agreement being given.

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5.4 Formal defects

The acts of the committee are valid notwithstanding any defect in the appointment, election or qualifications of any committee member or the representative of any committee member, or in the formalities of its establishment. **(r.4.172A)**

6. MEMBERSHIP

6.1 General

6.1.1 It is the creditors or contributories themselves who are the members of the committee, not the individuals who represent them. Thus a company which is a creditor may be a member of the committee but can only act through a representative appointed in accordance with paragraphs 6.2.1 to 6.2.3 below. **(r.4.152(5))**

6.1.2 Any creditor (other than one whose debt is fully secured) may be a member of the committee, so long as -

- (a) he has lodged a proof of his debt,
- (b) his proof has neither been wholly disallowed for voting purposes nor wholly rejected for the purposes of distribution or dividend, and
- (c) he has agreed to act as a member of the committee.

No person may be a member as both a creditor and a contributory. **(r.4.152)**

6.1.3 If the company being wound up is a recognised bank, a representative of the Deposit Protection Board may exercise the right to be a member of the committee.

If the company is a financial institution, representatives of the Financial Services Authority and the Financial Services Compensation Scheme may exercise the right to be members of the committee. Persons who exercise this right are to be regarded as additional creditor members of the committee. **(r.4.152)**

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6.2 Representatives

6.2.1 A member of the committee may be represented by another person duly authorised by him. Such representative must hold a letter of authority entitling him so to act (either generally or specially) signed by or on behalf of the committee member, and for this purpose any proxy or any authorisation under section 375 of the Companies Act 1985 in relation to any meeting of creditors of the company shall, unless it contains a statement to the contrary, be treated as such a letter of authority to act generally signed by or on behalf of the committee member. The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient. **(r.4.159)**

6.2.2 No member may be represented by -

- a body corporate,
- an undischarged bankrupt,
- a person who is subject to a bankruptcy restrictions order or undertaking, or
- a disqualified director.

6.2.3 No person may act as representative of more than one committee member, or both as a member and as a representative of another member, on the same committee.

6.2.4 Where the representative of a committee member signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

6.3 Resignation and termination of membership

6.3.1 A member of the liquidation committee may resign by notice in writing delivered to the liquidator. A person's membership of the committee is automatically terminated if -

- (a) he becomes bankrupt, or

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(b) at three consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to be applied in his case), or

(c) he ceases to be, or is found never to have been, a creditor. **(r.4.160, r.4.161)**

6.3.2 However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee. **(r.4.161)**

6.3.3 A creditor member of the committee may be removed by resolution at a meeting of creditors; 14 days' notice must be given of the intention to move the resolution. **(r.4.162)**

6.4 Vacancies

If there is a vacancy among the members of the committee it need not be filled if the liquidator and a majority of the remaining members so agree, provided the number of members does not fall below three. If another creditor is to be appointed he can be appointed either by the liquidator (provided the majority of the remaining committee members agree to the appointment and the creditor consents to act) or by a resolution passed at a duly convened meeting of creditors, after at least 14 days' notice of the resolution has been given. **(r.4.163)**

6.5 Composition of committee when creditors paid in full

If the liquidator issues a certificate that the creditors of the company have been paid in full with interest, the creditor members of the committee cease to be members of the committee. **(r.4.171)**

7. PROCEEDINGS

7.1 Chairman

The chairman at any meeting of the committee will be the liquidator, or a person nominated by him to act. A person so nominated must be either -

(a) one who is qualified to act as an insolvency practitioner in relation to the company, or

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- (b) an employee of the liquidator or his firm who is experienced in insolvency matters. **(r.4.157)**

7.2 Quorum

A meeting of the committee is duly constituted if due notice of it has been given to all members and, in the case of a creditors' voluntary liquidation, at least two members are present or represented, and, in the case of a compulsory liquidation, at least two creditor members are present or represented. **(r.4.158)**

7.3 Meetings

7.3.1 General

The committee will meet where and when determined by the liquidator, subject as follows **(r.4.156)**:

7.3.2 First meeting

The liquidator must call the first meeting to take place within 3 months of his appointment or of the committee's establishment (whichever is the later). **(r.4.156)**

7.3.3 Subsequent meetings

Subsequent meetings of the committee must be called by the liquidator -

- (a) if so requested by a creditor member of the committee or his representative - the meeting must then be held within 21 days of the request being received by the liquidator - and
- (b) for a specified date, if the committee has previously resolved that a meeting be held on that date. **(r.4.156)**

7.4 Notice of venue

The liquidator must give 7 days' notice in writing of the venue of any meeting to every member of the committee (or his representative, if designated for that purpose), unless this requirement has been waived by or on behalf of any member. Such waiver may be signified either at or before the meeting. **(r.4.156)**

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7.5 Voting rights and resolutions

At any meeting of the committee each member (whether present himself or by his representative) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it. **(r.4.165, r.4.166)**

7.6 Records of meetings

Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting. The record must be signed by the chairman and kept with the records of the liquidation. **(r.4.165, r.4.166)**

7.7 Postal resolutions

7.7.1 It is possible for resolutions to be passed by post. The liquidator must send to every member (or his representative designated for the purpose) a copy of any proposed resolution on which a decision is sought, which must be set out in such a way that agreement with, or dissent from, each separate resolution may be indicated by the recipient on the copy so sent. **(r.4.167)**

7.7.2 However, any member of the committee may, within 7 business days from the date of the liquidator sending out a resolution, require the liquidator to summon a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of the members (creditor members, in the case of a compulsory liquidation) that they concur with it. **(r.4.167)**

7.7.3 A copy of every resolution so passed, and a note that the concurrence of the committee was obtained, must be kept with the records of the liquidation. **(r.4.167)**

8. CONFIDENTIALITY OF DOCUMENTS

8.1 Where the liquidator considers that any document forming part of the record of the liquidation -

- (a) should be treated as confidential, or

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- (b) is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors, he may decline to allow it to be inspected by a person (including a member of the committee) who would otherwise be entitled to inspect it. **(r.12.13)**

8.2 A person refused inspection may apply to the court for the refusal to be overruled. **(r.12.13)**

9. CHARGES FOR COPY DOCUMENTS

Where the liquidator is requested by a member of the committee to supply copies of any documents, he is entitled to make a charge as follows:

15 pence per A4 or A5 page

30 pence per A3 page **(r.12.15A r.13.11)**

10. EXPENSES OF COMMITTEE MEMBERS

Any reasonable travelling expenses directly incurred by committee members or their representatives either in attending meetings of the committee or otherwise on the committee's business will be paid by the liquidator out of the assets in the due order of priority. **(r.4.169)**

11. DEALINGS BY COMMITTEE MEMBERS AND OTHERS

11.1 The position of all committee members is fiduciary and they must be careful not to expose themselves to a conflict between their duty as members of the committee and their personal interest. Accordingly, no member of the committee, or his representative, or any person who is an associate of a committee member or his representative, or any person who has been a committee member at any time in the previous twelve months, can enter into a transaction whereby he -

- (a) receives out of the company's assets any payment for services given or goods supplied in connection with the administration of the liquidation, or
 - (b) obtains any profit from the administration of the liquidation, or
 - (c) acquires any asset forming part of the estate,
- unless -

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- (a) he first obtains the leave of the court to the transaction, or
- (b) he enters into the transaction as a matter of urgency or by way of performance of a contract in force before the date of the winding-up order or resolution to wind up and he obtains the leave of the court, having applied for such leave without undue delay, or
- (c) he enters into the transaction with the prior sanction of the committee where the committee is satisfied (after full disclosure of the circumstances) that he will be giving full value in the transaction. **(r.4.170)**

11.2 Where a resolution is proposed in the committee that sanction be given to such a transaction, no member of the committee, and no representative of a member, can vote on the resolution if he is to participate directly or indirectly in the transaction. **(r.4.170)**

11.3 The costs of obtaining the leave of the court are not payable out of the assets unless the court so orders. **(r.4.170)**

11.4 Circumstances may occasionally arise where a legal action or dealing involving a member of the committee or a person connected with him make it inappropriate for him to attend discussions on the subject in the committee. In such circumstances the member may be asked not to attend a meeting, or part of a meeting, at which the matter is discussed. **(r.4.170)**

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APPENDIX A

Liquidator's security

The liquidator is required to have in place security for the proper performance of his functions. The security takes the form of a bond which provides that -

- a surety undertakes to be jointly and severally liable with the liquidator for losses caused by the fraud or dishonesty of the liquidator whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the liquidator;
- the liability of the surety and the liquidator is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;
- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period.; and

The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the company's assets, but ignoring the value of any assets charged to a third party to the extent of any amount which would be payable to that party, or held on trust to the extent that any beneficial interest in those assets does not belong to the company.

The minimum specific penalty sum is £5,000 and the maximum £5,000,000. In estimating the value of the assets the liquidator must have regard to the value of the assets as disclosed in any statement of affairs, and any comments of creditors or the official receiver on that statement. If, at any time, the liquidator forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000). **(s.390(3), reg.12 & sch 2, IP Regs)**

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APPENDIX B

Shareholder and contributory members of the committee

Where there are shareholder or contributory members of the committee the following special rules apply. References are to the section headings of the guide. The term 'contributory' is used to refer to any contributory or shareholder member of the committee.

6.3 Resignation and termination of membership

A contributory member of the committee may be removed by a resolution of a meeting of contributories; 14 days' notice must be given of the intention to move the resolution. **(r.4.162)**

6.4 Vacancies

If there is a vacancy among the contributory members of the committee it need not be filled if the liquidator and a majority of the remaining contributory members so agree, provided that, in the case of a committee of contributory members only, the total number of members does not fall below three. The liquidator may appoint any contributory to fill the vacancy if the other contributory members agree and the contributory concerned consents to act.

Alternatively, a meeting of contributories may resolve that a contributory be appointed (with his consent) to fill the vacancy. In this case at least 14 days' notice must have been given of the resolution to make such an appointment.

Where a meeting of contributories makes such an appointment in a creditors' voluntary liquidation the creditor members of the committee may, if they think it fit, resolve that the person appointed ought not to be a member of the committee. If so -

- that person is not qualified to be a member of the committee unless the court directs otherwise, and
- on any application to the court for directions the court may appoint another contributory to fill the vacancy. **(r.4.164)**

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6.5 Composition of committee when creditors paid in full

If there are at least three contributory members, the committee continues in being until a meeting of contributories decides to abolish it.

If the number of contributory members is below three, the committee will cease to exist 28 days after the issue of the liquidator's certificate of payment in full; but at any time when the committee consists of less than three contributory members it is suspended and cannot act.

Contributories may be co-opted by the liquidator, or appointed by a contributories' meeting, to be members of the committee, up to a maximum of five members.

All the other rules relating to the functioning of the liquidation committee continue to apply (with necessary modifications) as if all the members of the committee were creditor members. **(r.4.171)**

7.5 Voting rights and resolutions

In a compulsory liquidation, where a committee consists of both creditor and contributory members, the votes of the contributory members do not count towards the number required for passing a resolution, but the way in which they vote on any resolution must be recorded.

However, where the only members of the committee are contributories, the committee is treated for voting purposes as if all its members were creditors. **(r.4.165)**

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GUIDANCE FOR MEMBERS OF COMMITTEES IN VOLUNTARY ARRANGEMENTS

1. LEGISLATION

- 1.1 The references in bold and in parenthesis in this guide are to the Insolvency Act 1986, the Insolvency Rules 1986 (as amended) and the Insolvency Practitioners Regulations 2005.

2. MORATORIUM COMMITTEE FOR ELIGIBLE COMPANIES

- 2.1 A company in financial difficulties may, if it meets certain eligibility criteria, obtain a moratorium on creditor action while the directors put forward a proposal for a voluntary arrangement. The person proposed as supervisor of the arrangement is called the nominee, and he has a responsibility to monitor the company's affairs during the moratorium.
- 2.2 Initially the maximum period for a moratorium is 28 days, during which time meetings of creditors and shareholders must be held to consider the proposal. These meetings (or the creditors' meeting if the two meetings cannot agree) may resolve to extend the moratorium for a maximum of a further two months. Where this happens the meetings may also establish a committee. Apart from the duty to review the nominee's security mentioned below, there are no statutory rules about the functions of the committee, which will depend entirely on what functions are conferred on it by the meeting at which it was set up. The committee will cease to exist when the moratorium comes to an end. **(Sch A1, para 35)**

3. COMMITTEES IN APPROVED ARRANGEMENTS

- 3.1 A committee of creditors may be established under an agreed proposal for a company or individual voluntary arrangement. However, the insolvency legislation makes no provision for the establishment of such a committee, nor (save for the duty to review the supervisor's security mentioned below) for its functions. The rules pertaining to its establishment, membership, functions, powers and procedures will therefore derive wholly from the terms of the arrangement itself.

4. REVIEW OF NOMINEE'S OR SUPERVISOR'S SECURITY

- 4.1 The one statutory obligation laid on a committee in a voluntary arrangement is the duty to review, from time to time, the adequacy of the nominee's or supervisor's security. **(r.12.8)**

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4.2 The nominee or supervisor is required to have in place security for the proper performance of his functions. The security takes the form of a bond which provides that -

- a surety undertakes to be jointly and severally liable with the nominee or supervisor for losses caused by the fraud or dishonesty of the nominee or supervisor whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the nominee or supervisor;
- the liability of the surety and the nominee or supervisor is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;
- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period. **(s.390(3) reg.12 & sch.2, IP Regs)**

4.3 The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the assets subject to the terms of the arrangement (whether or not they are in the supervisor's possession) including the aggregate of any payments to be made by the company or individual or any third party. The minimum specific penalty sum is £5,000 and the maximum £5,000,000. In estimating the value of the assets the nominee or supervisor must have regard to the value of the assets as disclosed in any statement of affairs, and any comments of creditors or the official receiver on that statement. If, at any time, the nominee or supervisor forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000).

4.4 If the terms of the arrangement give the committee power to approve the supervisor's remuneration, reference should be made to the explanatory note, 'Voluntary Arrangements - a Creditors' Guide to Insolvency Practitioners' Fees', which is appended to Statement of Insolvency Practice 9 (Remuneration and Disbursements) and should be provided by the supervisor.

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2.16 STATEMENT OF INSOLVENCY PRACTICE 16 (E&W) PRE-PACKAGED SALES IN ADMINISTRATIONS

INTRODUCTION

[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]

STATEMENT OF INSOLVENCY PRACTICE

1. In this Statement of Insolvency Practice the term 'pre-packaged sale' (or 'pre-pack') refers to an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an administrator, and the administrator effects the sale immediately on, or shortly after, his appointment.
2. Practitioners who are party to a pre-packaged sale, whether as adviser to the company before the appointment, as the appointed administrator, or both, should bear in mind the duties which they, and those who act on their advice, owe to parties who might be affected by the arrangement, and should have regard to the associated risks. They should keep a detailed record of the reasoning behind the decision to undertake a pre-packaged sale, and should be able to explain and justify why such a course of action was considered appropriate.

THE LEGAL AUTHORITY FOR PRE-PACKAGED SALES

3. In a series of cases¹ the courts have held that, where the circumstances of the case warrant it, an administrator has the power to sell assets without the prior approval of the creditors or the permission of the court. However, it should be borne in mind that reliance on such authority does not protect administrators from potential challenges to their conduct under paragraph 74, or claims for misfeasance under paragraph 75, of Schedule B1 to the Insolvency Act 1986. In order to avoid the risk of such exposure, care should be taken to ensure that such power is only exercised in genuine furtherance of the purpose of administration.

¹ T&D Industries Plc [2001] 1 WLR 646; Transbus International Ltd [2004] EWHC 932 (Ch), [2004] All ER 911; DKLL Solicitors [2007] EWHC 2067 (Ch)

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PREPARATORY WORK

4. The preparation for a pre-packaged sale highlights a number of issues which arise in other contexts, but which are thrown into sharper focus in the particular circumstances of a pre-pack.
5. Practitioners should be clear about the nature and extent of their role and their relationship with the directors in the pre-appointment period. Where they are instructed to advise the company, they should make it clear that their role is to advise the company and not to advise the directors on their personal position. The directors should be encouraged to take independent advice. This is particularly important if there is a possibility of the directors acquiring an interest in the assets in the pre-packaged sale.
6. Practitioners should bear in mind the duties and obligations which are owed to creditors in the pre-appointment period. They should be mindful of the potential liability which may attach to any person who is party to a decision that causes a company to incur credit and who knows that there is no good reason to believe it will be repaid. Such liability is not restricted to the directors.
7. When considering the manner of disposal of the business or assets, administrators should bear in mind the requirements of paragraphs 3(2) and 3(4) of Schedule B1 to the Insolvency Act 1986. These provide that:
 - the administrator must perform his functions in the interests of the company's creditors as a whole, and
 - where the objective is to realise property in order to make a distribution to secured or preferential creditors, the administrator has a duty to avoid unnecessarily harming the interests of the creditors as a whole.

Administrators engaged in a pre-packaged sale should therefore be able to demonstrate that they have considered the above.

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DISCLOSURE

8. It is in the nature of a pre-packaged sale in an administration that unsecured creditors are not given the opportunity to consider the sale of the business or assets before it takes place. It is important, therefore, that they are provided with a detailed explanation and justification of why a pre-packaged sale was undertaken, so that they can be satisfied that the administrator has acted with due regard for their interests.
9. The following information should be disclosed to creditors in all cases where there is a pre-packaged sale, as far as the administrator is aware after making appropriate enquiries:
 - The source of the administrator's initial introduction
 - The extent of the administrator's involvement prior to appointment
 - Any marketing activities conducted by the company and/or the administrator
 - Any valuations obtained of the business or the underlying assets
 - The alternative courses of action that were considered by the administrator, with an explanation of possible financial outcomes
 - Why it was not appropriate to trade the business, and offer it for sale as a going concern, during the administration
 - Details of requests made to potential funders to fund working capital requirements
 - Whether efforts were made to consult with major creditors
 - The date of the transaction
 - Details of the assets involved and the nature of the transaction
 - The consideration for the transaction, terms of payment, and any condition of the contract that could materially affect the consideration
 - If the sale is part of a wider transaction, a description of the other aspects of the transaction
 - The identity of the purchaser
 - Any connection between the purchaser and the directors, shareholders or secured creditors of the company

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- The names of any directors, or former directors, of the company who are involved in the management or ownership of the purchaser, or of any other entity into which any of the assets are transferred
 - Whether any directors had given guarantees for amounts due from the company to a prior financier, and whether that financier is financing the new business
 - Any options, buy-back arrangements or similar conditions attached to the contract of sale
10. This information should be provided in all cases unless there are exceptional circumstances, and if this is the case, the reason why the information is not provided should be stated. If the sale is to a connected party it is unlikely that considerations of commercial confidentiality would outweigh the need for creditors to be provided with this information.
11. Unless it is impracticable to do so, this information should be provided with the first notification to creditors. In any case where a pre-packaged sale has been undertaken, the administrator should hold the initial creditors' meeting as soon as possible after his appointment. Where no initial creditors' meeting is to be held and it is impracticable to provide the information in the first notification to creditors it should be provided in the statement of proposals of the administrator which should be sent as soon as practicable after his appointment.
12. The Insolvency Act 1986 permits an administrator not to disclose information in certain limited circumstances. This Statement of Insolvency Practice will not restrict the effect of those statutory provisions.

Effective from 1 January 2009

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STATEMENT OF INSOLVENCY PRACTICE 17 (E&W) AN ADMINISTRATIVE RECEIVER'S RESPONSIBILITY FOR THE COMPANY'S RECORDS

INTRODUCTION

This document was issued as SIP 1 (Version 2 England and Wales) in August 1997. It was re-numbered as SIP 17 (without updating of the text) with effect from 2 May 2011.

1. *[Not reproduced. Superseded by SIP 1 with effect from 02 May 2011.]*
2. This statement has been prepared to summarise what is considered to be the best practice in circumstances where administrative receivers are approached by liquidators or directors seeking access to or custody of a company's books and records. The best practice is considered below both with regard to company records maintained prior to the appointment of an administrative receiver and with regard to those records prepared after the administrative receiver's appointment.

COMPANY RECORDS MAINTAINED PRIOR TO APPOINTMENT OF AN ADMINISTRATIVE RECEIVER

3. The records which a company maintains prior to the appointment of an administrative receiver may be classified under two main headings.
4. The first comprises the non-accounting records which the directors are required to maintain by the Companies Act 1985 (as amended) (the statutory records). These consist of various registers (e.g. of members) and minute books (e.g. of directors' meetings).
5. The second category of records maintained by a company prior to the appointment of an administrative receiver includes accounting records required by statute and all other non-statutory records of the company (statutory accounting and other non-statutory records). Taking each in turn:

Statutory records

6. The company's statutory records should be kept at its registered office (see paragraph 11 below) having regard to the provisions of the Companies Act 1985, sections 288, 353, 383 and 407 (registers of directors, members, minute books and charges).

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7. Directors' powers to cause entries to be made in these statutory records do not cease on the appointment of an administrative receiver. Indeed, the directors' statutory duties to maintain them are unaffected by his appointment.
8. An administrative receiver would have the power to inspect the statutory records as part of his right to take possession of, collect and get in the property of the company (cf paragraph 1 of Schedule 1 to the Insolvency Act 1986). He is not, however, placed under an obligation to maintain those records after his appointment and should not normally do so.
9. The abolition by section 130 of the Companies Act 1989 of the requirement for a company formed under the Companies Acts to have a common seal means that in many cases the company in receivership will have no common seal. Provided that an appropriately worded attestation clause is used, deeds can be executed without the use of the common seal. Given that the common seal may still be used for the execution of deeds by the company, however, it is considered best practice for the administrative receiver to take possession of it.
10. On appointment, an administrative receiver has two possible options:
 - i. To leave the statutory records in the custody of the directors so that they are in a position to continue to carry out their statutory duties to maintain them.
 - ii. To take possession of the statutory records for safe keeping. In such circumstances, the administrative receiver should remind the directors of their statutory responsibilities to maintain the records and allow them free access for this purpose. It would also be advisable for the administrative receiver to prepare a detailed receipt for all the records taken into his possession. This should be signed by a director or other responsible official of the company in receivership.
11. The administrative receiver may change the company's registered office to that of his own firm, in which case, the statutory records should also be transferred to the new registered office and the procedure outlined in paragraph 10 (ii) above followed.

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12. Any statutory records (and if applicable any seals) taken into an administrative receiver's possession (see paragraphs 8 and 9) should be returned to the directors (or liquidator) on the receiver's ceasing to act.

Statutory accounting and non-statutory records

13. All such records as are necessary for the purposes of the receivership and for the discharge of the administrative receiver's statutory duties should be taken into the administrative receiver's possession and/or control and any which he will definitely not require may be left with the directors. If the administrative receiver encounters difficulty in obtaining possession of the records, the provisions of sections 234-236 of the Insolvency Act 1986 may be of assistance. These are the provisions allowing an administrative receiver to apply to the court for an order for property in the control of any party to be handed to him, placing officers and others under a statutory obligation to co-operate with the administrative receiver and allowing him to apply to the court for an order summoning officers of the company in receivership and others before it for questioning.
14. An administrative receiver is under no statutory duty to bring these records up to date to the date of his appointment although for practical purposes (such as to give prospective purchasers some indication of the financial state of the business) it may be necessary for him to do so.
15. If an administrative receiver does not take possession of all the records it would be advisable for him to make a list of all those not taken into his custody with a note of their whereabouts.
16. When making sales of certain assets (e.g. book debts or plant and machinery) it may be necessary for the administrative receiver to hand over to the purchaser company records (e.g. debtors' ledgers or plant registers) relating to those assets. In such circumstances, the administrative receiver should ensure that the relevant asset sale agreement specifies the need for these records to be made available to the company on request. Although this will invariably be a matter of negotiation between the administrative receiver and his purchaser, it would be preferable for him to retain the originals of such records. He may make copies available to the purchaser or allow the purchaser to retain them for a short time for the purpose of making copies. Once again, appropriate provision should be made in the asset sale agreement as to the particular circumstances and as to whom is to bear the costs.

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17. If an administrative receiver transfers the business of the company to a third party as a going concern, section 49 and paragraph 6 of Schedule 11 to the Value Added Tax Act 1994 place the obligation of preserving any records relating to the business upon the transferee. This applies unless the Commissioners of Customs & Excise, at the request of the transferor, otherwise direct.
18. This is a wide-ranging obligation. It applies regardless of whether the VAT registration is itself transferred or whether the transfer is treated as a supply of neither goods nor services.
19. The categories of records covered by Schedule 11 paragraph 6 are wide-ranging. They include orders and delivery notes, purchase and sales records, annual accounts, VAT accounts and credit and debit notes.

Entitlement of liquidator to records

20. *The case of Engel v South Metropolitan Brewing & Bottling Company* [[1892] 1 Ch 442] is authority to the effect that a liquidator becomes entitled to possession of all books and records relating to the “management and business” of the company which are not necessary to support the title of the chargeholder as against a court-appointed receiver. The court held that a court-appointed receiver can be compelled to deliver such documents to the liquidator against the liquidator’s undertaking to produce them to the receiver on request. While there is no equivalent authority with respect to an administrative receiver, general practice supports the proposition that delivery up of records in return for an undertaking and subsequent production on request should occur (Lightman & Moss, *Law of Receivers of Companies*, 2nd Edition, paragraph 11-17).
21. An administrative receiver has no statutory authority to destroy pre-appointment records and in due course these must be returned to the company’s directors or, if the company is in liquidation, to its liquidator.

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POST APPOINTMENT RECORDS

Statutory accounting records

(i) Relating to the period prior to the appointment of a liquidator

22. The administrative receiver should establish appropriate accounting records as from the date of his appointment. The case of *Smiths Limited v Middleton* ([1979] 3 All ER 842) shows that he has a duty to render full and proper records to the company in order that the company (and its directors) may comply with the duties imposed by sections 221, 226, 227 and 241 Companies Act 1985 (preparation and approval of accounts).
23. An administrative receiver is also under obligation to make returns of his receipts and payments pursuant to Rule 3.32 of the Insolvency Rules 1986. The statutory requirements and the best practice to be followed in the preparation of insolvency office holders' receipts and payments accounts are summarised in the statement of insolvency practice entitled "Preparation of Insolvency Office Holders' Receipts and Payments Accounts", to which members are referred for further information.
24. When a liquidator is appointed, the *Engel* case would seem to apply so that the liquidator becomes entitled to possession of records (see paragraph 20 above).
25. Administrative receivers have no statutory authority to destroy such records and on ceasing to act must hand these over to the company's directors or, if it is in liquidation, to the liquidator.

(ii) Relating to the period after the appointment of a liquidator

26. As from the commencement of liquidation, the administrative receiver loses his status as agent of the company (section 44(1)(a) Insolvency Act 1986). The administrative receiver's obligation to make returns of receipts and payments and to maintain accounting records (paragraph 23 above) remains in force.
27. Section 41 Insolvency Act 1986 allows any member, creditor, the Registrar of Companies or the liquidator to enforce these duties.

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Other records

28. The remaining records, books and papers relating to a receivership may be subdivided between “company records”, “receiver’s personal records” and “chargeholder’s records”.

(i) Company records

Company records will include as a minimum all those records which exist as a result of carrying on the company’s business and dealing with the assets. These records fall in the same category as the non-statutory records mentioned in paragraphs 13 to 21 above. They should be treated in the same way, being returned to the company’s directors or if it is in liquidation, to its liquidator when the receiver ceases to act. In the case of *Gomba Holdings UK Limited v Minorities Finance Limited*, [(1989) 5BCC 27] consideration was given to precisely which records fall within the definition of “company records”. It was held that an administrative receiver acts in several capacities during the course of a receivership. In addition to being agent of the company, he owes fiduciary obligations to his appointor and to the company. It is only documents generated or received pursuant to his duty to manage the company’s business or dispose of its assets which belong to the company.

(ii) Chargeholder’s records

As explained above, in the *Gomba* case quoted in paragraph 28(i) above it was held that documents containing advice and information to the appointor and “notes, calculations and memoranda” prepared to enable the administrative receiver to discharge his professional duty to his appointor or to the company belong either to the appointor (if he wishes to claim them) or to the administrative receiver. They do not belong to the company.

(iii) Administrative receiver’s personal records

An administrative receiver’s personal records are those prepared by him for the purpose of better enabling him to discharge his professional duties. They will include, for instance, his statutory record which he is required to maintain by Regulation 17 of the Insolvency Practitioners’ Regulations 1990 (“the Regulations”). The record must take the form set out in Schedule 3 to the Regulations.

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BEST PRACTICE

29. It is considered best practice that all records mentioned above, with the exception of a receiver's personal records (paragraph 28 (iii) above) and the appointor's records (paragraph 28 (ii) above) should be made available on request to the company acting by its directors or if it is in liquidation, its liquidator unless the administrative receiver is of the opinion that disclosure at that time would be contrary to the interests of the appointor, for instance because of current negotiations for the sale of assets (*Gomba Holdings UK Limited v Homan*, [1986] 3 All ER 94). Subject to the interests of the appointor, it appears from this case that directors are entitled to such information as they need to enable them to exercise their residual powers and to perform their residual statutory duties considered above.
30. Disclosure of the administrative receiver's personal records is a matter for his discretion, although in any legal action brought against him it could be that if such records have not been disclosed they may be held to be discoverable.
31. Where there is no liquidator and the directors cannot be traced (or the administrative receiver has reason to suppose that they are not reliable) he will need to consider whether he feels it necessary to present a petition for the company to be wound up using his powers under Schedule 1 to the Insolvency Act 1986. Whether or not a liquidator is appointed, the administrative receiver has no statutory power to destroy a company's records even after the expiry of the statutory period for which the company would need to retain them (usually six years). Thus, if he does so without the authority of the company or the liquidator, he does so at his peril. Note also that the record an administrative receiver is required to keep by the Regulations must be preserved for a period of ten years from the later of the date upon which the administrative receiver ceases to hold office or any security or caution maintained in respect of the company ceases to have effect (Regulation 20).

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3.1 SOCIETY OF PRACTITIONERS OF INSOLVENCY*

TECHNICAL RELEASE 5

NON-PREFERENTIAL CLAIMS BY EMPLOYEES DISMISSED WITHOUT PROPER NOTICE BY INSOLVENT EMPLOYERS

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INTRODUCTION

1. This Technical Release has been prepared for the use of insolvency practitioners (IPs) in dealing with the treatment of employees' non-preferential claims in insolvencies in England and Wales. The purpose of this Release is to harmonise members' practice and try to ensure that it is acceptable to the Redundancy Payments Service (RPS) of the Department of Trade and Industry in processing claims under the Employment Rights Act 1996 (ERA). It has been approved in draft form by the RPS but no liability attaches to the RPS in respect of such approval nor is the RPS in any way bound by any statement contained in this Technical Release.

PAYMENT IN LIEU OF NOTICE - BASIS OF CALCULATION

2. Payments in lieu of notice are a liability of the employer and depend on the terms of the relevant contract of employment, subject to the minimum periods of notice laid down by s86 ERA. The amount of the claim, calculated as below, is payable by the RPS out of the National Insurance Fund in the case of an insolvent employer under s184(1)(b) ERA, only insofar as it relates to the minimum statutory period of notice (but not any additional contractual period) up to the current statutory weekly maximum and subject to the definition of 'a week's pay'. Payment by the RPS does not prejudice the right of an employee to seek recovery of any other debts, or debts in excess of the statutory limits, from the insolvent employer in the usual way. Nor does payment by the RPS imply that the IP is bound to admit a claim, whether by the employee or by the RPS in subrogation, which the IP does not agree is legally valid.
3. The basis on which the RPS' liability under s184(1)(b) ERA has been interpreted by the courts is that the amount payable should be computed on a similar basis to damages for wrongful dismissal at common law. The essential principle is that the employee's income (as limited by the definition of a week's pay in s221 ERA (formerly Sch 14 Employment Protection (Consolidation) Act 1978 (EPCA)) should be restored during the notice period to that which would have been received if proper notice had been given, but that the employee should take reasonable steps to mitigate the damage suffered by the employer's failure to give proper notice.

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4. The guidance below gives, in the light of existing case law, the approach approved by the RPS's and SPI's legal advisers. The case law is, however, not definitive in all respects and, if on particular points an IP proposes an alternative approach which does not conflict with established precedent, and provides a sensible and equitable assessment, it is likely to be accepted by the RPS.
5. The starting point for the calculation is a (gross) week's pay as defined in s221 ERA. The case of *Secretary of State v Haynes* [1980] ICR 371 is authority that only the loss of remuneration payable under ss86-91 and 220-9 ERA (formerly Sch 3 and 14 EPCA) is to be taken into account by the RPS in calculating the putative 'damages'. Thus fringe benefits, even where they are a contractual entitlement, are disregarded by the RPS except where, like luncheon vouchers, they are sufficiently close to pay to form part of a week's pay. Any benefit in kind (e.g. free accommodation) is also disregarded (*S & U Stores Limited v Wilkes* [1974] ITR 425). The Haynes case is also regarded by the RPS as authority for excluding payments such as holiday credits, and by analogy employers' pension contributions, which do not form part of the remuneration payable to the employee in respect of the week or weeks in question.
6. In effect, it was held by the Employment Appeal Tribunal (EAT) in the Haynes case that the RPS's liability under ERA s184(1)(b) is somewhat narrower than the employer's common law liability, in that the RPS is concerned only with 'remuneration'. Thus, in that case, the purchase of holiday stamps was not regarded as pay in respect of the week in which they would have been purchased, partly because the employee would have lost his rights entirely if he had not taken the holiday by a certain date. In the Wilkes case, it was held that an additional weekly sum of expenses which was a genuine pre-estimate of anticipated expenditure by the employee was not 'remuneration', although any profit element would have been. It is accepted that use of a company car could not be classified as 'remuneration', but it does not necessarily follow that the employer's pension contributions can similarly be excluded and it is submitted that the Haynes case is not authority for excluding them. Thus, there are certain items, such as the value of use of a company car, which the employee could possibly claim against the employer (non-preferential) but not against the RPS.

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IRRELEVANT FACTORS

7. The following factors should be disregarded in assessing the employee's claim:

- (a) Redundancy Pay
The decision in *Basnett v J & A Jackson Limited* [1976] ICR 63 provides that redundancy pay is not a mitigating factor in assessing the amount of a claim for damages or pay in lieu of notice, on the basis that the redundancy entitlements are not founded on or connected with a breach of contract. This view has been adopted by the RPS and is thought to be the correct approach despite an earlier contrary decision in *Stocks v Magna Merchants Limited* [1973] 2 All ER 329 and the acceptance of the decision in that case in *Aspden v Webbs Poultry and Meat Group (Holdings) Limited* [1996] IRLR 521. In *Wilson v National Coal Board*, New Law Journal 4/12/80 p1146, a personal injuries case, the House of Lords confirmed the general principle here expressed, although they decided in that particular case, on its special facts, that redundancy pay should be deducted. (Gross damages were assessed on the basis that the employee would have continued in employment for the rest of his working life but for the injury, so it would be unreasonable not to make the deduction in such a case).
- (b) Discretionary Social Security Benefits
See para 11(c) below regarding non-discretionary benefits.
- (c) National Insurance Contributions (NIC) Despite the first instance decision in *Cooper v Firth Brown Limited* [1963] 2 All ER 31 (a personal injuries case), it is considered that NIC of the employee should not be deducted from any payment of salary in lieu of notice. There are two reasons for this. First, the individual may lose the benefits which he would otherwise have obtained from these NIC and would thus be penalised twice if he lost the amount of the NIC themselves as well as the benefits. Secondly, if the individual is employed for at least one day during the week of his notice period, his NIC for that week will have already been paid.

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- (d) Retirement Pension
It is clear from the Court of Appeal decision in *Hopkins v Norcross Plc* [1994] ICR 11 that a pension payable under an employer's scheme should be treated as purchased by the employee's past work and is not deductible. As regards state pensions, the Pensioners' Earnings Rule was abolished in the 1989 Finance Act. It is no longer appropriate to deduct retirement pension monies from payment in lieu of notice claims. However, see para 9(b) below regarding possible additional claims for loss of pension benefit.
- (e) Protective Awards (possibly) Previous practice was to deduct from pay in lieu of notice the amount of any protective award insofar as it related to the same period. Indeed s190(3) Trade Union and Labour Relations (Consolidation) Act 1992 (TULCRA) specifically provided for mutual deduction between the two amounts and the practice was upheld by the Court of Appeal in *Potter v Secretary of State for Employment* [1997] IRLR 21 (subject to appeal to the House of Lords). However, it was held in *EC Commission v UK* [1994] IRLR 412 that this power of deduction was not compatible with EC law in that its effect was that UK law provided no sufficient deterrent to encourage employers to comply with the consultation requirements of s188 TULCRA and s190(3) was accordingly repealed as from 30 August 1993. Therefore, it is now the RPS's practice not to reduce pay in lieu of notice by reference to a protective award or vice versa, where the first dismissal covered by the award was after 28 November 1993.

The textbooks seem to have assumed that the right of deduction has been effectively removed but it is submitted that this is highly doubtful. A protective award is an award ordering the employer to pay 'remuneration' for the protected period, that is, a period commencing on the date when the first relevant dismissal takes effect (or of the award, if earlier). Pay in lieu of notice relates to remuneration over, in many cases, precisely the same period. The repeal, without more, of an express provision for mutual deduction does not take away a right of deduction which may well be implicit by reference to s190 as it now remains. There is also an argument that the rule against double proof would prevent a liquidator from admitting proofs under both heads, though this is likely to apply only if, notwithstanding the view of the RPS, the employer itself remains entitled to apply the deduction.

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In view of the risk of duplicated claims, IPs should be more inclined than in the past to defend protective award cases and may refer to the RPS in cases of doubt.

(f) Other Benefits

Any benefits payable to an employee which arise from a private contract, as opposed to the State scheme, should not be set off in mitigation. Examples of these might include, as well as an occupational pension (see para 7(d) above), unemployment pay from a welfare scheme administered by a trade union.

ADDITIONAL CLAIMS

8. The following factors may be required to be taken into account so as, where appropriate, to increase a person's claim:

(a) Fringe Benefits

Fringe benefits, such as a company car and car fuel, medical insurance subscriptions or rent-free accommodation, are likely to give rise to an additional claim where these are a contractual entitlement. A claim from an employee may well arise even though the RPS cannot consider fringe benefits under the ERA.

The value of a company car was considered in *Shove v Downs Surgical Plc* [1984] ICR 532, where the loss of use of a 4,200 cc Daimler over two and a half years, including petrol for 5,000 miles pa private motoring, was assessed at £10,000. On the other hand, in *Clark v BET plc*, [1997] IRLR 348, Timothy Walker J assessed entitlement to a chauffeur-driven car for business and private use including all running expenses, which was in fact used privately only for visits to the opera, theatre and dinner, and in essence placed at nil for tax purposes, apart from travel to and from work, at £2,000 pa.

The Inland Revenue for the 1994/95 tax year revised the basis on which the taxable benefit of a car is taxed. These rules were introduced to reflect more accurately the true value of a company car and the taxable benefit charge also provides a useful indicator of the value of the benefit. The Automobile Association also produces annual tables giving up-to-date information on the costs of running cars of various sizes and these are a more accurate, if more favourable to the employee, method of assessing the value of a company car to an employee.

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(b) Lost Pension Scheme Benefits

The employer's likely contributions to a pension scheme in respect of the employee and/or any additional benefits expected to accrue to the employee during the contractual period of notice are likely to be claimed. Of course, the contributions will not necessarily fairly reflect the benefit and in many cases an actuarial calculation will be required. It is normally only in cases of fixed-term contracts where the pension scheme is determinable within the contract period that pension entitlements may to some extent be excluded from the calculations: see *Beach v Reid Corrugated Cases Limited* [1956] 1 WLR 807.

MITIGATION

9. The principle of mitigation applies to payments in lieu of notice since the claim of an employee dismissed with no, or short, notice is in essence one for damages for breach of contract and an insolvent employer must apply all possible reductions. Mitigation is particularly difficult to apply since it may be notional as well as actual (what would the employee have earned if he had made the effort to find a job?). To facilitate accurate calculation of mitigation, the amount of the payment cannot normally be calculated until after the notice period has expired.
10. Mitigation does not apply where the contract itself provides for pay in lieu as an alternative to notice since there is then no breach of contract and the pay in lieu is a contractual entitlement: see *Abrahams v Performing Rights Society* [1995] IRLR 486. This is most likely to arise in the contracts of senior executives.
11. The different elements that may come into the calculation of mitigation are discussed separately as follows:
 - (a) Remuneration
Any income earned or received by the employee during the notice period, which would not have been earned or received if the contract of employment had not been terminated, should be deducted from the payment in lieu of notice. The authority for this is *Secretary of State for Employment v Wilson* [1978] ICR 200.
 - (b) Notional Earnings
A deduction for notional earnings because of the employee's failure to mitigate his loss may be made in those relatively rare circumstances

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where the notice period is substantial and/or it is sufficiently clear that the employee had the opportunity to obtain other income in the notice period and unreasonably failed to take that opportunity. It is reasonable, where notice of less than, say, three months is involved, not to pursue the question of notional, as opposed to actual, mitigation in respect of alternative earnings very far. The objective must be to produce a figure which is not over-generous but which genuinely compensates the employee for his loss over the notice period and therefore should not lead to litigation. The EAT confirmed in the case of *Secretary of State v Jobling* [1980] ICR 380 that the duty to mitigate does not drive an employee to unreasonable lengths, even though in that particular case they did decide that deduction for notional earnings should be made, because Mr Jobling deliberately chose not to draw a salary that was readily available.

- (c) **Non-discretionary Benefits**
Any social security benefits or allowances which are not discretionary received by the employee during the period of notice, such as sickness pay, invalidity pay and maternity allowance should be deducted. The House of Lords in the case of *Westwood v Secretary of State for Employment* [1985] ICR 209 held, following *Parsons v BNM Laboratories Limited* [1964] 1 QB 95, that unemployment benefit (now replaced by Jobseeker's Allowance (JSA)) should mitigate the claim. Further authority in support of this is *Lincoln v Hayman* [1982] 2 All ER 819, where the Court of Appeal held that supplementary benefit as well as unemployment benefit should be deducted from special damages in a personal injury case. The question of mitigation of notional JSA in cases where the employee has failed to claim JSA does not arise (except in rare cases where it is income based) because no JSA is paid where pay in lieu is due, whether or not it has been received, pursuant to The Jobseeker's Allowance Regulations 1996 (SI 1996 No 207) reg 105(6).
- (d) **Unfair Dismissal**
Any compensation for unfair dismissal awarded by an industrial tribunal should be deducted only to the extent that it represents loss of earnings in the notice period. It was held in *Berry v Aynsley Trust Limited* [1976] BLT No. 394 New Law Journal 27/10/77 p1052 and more recently in *Aspden v Webbs Poultry & Meat Group (Holdings)*

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Limited [1996] IRLR 521 that a deduction should be made in respect of a tribunal award of compensation for unfair dismissal. However, it is submitted that the basic award should not be taken into account and any compensatory award should only be taken into account to the extent that it reflects loss of earnings in the notice period, if it can be apportioned in this way. The Court of Appeal held in *O'Laioire v Jackel International Limited* (No 2) [1991] ICR 718 that a Tribunal's maximum award (then £8,000) was not deductible because it could not be allocated specifically to the notice period so the employer could not establish double recovery for the same loss. It may be worth noting, however, that the basic award should be taken into account in the rare case where it is payable on the particular dismissal but would not have been if full notice had been given at the time of the short notice, e.g. if the employee would have reached 65 in the meantime: see *Shove v Downs Surgical Plc* (para 89(a) above).

- (e) Protective Awards (possibly)
See para 7(e) above.
- (f) Tax
 - (i) Amounts below £30,000. The full amount of tax which would have been payable by the employee if the amount in question had been paid as salary may be deducted from the amount due by the company and retained by the employer. In certain cases, it may seem that the cost of calculating the deduction would not be justified in view of the small amount of assets available in the liquidation. However, the RPS insist on a basic rate notional deduction being made on the notice payment which they pay under the ERA.
 - (ii) Amounts exceeding £30,000. The correct principle is, it is submitted, to start by estimating the net amount which would have been received by the employee after the deduction of tax from his gross income (i.e. his actual loss) and then to take into account his liability to tax on the damages, so that the net amount payable to him should, as far as possible, equal the net loss suffered.

The tax position is considered more fully in the Appendix.

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APPENDIX

Tax on Pay in Lieu of Notice

1. The following paragraphs set out, at the time of issue, what is understood to be the tax position on payments in lieu of notice. IPs should note that this is an area where there has been considerable professional comment and discussion. They are therefore advised to obtain their own detailed guidance.
2. In *British Transport Commission v Gourley* [1956] AC 185, the House of Lords decided that damages awarded in a personal injuries action for loss of earnings should be reduced by such amount as the plaintiff would have paid in tax had he in fact received those damages in the form of taxable income. If this reduction were not made, then clearly the plaintiff would be overcompensated for his loss, to the extent that the damages themselves were not subject to tax. This principle has been extended to damages awarded for wrongful dismissal by the EAT case of *Secretary of State for Employment v Cooper and Vinning* [1987] ICR 766 and must, it is submitted, also apply to payments in lieu of notice as these are similarly compensatory in nature. However, it should be noted that pay in lieu of notice is itself taxable where the employer is entitled to make such a payment under the contract instead of giving the full period of notice (see para 11 above).
3. The Inland Revenue has recommended that notional tax be assessed at the basic rate rather than using the individual's last known code number, since most employees should recover the tax allowances lost during the notice period, either as a direct refund or in subsequent employment.
4. Sometimes an employee (usually one who has remained unemployed) feels that he has still, at the end of the tax year(s) to which his notice payment relates, had too much notional tax deducted, because he has not used up his personal allowance from his total taxable income for the whole tax year(s). In these circumstances an employee may apply for a refund direct to the RPS and should request form RP13.
5. Where a notice period includes the date of a change in Basic Rate Income Tax, the balance remaining after any mitigation should be divided by the number of days (including Saturdays, Sundays and/or any other day on which the employee did not normally work) and then multiplied by the number of days before and after the date of change to give two sums on

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which the appropriate percentages can be calculated. It is also acceptable for the two tax calculations to be rounded down to the nearest pound.

6. In the case of payments in lieu of notice, the position is complicated by the fact that payments will be taxable to the extent that they exceed £30,000 (unless they are wholly taxable because there is a contractual entitlement to make a cash payment in lieu of notice (see App para 2 above)). The Income and Corporation Taxes Act 1988 ss 148 and 188 provide that any payment made in consideration of, or in connection with, the termination of the holding of an office or employment is (except as provided in Section 188) taxable on such portion (if any) as exceeds £30,000. There have been a number of interpretations as to how the Gourley principle should be applied in the light of the predecessors of Sections 148 and 188 but the correct method of calculating damages exceeding £30,000 would appear to be that adopted in *Shove v Downs Surgical Plc* (see para 9(a) above). This approach involves taking into account the tax to be paid on the payment so that the net amount received by an employee reflects the actual (net) loss suffered by him.

For Example:

Entitlement to one year's notice or damages in lieu. Annual Salary £60,000 plus benefits. 1997/98 tax bands.

	£	£
Gross salary	60,000	60,000
Benefits in kind (life assurance, medical cover, car etc) (a) (say)	<u>10,000</u>	<u>10,000</u>
	70,000	70,000
Personal allowance 4,045	(4,045)	
Taxable amount	65,955	
20% on £4,100	820	
23% on £22,000	5,060	
40% on <u>£39,855</u>	<u>15,942</u>	
	65,955	(21,822)
Tax Relief for married couples (allowance) (say)		275
Net loss - 12 months' salary after tax (70,000-21,547)		48,453

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Less net mitigation (b) say	(5,000)	<u>(5,000)</u>
Total net damages (c)		<u>43,453</u>
To receive a net receipt of £43,453:		
Total net damage	43,453	
Tax free slice	<u>(30,000)</u>	30,000
	13,453	
Gross up £13,453 x 100/77(d)		<u>17,471</u>
Amount to be awarded		<u>47,471</u>

Notes to example

- (a) The value of any benefits in kind provided (e.g the provision of cars and health cover) will need to be ascertained. Strictly speaking the value of benefits in kind should be added to the gross salary to determine total remuneration.
- (b) It will be noted that mitigation has been taken into account after the tax calculation. This was the method adopted in the Shove case. The RPS take the view that notional tax should be assessed after mitigation in order to ensure that an individual does not suffer financial loss from the failure to be given notice, even though an assessment before mitigation might in particular cases give more precise results. However, it is submitted that the employee is not adversely affected provided that the mitigation figure is itself a net one. Nevertheless, when calculating an ERA s184(1)(b) payment, IPs need to understand the RPS's method of making a notional deduction for tax after all other mitigating items which have been dealt with gross. It remains the responsibility of the IP to agree such claims submitted by the RPS.
- (c) No amount has been deducted from the net damages for accelerated receipt.
- (d) Grossing up is at the standard rate because the total income (including the excess over £30,000) is taken to be less than (£26,100 + £4045 =) £30,145 and in any event the employer is not concerned with higher rate tax where a form P45 has already been issued.

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7. The fact that the payment will not in any event be paid in full because the employer is insolvent, and thus that the tax payable on the full sum will be reduced or not payable at all, should not be used so as further to reduce the claim.
8. In arriving at the reduction to be made under the Gourley principle, the Courts would, when assessing a damages claim with the benefit of hindsight, work on the basis of the ex-employee's actual liability to Income Tax during the year in question. Any deductions made by the employer in respect of payments in lieu of notice must of necessity be based on an estimated Income Tax liability and the most obvious and practical solution is to base the deduction upon the basic rate as that will in most cases be the employee's marginal rate of tax and it is the marginal rate which is appropriate. It may well be that the employee can show just cause why the notional deduction should be reduced because of an actual or expected change in circumstances but the obligation must rest on him to do so.
9. Where amounts over £30,000 are paid and a form P45 has already been issued, basic rate Income Tax must be deducted by the employer in respect of the excess over £30,000 and paid over to the Revenue. If form P45 has not yet been issued, the PAYE code should be applied and tax charged using the appropriate tax table rates. The employee will receive a tax credit in respect of this deduction to set against his liability to Income Tax.

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3.2 SOCIETY OF PRACTITIONERS OF INSOLVENCY*

TECHNICAL RELEASE 6

TREATMENT OF DIRECTORS' CLAIMS AS EMPLOYEES

IN INSOLVENCIES

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* The Society of Practitioners of Insolvency is the former name of R3: Association of Business Recovery Professionals.

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INTRODUCTION

1. This Technical Release gives guidance to members on the approach to be adopted when dealing with the assessment of claims from directors as 'employees' of insolvent companies in a manner acceptable to the Redundancy Payments Service (RPS) of the Department of Trade and Industry. It has been approved in draft form by the RPS but no liability attaches to the RPS in respect of such approval nor is the RPS in any way bound by any statement contained in this Technical Release. Members are reminded that Technical Releases are for purposes of guidance only and may not be relied on as definitive statements. Members are also referred to the Technical Release entitled 'Non-Preferential Claims of Employees Dismissed Without Proper Notice by Insolvent Employers'.

WHAT CONSTITUTES AN 'EMPLOYEE'?

2. The Employment Rights Act 1996 (ERA) provides for payment from the National Insurance Fund of some arrears of wages, holiday pay, pay in lieu and redundancy pay owed to the employees of insolvent companies.
3. Section 230(1) of the ERA defines an 'employee' as 'an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment'.
4. Section 230(2) of the ERA defines 'contract of employment' as a 'contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing'.

THE POSITION OF DIRECTORS

5. In law, a company director is an office-holder. However, a director can also be an employee and this matter has to be considered on the basis of the evidence concerning the director's relationship with the company. It is essentially a matter of fact in each individual case.
6. The Employment Appeal Tribunal (EAT) in the case of *Eaton v Robert Eaton Limited [1988] IRLR 83*, gave guidance on the factors to be considered as follows:
 - (a) Did the director have a descriptive title (e.g managing director or technical director)?

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- (b) Was there an express contract of employment? If not, was there a board minute or memorandum in writing constituting an agreement to employ the director as an employee as required by section 318 of the Companies Act 1985?
 - (c) Was remuneration paid by way of salary or director's fees?
 - (d) Was remuneration fixed in advance or paid on an 'ad hoc' basis?
 - (e) Was remuneration by way of entitlement or, in effect, gratuitous?
 - (f) Did the director merely act in a directorial capacity or was he/she under the control of the board of directors in respect of the management of his/her work?
- 7. Another factor to be considered is whether the director paid Schedule E (PAYE) Income Tax and Class 1 National Insurance Contributions (NIC). As the working conditions of office-holders are more related to those of 'employed earners' than those of 'self-employed earners', they are treated for NIC and Tax purposes as 'employed earners'. However, payment of Tax and NIC as an 'employed earner' does not of itself confer employee status for the purposes of employment legislation: see *Wilson v Trenton Service Station Limited* EAT/100/87 23 June 1987. Indeed, this factor was considered to be 'neutral' in *Fleming v Secretary of State for Trade and Industry (SSTI)* [1997] IRLR 682, though it was taken into account in *SSTI v Bottrill* (below). Equally, deductions at the 'self-employed' rate do not necessarily preclude entitlement under the redundancy and insolvency provisions.
- 8. Where a director has forgone or postponed payment of 'salary' for a period, that may be evidence that his relationship with the company is not one of employment, since it is normally a fundamental term of a contract of employment that, in return for services, an employee will receive remuneration. The fact that a director is an investor in the company, guaranteeing a loan to it will also point against his being an employee: see *McQuisten v Secretary of State for Employment (SSE)* EAT/1298/95 11 June 1996.
- 9. In *Buchan v SSE and Ivey v SSE* [1997] IRLR 80, the EAT suggested the following questions:
 - (a) Is the director under the control of another?
 - (b) Is the director an integral part of another's organisation?
 - (c) Is the director in effect in business on his own account?

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- (d) What is the economic reality of the relationship between the director and the 'employer'?
- (e) Is there mutuality of obligation between them?
- (f) What is their respective bargaining power?

The decision-making body has to consider the relevance of all the factors, decide what weight to give to each of them, evaluate them and balance one against the other in order to arrive at a conclusion.

DIRECTORS WITH CONTROLLING SHAREHOLDINGS

10. Particular difficulties may arise in relation to a director who holds 50% or more of the voting shares in a company. In *Buchan v SSE* above, the EAT went on to hold that: 'If the claimant is able, by reason of a beneficial interest in the shares of the company, to prevent his dismissal from his position in the company, he is outside the class of persons intended to be protected by the provisions of the [ERA] and is not an employee within the meaning of that Act.' The EAT concluded in that case that a director owning 50% or more of the issued shares of the company could virtually never be its employee for the purposes of the ERA.
11. On the other hand, in *SSTI v Bottrill* [1998] IRLR 120, the EAT found that the reasoning behind the above rule laid down by *Buchan v SSE* was unsound. The position was rather that:

'The shareholding of a person in the company by which he alleges he was employed is a factor to be taken into account, because it might tend to establish either that the company was a mere simulacrum or that the contract under scrutiny was a sham.'
12. In the *Bottrill* case, a managing director who was also, temporarily, 100% shareholder was nevertheless held to be an employee on the facts as a whole. There was one other director and two other employees. The intention was that 80% of the shares should go to the US supplier, which in any event had 'real control'. Facts indicating employment were:
 - (a) he paid tax and NIC on that basis;
 - (b) he had no other employment;
 - (c) his contract of employment was signed and dated and indicated that he was an employee;

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- (d) he was entitled to holidays and sick pay;
- (e) he worked every day from 8.30 am to 5.30 pm;
- (f) he was paid by salary and not director's fees.

Against that were:

- (g) his theoretical control over the company;
- (h) the fact that he has taken only 8 out of 16 days' holiday in the last year;
- (i) he had not received pay for the last month (because the cheque book was not available).

13. The *Bottrill* case subsequently went to the Court of Appeal ([1999] IRLR 326). The Court of Appeal upheld the decision of the EAT and stated that:

'... whether or not an employer/employee relationship exists can only be decided by having regard to all the relevant facts. If an individual has a controlling shareholding that is certainly a fact which is likely to be significant in all situations and in some cases it may prove to be decisive. However, it is only one of the factors which are relevant and certainly it is not to be taken as determinative without considering all the relevant circumstances.'

14. Counsel for the SSTI requested further guidance on the subject generally and the Court of Appeal responded as follows:

'We are anxious not to lay down rigid guidelines for the factual enquiry which the tribunal of fact must undertake in the particular circumstances of each case, but we hope that the following comments may be of assistance.'

'The first question which the tribunal is likely to wish to consider is whether there is or has been a genuine contract between the company and the shareholder. In this context how and for what reasons the contract came into existence (for example, whether the contract was made at a time when insolvency loomed) and what each party actually did pursuant to the contract are likely to be relevant'

'If the tribunal concludes that the contract is not a sham, it is likely to wish to consider next whether the contract, which may well have been labelled a contract of employment, actually gave rise to an employer/employee relationship. In this context, of the various factors usually regarded as relevant (see, for example, Chitty on Contracts 27th ed. (1994) para.

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37 - 008], the degree of control exercised by the company over the shareholder employee is always important. This is not the same question as that relating to whether there is a controlling shareholding. The tribunal may think it appropriate to consider whether there are directors other than or in addition to the shareholder employee and whether the constitution of the company gives that shareholder rights such that he is in reality answerable only to himself and incapable of being dismissed. If he is a director, it may be relevant to consider whether he is able under the Articles of Association to vote on matters in which he is personally interested, such as the termination of his contract of employment. Again, the actual conduct of the parties pursuant to the terms of the contract is likely to be relevant. It is for the tribunal as an industrial jury to take all relevant factors into account in reaching its conclusion, giving such weight to them as it considers appropriate.'

15. Thus, no single factor is likely to be conclusive and the RPS looks at all the factors to establish whether the director was an employee for the purposes of the ERA, as will an Employment Tribunal if necessary, and as too must the insolvency practitioner. The ERA provides for a right to refer to an Employment Tribunal in the event of disagreement with a decision made by the RPS or the insolvency practitioner. It is very difficult to appeal successfully against a decision of an Employment Tribunal on this question because appeals are permitted only on matters of law and the decision on this point is usually treated as one of fact.

DIVIDENDS

16. The principles are equally applicable to admitting a claim for dividend purposes. The effect of such claims, or the entitlement to claim, will affect not only the direct claim by the director, but also those by banks or other creditors making subrogated claims.
17. In marginal cases, IPs are requested to liaise and consult with the RPS as suggested in their booklet *Guidance for Employers' Representatives*.
18. The IP has no authority to accept or reject claims on behalf of the RPS; nor is the RPS's view in a particular case binding on the IP.

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INTRODUCTION

Insolvency Guidance Papers (IGPs) are issued to insolvency practitioners to provide guidance on matters that may require consideration in the conduct of insolvency work or in an Insolvency Practitioner's practice. Unlike Statements of Insolvency Practice, which set out required practice, IGPs are purely guidance and practitioners may develop different approaches to the areas covered by the IGPs. IGPs are developed and approved by the Joint Insolvency Committee, and adopted by each of the insolvency authorising bodies:

AUTHORISING BODIES

Recognised professional bodies

The Association of Chartered Certified Accountants
Insolvency Practitioners Association
The Institute of Chartered Accountants in England and Wales
Chartered Accountants Regulatory Board for the Institute of Chartered Accountants in Ireland
The Institute of Chartered Accountants of Scotland
Solicitors Regulation Authority for the Law Society
The Law Society of Northern Ireland
The Law Society of Scotland

Competent authorities

The Insolvency Service (for the Secretary of State for Business, Innovation and Skills)
Department of Enterprise, Trade and Investment (for Northern Ireland)

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4.1 INSOLVENCY GUIDANCE PAPER CONTROL OF CASES

Approved by the Joint Insolvency Committee and Issued by the RPBs and The Insolvency Service

1. INTRODUCTION

Insolvency appointments are personal to an individual insolvency practitioner, who has an obligation to ensure that cases are properly controlled and administered at all times. However, issues can arise when an Insolvency Practitioner delegates work to others, or takes appointments jointly with other practitioners. In such circumstances, a practitioner's planning and administrative arrangements will need to consider how best to ensure that cases are properly controlled at all times, and that proper regard is paid to the interests of creditors and other affected parties

2. DELEGATION

2.1 Given the wide variation in the size of firms dealing with insolvency work, each practitioner will have different case loads and resources and thus a different requirement to delegate work. Delegation can take on a number of forms, including:

- delegation of work to staff in the practitioner's own office, or to sub-contractors;
- delegation of work to staff within a firm but in another location;
- taking a reduced role on an appointment taken jointly with an insolvency practitioner in the practitioner's office;
- taking a reduced role on an appointment taken jointly with an insolvency practitioner within the same firm but in another location;
- allowing a specialist insolvency practitioner within a firm to take responsibility for all work of a specific type;
- allowing a specialist within a firm to handle work of a specific type (e.g. tax);

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- sharing work on an agreed basis on an appointment taken jointly with a practitioner from another firm;
- employing another firm to give specialist advice (e.g. tax), or to undertake specific work (e.g. an investigation); and
- allowing a practitioner in a former firm (following either the practitioner's move to another firm or retirement) to take responsibility for appointments for a short time pending the transfer of cases.

2.2 For each of the above examples (and in other circumstances where delegation takes place), the practitioner must be satisfied at all times that work is being carried out in a proper and efficient manner, appropriate to the case.

3. CONTROL

3.1 In determining the procedures to be put in place to ensure that an appropriate level of control can be established in relation to delegated work, it is recommended that a practitioner have regard to the following matters:

- the structure within a firm, and the qualifications and experience of staff;
- the need for the practitioner to be involved in setting case strategy at the outset, depending on the nature, size and complexity of the case;
- the procedures within a firm to ensure consultation by joint appointees, other practitioners, and staff;
- the extent to which levels of responsibility are defined, and the circumstances in which a reference to, or approval by, the practitioner is required;
- whether there are clear guidelines within a firm to deal with the administration of cases at locations remote from the practitioner;
- the ways in which compliance and case progress are monitored, and then reported to the practitioner;
- the frequency of case reviews, and who carries them out;

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- the systems for dealing with correspondence received and, in particular, complaints;
- the process by which work is allocated on a joint appointment with a practitioner from another firm, the rationale for that split, and the controls to be put in place, subject always to statutory requirements; and
- the way in which specialist advisers (including agents and solicitors) and sub-contractors are chosen and engaged, and how their work is monitored.

3.2 Insolvency Practitioners are aware that they may be required to justify their decisions and demonstrate that appropriate levels of control have been established. It is recommended that for firm wide procedures, guidance is set out in writing, and that on a case by case basis, contemporaneous working papers or file notes are prepared.

4. FIRMS

In this Paper, reference to 'firm' includes, as appropriate, a company, a partnership, a sole practitioner, and a practitioner working in association with other 'firms' or practitioners in other 'firms'.

IPA July 2005

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4.2 INSOLVENCY GUIDANCE PAPER SUCCESSION PLANNING

Approved by the Joint Insolvency Committee and Issued by the RPBs and The Insolvency Service

1. INTRODUCTION

Insolvency appointments are personal to an insolvency practitioner, who has an obligation to ensure that cases are properly managed at all times, and to have appropriate contingency arrangements in place to cover a change in the Insolvency Practitioner's circumstances. The over-riding principle is that the interests of creditors and other stakeholders should not be prejudiced.

2. CONTINUITY

It is important for insolvency practitioners to consider on a regular basis the arrangements in place to ensure continuity in the event of death, incapacity to act, retirement from practice, or the practitioner otherwise retiring from a firm

3. SOLE PRACTITIONERS

- 3.1 A sole practitioner should consider the steps necessary to put a workable continuity agreement in place, although there may well be considerations as to whether a sole practitioner's cases would be accepted by another insolvency practitioner. The full consequences, both practical and financial, of the relationship with another Insolvency Practitioner have to be recognised by both the office holder and the nominated successor, so that continuity can be achieved and the interests of creditors and other stakeholders safeguarded. In particular, the nominated successor would have to consider whether the obligations arising from a successor arrangement can be discharged properly and expeditiously, having regard to the number and nature of the cases to be taken over.
- 3.2 A retiring office holder should normally make arrangements for the transfer of cases (including, where appropriate, an application to Court) in sufficient time to ensure that the cases are transferred before the retirement takes place.
- 3.3 The nominated successor may need to make an application to Court for the transfer of cases as soon as possible after the other office holder's death, incapacity or, if no other arrangements have been made, retirement.

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3.4 The arrangements with the nominated successor will need to be reviewed as circumstances dictate, but preferably at least annually.

3.5 The principal matters that might routinely be dealt with in a continuity agreement are set out in the Appendix.

4. FIRMS

4.1 Every insolvency practitioner in a firm (whether a principal or an employee) should consider the comments made above regarding sole practitioners, and should discuss with the firm the arrangements for succession planning, to cover death, incapacity to act, retirement, or leaving the firm. It is recommended that this is reflected in the partnership agreement or in a separate insolvency practice agreement.

4.2 In a firm with other insolvency practitioners, it is likely that the arrangements would include, at the least, an understanding that another Insolvency Practitioner will take over open cases, and make an application to court for the transfer of those cases, if the office holder is unable to do so. It will be the professional responsibility of the remaining partners (as insolvency practitioners) to take prompt action to safeguard the interests of creditors and other stakeholders.

4.3 When an office holder retires from a firm, it may be acceptable for the office holder to remain in office for a short period, with an insolvency practitioner in the firm dealing with the administration of cases. However, where the office holder needs to receive appropriate information on the progress of cases, and be consulted when decisions are to be made; the office holder is likely to require unrestricted access to case files. Such an arrangement, however, is unlikely to be appropriate other than for cases that are clearly in their closing stages. In normal circumstances, the retiring office holder should be replaced within a reasonable period, likely to be within 12 months of retirement.

4.4 Where there are no other insolvency practitioners in a firm, and in the absence of any contractual arrangements to deal with death, incapacity to act, or retirement, the remaining partners (presumably themselves members of professional bodies) should consider their own professional obligations to ensure the proper management of their practice, including making arrangements for another insolvency practitioner to step in as

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office holder. The firm may have to procure an application to court for the transfer of cases as soon as possible after the office holder's death, incapacity or retirement.

- 4.5 The principal matters that might routinely be dealt with in an insolvency practice agreement (or a partnership agreement) are set out in the Appendix.

5. DISPUTES

- 5.1 There can be disputes between firms and partners (and employees who are office holders) who leave the firm, principally arising from the personal nature of insolvency appointments. However, commercial disputes should not be allowed to obscure the over-riding principle set out at the beginning of this paper – that the interests of creditors and other stakeholders should not be prejudiced.
- 5.2 It is important, therefore, that the contractual arrangements referred to above should provide for the (essentially) mechanistic and financial consequences of an office holder leaving the firm (or upon incapacity to act). There will be similar considerations when an office holder (either partner or employee) is suspended by a firm, or is otherwise excluded from the firm's offices.
- 5.3 Where there are no contractual arrangements, or where a dispute arises, both parties should consider their professional obligations, and the standard of conduct required by their professional bodies. Further, an office holder must have regard to the statutory obligations of the office held.
- 5.4 If there is a dispute, it is for the office holder to decide how best to ensure that the obligations of office can be discharged; an application to court may be the only means of finding a solution. It is always open to an office holder to consult with his or her authorising body.
- 5.5 As noted above, there may be professional obligations on remaining partners to arrange for the proper management of their practice, and so ensure that they do not bring their own professional bodies into disrepute.

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APPENDIX**Principal matters that might be dealt with in a continuity agreement**

1. A clear statement of the circumstances upon which the agreement would become operative, and also the circumstances in which the nominated successor can decline to act.
2. The extent and frequency of disclosure to the nominated successor of case details and financial information.
3. Detailed provisions to provide for:
 - the steps to be taken by the nominated successor when the agreement becomes operative;
 - ownership of, or access to, case working papers;
 - access to practice records; and
 - financial arrangements.

Principal matters that might be dealt with in an insolvency practice agreement (or in a partnership agreement)

1. Clear statements of what happens in the event of an Insolvency Practitioner (whether partner or employee):
 - dying, or being otherwise incapable of acting as an Insolvency Practitioner;
 - retiring from practice;
 - being suspended or otherwise excluded from the firm's offices; or
 - leaving the firm.

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2. Where the agreement provides for another Insolvency Practitioner (whether in the firm or in another firm) to take over appointments:
 - the time within which transfer of cases will take place, and the arrangements for the interim period, including provisions for access to information and files;
 - the obligations placed on the practitioner, the firm and the successor practitioner, both in the interim period and thereafter;
 - professional indemnity insurance arrangements; and
 - financial arrangements.
3. Where the Insolvency Practitioner is to remain as office holder following retirement or leaving the firm:
 - ownership of, or access to, case working papers;
 - access to practice records;
 - professional indemnity insurance arrangements; and
 - financial arrangements.

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4.3 INSOLVENCY GUIDANCE PAPER BANKRUPTCY – THE FAMILY HOME

Approved by the Joint Insolvency Committee and Issued by the RPBs, The Insolvency Service and The Insolvency Service for Northern Ireland

1. INTRODUCTION

It is in the interests of the debtor and the creditors, and in the wider public interest, that a family home, and any other residential property available for use by the debtor or the debtor's immediate family, are dealt with fairly and expeditiously in a bankruptcy. This can happen only if the debtor and others who may have an interest in the properties have sufficient information to understand how the bankruptcy affects them, and the options available to them. Failure by a trustee to provide information and explanations can prolong the realisation process, cause unnecessary distress to those involved, and also give rise to complaints.

2. AFFECTED PARTIES

2.1 Where the debtor has an interest in a property falling within the estate, the trustee should consider at an early stage whether the property is or has been the home of any person other than the debtor, and if that person could be affected by the bankruptcy and the sale of the property.

2.2 Those potentially affected include:

- the debtor's spouse, former spouse, or unmarried partner;
- members of the debtor's immediate family;
- a joint legal owner;
- anyone who has contributed towards the purchase of a property (including making mortgage payments);
- anyone in occupation of the property other than under a formal tenancy agreement; and
- a trustee under a previous bankruptcy.

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2.3 A trustee will make enquiries of the debtor to establish the properties within the estate and whether any other persons may have an interest in them. It is recommended that a trustee should write to the debtor and any other affected parties as soon as possible, after the appointment or of becoming aware of the property or the third party interest. An initial communication may give a broad explanation of the process and timescales to be followed in the proceedings with further, more specific information provided as it becomes available. This is in addition to the trustee's statutory obligations.

3. INFORMATION TO BE PROVIDED

3.1 A trustee should provide the debtor and any other affected parties with sufficient information at appropriate times to enable them to understand the possible consequences of the bankruptcy, so that they can make an informed decision or seek advice. The information to be provided might include (as appropriate to the circumstances):

- an explanation of the trustee's interest, and why that interest may continue after discharge from bankruptcy;
- the circumstances in which the property will revert to the debtor, and why it may not revert;
- an explanation of why the trustee needs to realise the property;
- the way in which the property and the trustee's interest would be valued;
- an explanation of how any changes in the value of the property, and payments under a mortgage, may be treated;
- how any mortgage, or other security for the repayment of any loan, may be treated;
- details of the steps that the trustee can take, and any timetable, for realising the property; and
- a copy of the Insolvency Service leaflet "What will happen to my home".

3.2 It is also recommended that a trustee:

- seeks offers from affected parties as appropriate, giving sufficient time for responses and explaining any deadlines;

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- be prepared, in appropriate circumstances, to meet the debtor and other affected parties to discuss any problems that may arise; and
- advises that affected parties should take independent advice.

4. TIMING OF COMMUNICATIONS

After the initial communications outlined above, it is recommended that a trustee writes regularly to the debtor and other affected parties pending realisation of the property. Whilst such communications should be as circumstances dictate, it is recommended that this should be normally every 12 months. The matters to be dealt with might include (as appropriate to the circumstances):

- whether the trustee's intentions have changed, and the effect on the likely timetable for realisation;
- any changes in the value of the property and the trustee's interest;
- any changes to the positions of the affected parties; and
- whether the trustee is seeking offers for the estate's interest in the property.

5. DEALING WITH OFFERS

5.1 A trustee has a duty to obtain a proper price for the benefit of the estate, but the bankruptcy should not be unnecessarily protracted and account should be taken of the effect of future costs. It is recommended that the consequences of any action, or delay, in respect of a property should be explained to affected parties and where appropriate, to creditors.

5.2 If an affected party makes an offer to purchase the trustee's interest in the property the trustee should deal expeditiously with the offer. If the offer is rejected, the trustee should normally provide an explanation of why the offer was regarded as inadequate.

6. GUIDANCE FOR AFFECTED PARTIES

As noted above, it is recommended that a trustee advises the debtor and other affected parties to take independent advice in relation to the property. It may be appropriate for the trustee to recommend, in the first instance, contact with a solicitor or Citizens' Advice Bureau. The Insolvency Service leaflet "What will happen to my home" is available via www.insolvency.gov.uk

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7. DUTY OF CARE

Nothing in this Paper imposes or implies any duty of care by an insolvency practitioner to a debtor, or any person with an interest in a property, over and above what may be imposed by legislation or case law.

IPA October 2005

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4.4 INSOLVENCY GUIDANCE PAPER SYSTEMS FOR CONTROL OF ACCOUNTING AND OTHER BUSINESS RECORDS

Approved by the Joint Insolvency Committee and Issued by the RPBs, The Insolvency Service and The Insolvency Service Northern Ireland

1. INTRODUCTION

- 1.1 The existence and accuracy of an insolvent's accounting and other business records will affect the efficient realisation and distribution of an insolvent's assets; and may also be relevant in other circumstances, for example in disqualification proceedings or the prosecution of criminal offences. An insolvency practitioner will also need to take account of the various statutory requirements for businesses to retain certain categories of records.
- 1.2 Insolvency practitioners should have satisfactory systems in place to record the receipt of, and to control access to, movement of and eventual disposal of, records. This Guidance looks at the parameters of these systems: each case will need to be considered on its own merit: some cases may need significantly more detail than is suggested here.
- 1.3 Formal recording systems can also assist an insolvency practitioner in the effective management of storage costs.

2. CONTROL OF RECORDS

- 2.1 It is likely that any system implemented by an insolvency practitioner would record:
 - the practitioner's initial enquiries to establish the nature and location of records;
 - the steps taken to safeguard records;
 - requests made of directors and others to deliver up records;
 - what records have been taken under the practitioner's control, and when and how this was done;

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- the location of the records;
- whether third parties have had access to the records, and for what purpose; and
- the eventual disposal of the records, and when and how this was done.

2.2 It will be particularly important in cases where the insolvent's records are referred to in legal proceedings (whether for the purpose of civil asset recovery or in other circumstances) that a formal recording process has been followed. Accordingly, an insolvency practitioner should be able to show that any system is applied consistently and that staff are trained in its use.

3. RECORDS IN ELECTRONIC FORM

An insolvency practitioner will need to consider how to deal with information held in electronic form. Retrieval and storage of such information may include, as appropriate, securing servers and personal computers (or hard drives), copying information from those sources, or obtaining hard copies. The system of control is likely to follow the principles set out above.

4. JOINT APPOINTMENTS

Where an insolvency practitioner is appointed jointly with a practitioner from a different firm, responsibility for records should be included within the agreed division of duties. Where both practitioners receive records, each should implement a system of control.

IPA 14 March 2006

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4.5 INSOLVENCY GUIDANCE PAPER DEALING WITH COMPLAINTS

Approved by the Joint Insolvency Committee and Issued by the RPBs, The Insolvency Service and The Insolvency Service Northern Ireland

INTRODUCTION

It is in the interest of complainants and insolvency practitioners, and in the wider public interest, that complaints directed at practitioners are dealt with professionally and expeditiously. Failures to do so can only exacerbate any problem, prolong any sense of grievance felt by a complainant, and undermine confidence in the insolvency profession. As a result, practitioners, their firms and the profession may be brought into disrepute.

This paper is intended to remind insolvency practitioners of their duty to deal properly with complaints, and to suggest some matters that insolvency practitioners might usefully consider. The rules of some authorising bodies (and the rules which apply to the holders of standard consumer credit licences) impose requirements additional to, and which override, the suggestions in this guidance paper,

STEPS TO BE TAKEN

It is likely that the following steps will be appropriate:

- A complaint should be acknowledged promptly.
- The insolvency practitioner should ascertain the background facts as quickly as possible and seek additional information from the complainant as required.
- If the insolvency practitioner concludes that a complaint is unjustified, the complainant should be provided with a full and clear explanation of the reasons for that conclusion.
- If an error has been made, the insolvency practitioner should rectify the error promptly and offer an apology.
- The complainant should always be notified that a complaint can be referred to the insolvency practitioner's authorising body at any time.

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The complainant should be kept aware of the steps that are being taken by the insolvency practitioner to review and respond to the complaint, the likely timetable for the response, and the reasons for any delay.

THE DUTIES OF INSOLVENCY OFFICE HOLDERS

It is a feature of the work of insolvency practitioners that complaints may arise because of an incomplete understanding of the legislation under which insolvency office holders are required to act. In many cases, actions or outcomes that are obvious to insolvency practitioners may be seen as wrong or unfair by complainants, as the duties of the office holder may be misunderstood.

When responding to a complaint, an insolvency practitioner should provide where appropriate a clear explanation of the matters affecting the duties of an office holder, including the relevant legislation.

OTHER MATTERS TO CONSIDER

The matters that an insolvency practitioner should consider in relation to complaints include:

- The desirability of establishing a formal complaints procedure within the firm, set out in writing, which can be communicated to complainants.
- Whether complaints should be reviewed by another principal in the firm (where possible) or by an independent practitioner.
- Early resolution of complaints by telephone conversations and meetings. Guidance on what constitutes a good complaints procedure is issued by certain of the authorising bodies.

PROFESSIONAL INDEMNITY INSURANCE

A complaint may, in some circumstances, have to be notified to an insolvency practitioner's professional indemnity insurer. In such cases, any action or response by the practitioner will necessarily be subject to any conditions imposed by the insurer.

IPA October 2009

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BUT HERE ARE 5 BOXES YOU SHOULD TICK THIS YEAR

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Identify, evaluate and deal with ethical threats on first contact (Insolvency Ethical Code)



Start investigations early and keep contemporaneous records (SIP 2)



In progress reports, explain what you did, why you did it and how long it took (SIP 9)



In VAs, keep a contemporaneous and full record of the advice given and show that you gave the debtor a copy (SIP 3)



Don't issue a draft final report unless you have made the required statement about dividends (Rules 4.49D(3) and 6.78B(3))

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Key

ADM: Administration

CVA: Company voluntary arrangement

MVL: Members' voluntary liquidation

BKY: Bankruptcy

PVA: Partnership voluntary arrangement

ADR: Administrative receivership

CVL: Creditors' voluntary liquidation

WUC: Compulsory liquidation

IVA: Individual voluntary arrangement



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5.1 CHECKLIST OF ESSENTIAL FACTS

For reference when undertaking cases.

Whilst this list is not comprehensive, it is produced as guidance for ensuring compliance with rules, regulations and SIPs.

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ADM: Administration
CVA: Company voluntary arrangement
MVL: Members' voluntary liquidation
BKY: Bankruptcy
PVA: Partnership voluntary arrangement

ADR: Administrative receivership
CVL: Creditors' voluntary liquidation
WUC: Compulsory liquidation
IVA: Individual voluntary arrangement

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Ethical issues	Consider and evidence ethical issues
Consider all ethical issues, including business and personal, prior to acceptance of the appointment.	
Identify all relevant parties.	
Follow RPB guidance.	
Money laundering issues	Consider and evidence money laundering issues
Verify and maintain evidence of client's identity. <i>(Money Laundering Regulations 2003 – effective from 1 March 2004)</i>	
Identity checks extend to beneficial owner; evidence must be maintained for five years after end of business relationship; and where the business relationship continues, it must be monitored on an ongoing basis. Emphasis is on a risk-based approach. <i>(Money Laundering Regulations 2007 – effective from 15 December 2007)</i> <i>(See also CCAB Anti-Money Laundering Guidance)</i>	
Has any knowledge/suspicion of money laundering or terrorist property offences been reported to the MLRO/SOCA? <i>(Section 330 Proceeds of Crime Act 2002, Section 19 Terrorism Act 2000)</i>	
Pre-appointment work and meetings	
Complete pre-appointment work and meetings according to statute and SIP requirements.	
All meetings: Give appropriate notice and convene in accordance with statutory timescales.	
Pre-appointment documentation must comply with the provisions of SIP3 (VAs), SIP8 (CVLs) and any requirements of the Act and Rules.	
Make arrangements to enable those attending meetings remotely to exercise their rights to speak and vote. <i>(Sections 246A and 379A)</i>	
Ensure the identification of those attending a meeting by remote means and the security of any electronic means used to enable remote attendance. <i>(Sections 246A(6) and 379A(5))</i>	
If physical meetings are held, are the meetings held in a location convenient to creditors?	
Validate the schedule of all proxies, showing how they voted at the meetings.	
Obtain the requisite majorities.	
Obtain approval for remuneration in accordance with the Rules.	
Prepare minutes for all meetings in compliance with SIP12.	
Issue all post meeting reports in accordance with the statutory timescales.	
The content of reports must comply with statutory and SIP requirements.	
The liquidator, nominated by the company, must be present at the section 98 meeting. <i>(Section 166(4))</i>	
The nominee must carry out all of the necessary duties regarding any moratorium.	

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Appointment formalities

Complete appointment formalities in accordance with statute and SIP requirements.

Appointment notifications to the registrar, creditors and others must be within the timescales in the Act and Rules and Dear IP.

Content of notifications must comply with statutory and SIP requirements.

Send VAT769 to HM Revenue & Customs within 21 days of appointment.

Issue instructions to publish any required notices of appointment in accordance with the statutory timescales.

Give consideration to the validity of the appointment.

- Where this was considered internally, have the steps taken and the outcome been adequately documented?
- Where external advice was sought, are there any issues highlighted in the advice as requiring clarification, and if so have these been investigated, and is there evidence of this?

Do the appointment notifications include details of the office holder's authorising body?
(IPA News Summer/Winter 2000)

Where there is an occupational pension scheme, ensure notification of appointment and ceasing to act to the Pension Protection Fund, the Pensions Regulator, and the Trustees, as soon as reasonably practicable.
(Sections 22 & 22 (2B) Pensions Act 1995 (as amended by Pensions Act 2004))

Where an "insolvency event" occurs in relation to the employer of an occupational pension scheme, the insolvency practitioner is required to notify the Board of the Pension Protection Fund, the Pensions Regulator, and the Trustees, within 14 days of the insolvency event or of the date that the IP becomes aware of the existence of a scheme, if later.

(Section 120 Pensions Act 2004)

Bonding

Ensure case bonded in accordance with the requirements of statute.

Ensure case bonded in accordance with the timescale in the Insolvency Practitioners Regulations 2005 for all office holders.

(Regulation 12 Insolvency Practitioner Regulations 2005)

Set appropriate bond level and file evidence of bond level calculation.

Review bond level regularly and file evidence of the reviews. Increase bond promptly where necessary.

Terminate the bond promptly on release.

(Regulation 12 Insolvency Practitioners Regulations 2005)

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Financial issues

Ensure financial controls are adequate.

Maintain separate accounting records for each appointment. *(SIP11)*

File all receipts and payments accounts with the registrar in accordance with the statutory timescales.

File copies of the receipts and payments accounts with all relevant parties.

Prepare receipts and payments accounts, including those in reports to creditors, in accordance with SIP7.

Pay all funds arising from Compulsory Liquidation and Bankruptcy appointments to the ISA in accordance with the Insolvency Regulations 1994.

For all other cases, consider whether it would be in the interests of creditors to use the ISA.

Seek sanction where a local account is operated for trading purposes.

Operate the account in accordance with the terms of the sanction.

(Regulations 6 and 21 Insolvency Regulations 1994)

Reconcile all bank accounts regularly and follow up any issues promptly.

Notices, advertisements and notifications to Registrar

Notices to be given and documents to be supplied in accordance with the Rules (including where electronic means used).

Rules 12A.1 – 12A.15

Information submitted electronically to be in accordance with the Rules.

Rules 12A.30 – 12A.31

For post 6 April 2010 appointments, Gazette advertisements to contain standard contents (in addition to any content specifically required).

Rules 12A.33 – 12A.37

For post 6 April 2010 appointments, other advertisements to contain standard contents (in addition to any content specifically required).

Rules 12A.38 – 12A.41

Notifications to the Registrar of Companies in accordance with the Rules.

Rules 12A.42 – 12A.50

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Remuneration and disbursements

Draw remuneration and charge disbursements in accordance with statute and SIP.

Obtain appropriate authorisation prior to the drawing of remuneration, or, where appropriate, obtain agreement from the Committee or Appointor for each tranche of remuneration drawn.

If fees are drawn on a time cost basis, ensure they are in line with the recorded time costs at the date the fees are drawn.

Correctly calculate fees when they are drawn on a percentage basis.

The minutes of the meeting must reflect the approval where the basis of remuneration has been approved by the members (MVLs only), creditors, or a creditors' committee.

No chairman's general proxies used to vote for the approval of the basis of the officeholder's remuneration should be contrary to the Rules.

(Rules 1.15, 4.63(4), 5.20, 6.88(4), 8.6)

Do not recover unauthorised pre-appointment time post appointment.

Draw remuneration in accordance with the terms of the proposal, as modified.

Maintain separate records for work on fixed and floating charge assets.

Support any split of time charges by working papers and show a realistic apportionment between the fixed and floating charges. *(SIP14)*

Where a meeting is held and agreement to a fee basis is sought, obtain evidence that the meeting was provided with:

- details of the charge out rates for all grades of staff likely to be involved on the case;
- such additional information as may be required per SIP9; and
- an up to date receipts and payments account. *(SIP9)*

Obtain approval to draw any category 2 disbursements from those responsible for approving the office holder's remuneration. *(SIP9)*

For liquidations post 4 March 2004, ensure approval for general costs of winding-up has been obtained from floating charge holder(s) and/or preferential creditors, where appropriate. *(Buchler v Talbot, Re Leyland Daf Limited)*

For liquidations post 6 April 2008, follow procedure to gain approval for litigation expenses only. *(Section 176ZA)*

For post 1 April 2005 appointments (post 6 April 2010 in the case of voluntary arrangements), provide information on hours spent and charge out rates free of charge and within 28 days of request to those named. This obligation extends beyond release from office. *(Regulation 36A Insolvency Regulations 1994 & Rules 1.55 and 5.66)*

For post 6 April 2010 appointments (excepting voluntary arrangements and receiverships), respond to requests for further information in accordance with the Rules and SIPs 7 & 9. *(Rules 2.48A, 4.49E and 6.78C)*

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Meeting formalities during the case

Ensure meeting formalities comply with statutory and SIP requirements.

Creditors' meetings must be convened within the statutory timescales.

Give creditors adequate notice of the meeting.

(Sections 246B and 379B and Rules 12A.1 – 12A.14)

Give 14 days' notice of any meeting of creditors to the bankrupt.

(Rule 6.84)

Advertise the meetings appropriately.

Make arrangements to enable those attending meetings remotely to exercise their rights to speak and vote.

(Sections 246A and 379A)

Ensure the identification of those attending a meeting by remote means and the security of any electronic means used to enable remote attendance.

(Sections 246A(6) and 379A(5))

If a physical meeting is held, hold the meeting in a location convenient to creditors

(Rule 4.60 and 6.86)

If (s)he is not the office-holder, authorise the chairman of the meeting in writing.

The proxies scheduled as being voted at the meeting must be valid in all respects.

Claims for voting purposes must be calculated in line with the Rules.

Prepare minutes for all meetings, including those that are inquorate.

All of the minutes must include the information required by SIP12 and be authenticated by the chairman of the meeting.

Minutes to include names and addresses of those elected to be members of a creditors' committee.

(Rules 4.7(4) and 6.95(3))

Issue the post meeting reports within the statutory timescale.

(Rules 2.46, 4.49)

Ensure compliance with statutory formalities where resolutions are obtained by correspondence instead of creditors' meeting.

(Schedule B1 Para 58 and Rule 2.48 / Rules 4.63A and 6.88A)

Notify creditors of details of any fee resolutions passed in the next circular or progress report to creditors.

(SIP9 and Rules 2.47, 4.49B, 4.49C and 6.78A)

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CDDA reporting

CDDA reporting must comply with statute and SIP.

Submit a D2 interim/final return or a D1 report within six months of appointment.

[Rule 4, Insolvent Companies (Reports on Conduct of Directors) Rules 1996]

If an interim return is submitted, a final return should be submitted within the stated timescale, and it is hoped within 12 months of appointment. *[SIP4]*

All parties who have been directors within the three years preceding the appointment must be included in the return and any report.

[Rule 4, Insolvent Companies (Reports on Conduct of Directors) Rules 1996]

Consider adequate evidence of the matters in preparing the return/report.

Ensure that there is evidence that the liquidator/administrator has carried out the investigative steps outlined in SIP2.

Report all evidence of unfit conduct on file.

Report any criminal allegations to the appropriate body. *[Section 218 and SIP2]*

Reports to creditors

All reports must comply with statute and SIP

Prepare all reports to creditors in accordance with statutory timescales and in compliance with statutory requirements.

Include SIP9 and SIP7 disclosures in progress reports issued after a fee resolution has been sought.

Disclose connected party transactions as required by SIPs 7, 9 and 13 and all Administration pre-packs (post 1 January 2009) as required by SIP16.

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Creditors' committees

Creditors' committee formalities must comply with statute and SIP.

Issue and file a certificate of constitution.

Hold the first meeting of the committee within the statutory timescale.

If an informal meeting was held before the certificate of constitution is issued, ensure that the resolutions passed at that meeting are subsequently ratified by the committee.

A simple majority is requisite for any resolutions passed.

The committee should review the adequacy of the bond from time to time. *(Rule 12.8)*

A copy of the appropriate SIP15 guide must be issued to the members either at the meeting at which the committee was established or as soon as practicable thereafter.

For liquidation appointments, retain evidence that a copy of SIP2 was made available to the committee members.

Report to creditors' committees in accordance with statutory timescales, or in accordance with the committee's directions.

Give notice to the committee of any disposal to a connected party (CVL/WUC/BKY) and/or employment of solicitors (WUC/BKY).

(Section 165(6) (CVL)/ Section 167(2) (WUC)/ Section 314(6) (BKY))

Comply with the obligations under the terms of the proposals for creditors' committees in VAs.

Ensure that the committee sanctions the use of specific powers as necessary.

*(Section 165 (CVL)/ Section 167 (WUC)/ Section 314 (BKY))***Other statutory filing**

Comply with other statutory filing requirements.

Carry out any additional statutory filing in accordance with the statutory timescale.

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Case administration and control – trading

All trading formalities must comply with statute/best practice and be managed/controlled adequately.

Include the required statements in trading orders and sales invoices.

(Paragraph 45(1) Sch B1 (ADMs)/ S39 (ADRs))

Include on hard copy and electronic documents, including websites, statement that company is subject to relevant insolvency procedure - for liquidations from 01/01/07 and for other corporate insolvencies (except CVAs) from 01/10/08.

(Section 188 – Dear IP no. 31 & 37)

Where the company had continued trading under the office holder's control, ensure that there is evidence that the profitability of trading had been reviewed on a regular basis and that the affairs of the company had been managed properly.

Allocate any trading losses in accordance with the principles in SIP14.

Pay all post appointment trade creditors.

Account for all trading VAT to HM Revenue & Customs.

Pay post appointment PAYE/NIC by the 19th of the month.

Verify that there are sufficient funds to pay the post appointment PAYE/NIC liabilities.

Account for post appointment deductions for pension contributions promptly.

Account for other payroll deductions accounted on a timely basis.

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Case administration and control – asset realisation and case progression

Give due consideration to rescuing the company as a going concern (Administrations). <i>(Paragraph 3 Schedule B1)</i>
Assets must be realised and matters progressed appropriately.
Identify and realise all of the assets on the Statement of Affairs/Declaration of Solvency, disclosed in the OR's observations, or in the questionnaire. Ensure no assets are overlooked and avoid delay in realising any of the assets.
Record any professional agents supplying valuations obtained and the assets dealt with.
Deal with any book debts subject to Brumark/Spectrum Plus appropriately.
Appropriately categorise assets between the fixed and floating charges.
Consider submission of a claim for VAT bad debt relief where debts are written off.
Reclaim any tax losses.
Investigate and follow up any antecedent transactions. <i>(Sections 213, 214, 238, 239, 339, 340 and 343 where applicable)</i>
Obtain appropriate sanctions where proceedings under Sections 213, 214, 238, 239, 242, 243 or 423 are commenced. <i>(Paragraph 3A Schedule 4 (introduced 15/09/03))</i>
Note whether the arrangement is implemented in accordance with the terms of the proposal, or whether a variation is sought.
Pay any petition costs without any undue delay.
Seek sanction from the creditors'/liquidation committee or the Secretary of State where necessary before the exercise of any relevant powers. <i>(Schedules 4 & 5 IA 1986)</i>
Ensure that prompt action is taken with regard to realisation of the bankrupt's home (three year rule). <i>(Sections 283A and 313)</i>

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Case administration and control – distributions

Progress all distributions and other related matters appropriately and in accordance with statute and SIP.

Consider the validity of any charges and ensure that there is evidence of this, the matters considered, and the outcome.

Pay secured creditors in accordance with the appropriate priorities and in accordance with any priority agreement.

Take steps to agree preferential claims promptly once it is clear that there are funds for preferential creditors.

Correctly calculate preferential claims. *[Schedule 6 IA 1986]*

Pay a preferential distribution promptly once claims are agreed.

Where a partial preferential distribution is paid, deal with employee claims appropriately.

[Section 189(4) Employment Rights Act 1996 repealed by Sch 26, EA 2002]

Comply with Section 176A regarding the prescribed part.

Take steps to agree the non-preferential unsecured claims promptly once it is clear that there are funds for creditors.

Calculate unsecured claims correctly.

Before declaring a dividend:

- Give notice of the intention to do so to all creditors who have not proved.
- Advertise for claims.
- Deal with all claims within seven days of the last date for proving.

[Rules 2.95, 2.96, 11.2, 11.3]

The notice of dividend should include the information required by Rule 11.6(2)/2.98

Where claims are paid in full, calculate and pay statutory interest.

Obtain sanction for a distribution in specie.

[Article 117, Table A/Section 110 Insolvency Act 1986]

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Case administration and control – VAT and tax issues

Progress all VAT and tax issues appropriately.

Submit a final VAT193 return.

Regularly submit VAT returns or 426/833 forms.

Account for/reclaim all VAT.

Submit tax returns for all of the relevant accounting periods

Pay all tax when due.

Case administration and control – file reviews

File reviews should be conducted and actioned appropriately.

Carry out reviews in accordance with the firm's policy.

Follow up issues identified on reviews within a reasonable timescale.

Ensure that the appointee(s) has/have seen the completed reviews.

Case administration and control – IP case record

Maintain an IP case record in accordance with statute.

Keep an IP case record for the case and ensure that this is up to date and accurate.

*(Regulation 13, Insolvency Practitioners Regulations 2005)***Closure formalities**

Closure formalities must comply with statute and SIP.

Convene a final meeting in accordance with statute and give notice to all relevant parties.

Liquidation & Bankruptcy (post 6 April 2010 appointments) – send draft final report to creditors at least 8 weeks prior to final meeting. *(Rules 4.49D & 6.78B)*

Advertise notice of the final meeting in accordance with statutory timescales.

File the relevant forms with the registrar and/or court.

File a final receipts and payments account/report with the appropriate parties within the statutory timescale.

File all subsequent or other required notices.

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5.2 TECHNICAL HELPSHEET 1 ADM, CVA, IVA PRE EA2002/IA2000

IPA Technical Helpsheet 1 for administrations prior to enterprise act 2002 (relevant date 15/09/03) and company and individual voluntary arrangements prior to Insolvency Act 2000 (relevant date 01/01/03)

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ADM: Administration

IVA: Individual voluntary arrangement

CVA: Company voluntary arrangement

PVA: Partnership voluntary arrangement

IPA TECHNICAL HELPSHEETS AVAILABLE

IPA Technical Helpsheet 1 ADM, CVA, IVA Pre EA2002/IA2000
 IPA Technical Helpsheet 2 ADM, CVA, IVA Post EA2002/IA2000
 IPA Technical Helpsheet 2a ADM, CVA, IVA 06/04/09 - 05/04/10
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Pre-appointment work - VAs			
Meetings convened and notice given	N/A	At least 14 days notice of: - the creditors' meeting to be given to all creditors specified in the statement of affairs and to any other creditors of whom the practitioner is aware, - the members' meeting to be given to all persons who are, to the best of the practitioner's belief, members of the company - Rule 1.11	Meeting to be held not less than 14 days from the date on which the nominee's report is filed in court, nor more than 28 days from the date on which the report is considered by the court - Rule 5.17 Notice to be given to every creditor of whose claim, and address, the person summoning the meeting is aware - Section 257(2)
Post meeting reports	N/A	Copy of chairman's report to be filed in court within four days of the meeting - Rule 1.24(3) Copy of chairman's report to court and form 1.1 to be sent to registrar forthwith Rule 1.24(5) Copy of chairman's report to be sent to creditors immediately after it has been filed in court - Section 4 (6)/ Rule 1.24(4).	Copy of chairman's report to be filed in court within four days of the meeting - Rule 5.27(3). Copy of chairman's report to be sent to creditors, and where the debtor is an undischarged bankrupt, to the OR and trustee (if any), immediately after it has been filed in court - Rule 5.27(4)
Report contents	N/A	Rule 1.24(2)	Rule 5.27(2)

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Appointment formalities			
Filing with the registrar	Notice of order to be filed forthwith - Rule 2.10(3) Office copy of order to be filed within 14 days of the making of the order - Section 21(2)	See requirements for post meeting reports above	See requirements for post meeting reports above
Notification to creditors	Due within 28 days of the making of the order - Section 21(1)	See requirements for post meeting reports above	See requirements for post meeting reports above
Notification to others	To the company - due forthwith -Section 21(1)(a) See also Rule 2.10(3)	See requirements for post meeting reports above	Approval to be advised to Secretary of State immediately chairman's report has been filed in court - Rule 5.29
Content of notices		See requirements for post meeting reports above	See requirements for post meeting reports above
Advertising	Publication in Gazette and appropriate newspaper - due forthwith after order is made -Rule 2.10(2)	N/A	N/A
Financial issues			
Filing of periodic statutory receipts and payments accounts with the registrar	Due within 2 months of the end of every six month accounting period following appointment -Rule 2.52(1)	Not less often than once in every 12 month period beginning with the date of appointment. Due to be filed within 2 months of the end of the period to which the abstract relates - Rule 1.26(2) and (3)	N/A

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Other parties to whom accounts must be sent	The court and every member of the creditors' committee - Rule 2.52(1)	Court, company, creditors, members and, whilst not in liquidation, auditors - Rule 1.26(2)	Not less often than once in every 12 month period beginning with the date of appointment an abstract of receipts and payments accounts should be sent to the debtor, the creditors and the court. Due within 2 months of the period end - Rule 5.31(3) ISA
ISA	N/A	N/A	N/A
Meeting formalities during the conduct of the case			
Timing of meetings	To be held within 3 months of appointment - Section 23	N/A	N/A
Notice to creditors/ members	14 days notice required - Section 23(1)(b) Copy of proposals to be sent to members within 3 months of appointment -Section 23(2)(a) – subject to provisions in Section 23(2)(b)	N/A	N/A
Advertising	Notice of meeting to be published in same newspaper as that in which administration order was advertised - Rule 2.18(2)	N/A	N/A

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Chairman	Where not the administrator, the chairman is to be nominated by him in writing - Rule 2.20(1)	N/A	N/A
Calculation of claims for voting	Rules 2.22(4) and (5), 2.24, 2.25, 2.26 and 2.27	N/A	N/A
Reporting of outcome	Report on the section 23 meeting to be sent to all creditors within 14 days of conclusion of the meeting to consider the proposals - Rule 2.30(1)	N/A	N/A
Reports to creditors			
Reports to be issued	Due within 14 days of the end of every six month period from the date of approval of the proposals -Rule 2.30(2)	Every 12 months requirement to report on progress and efficacy of arrangement – due to be issued/ filed within 2 months of the end of the period to which it relates - Rule 1.26(2) and (3)	Not less often than once in every 12 month period beginning with the date of appointment supervisor required to report on progress and efficacy of arrangement – due to be issued/ filed within 2 months of the end of the period to which it relates - Rule 5.31 (2) and (3)
Creditors' committees			
Certificate of constitution	To be filed in court – no statutory timescale - Rule 2.33(4)	Depends on proposals	Depends on proposals

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	ADM (Appointments pre 15.9.03) *	CVA (Appointments pre 1.1.03) **	IVA (Appointments pre 1.1.03) **
First meeting	To be called within three months of the first establishment of the committee - Rule 2.34(3)	Depends on proposals	Depends on proposals
Reporting requirements	No statutory requirements for periodic reporting	Depends on proposals	Depends on proposals
Other statutory filing			
With the registrar and / or court	Proposals to be filed with the registrar within 3 months of appointment - Section 23 (1)(a) Result of section 23 meeting to be filed with the registrar and court after conclusion of the meeting - Section 24(4)		
Closure formalities			
Notice of final meeting	N/A	N/A	N/A
Advertisement of final meeting	N/A	N/A	N/A
Report to creditors	Except where administration is followed by liquidation, on vacating office the administrator shall send the creditors a report on the administration up to that time - Rule 2.30(3)	Notice of completion/ termination of arrangement and report, including summary of all receipts and payments, to be sent to creditors and members not more than 28 days after the final completion/termination of the arrangement - Rule 1.29	Notice of completion/ termination of arrangement and report, including summary of all receipts and payments, to be sent to creditors and members not more than 28 days after the final completion/termination of the arrangement - Rule 5.34

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Filing with the registrar/ court	Copy of discharge order to be filed with registrar within 14 days of the order - Section 18(4)	Copy of notice to creditors and report summarising all receipts and payments to be sent to registrar and filed in court within 28 days of final completion/termination of arrangement - Rule 1.29	Registrar - N/A Copy of notice to creditors and report summarising all receipts and payments to be filed in court within 28 days of final completion/termination of arrangement - Rule 5.34
Final receipts and payments account	Due within 2 months of the administrator ceasing to act. To be sent to the registrar, the court and every members of the creditors' committee - Rule 2.52(1)	Covered by requirements above	Covered by requirements above
Other/ Subsequent notices	N/A	N/A	Copy of notice to creditors and report summarising all receipts and payments to be sent to Secretary of State within 28 days of completion/ termination - Rule 5.34.

* Subject to Article 3 of the Enterprise Act 2002 (Commencement No.4 and Transitional Provisions and Savings) Order 2003. For appointments pre 15.09.03, technical references relate to the Insolvency Act and Rules 1986. For appointments post 15.09.03, technical references relate to the Insolvency Act and Rules 1986 as amended by the Enterprise Act 2002.

** Subject to The Insolvency Act 2000 (Commencement No.3 and Transitional Provisions) Order 2002. For appointments pre 01.01.03, technical references relate to the Insolvency Act and Rules 1986. For appointments post 01.01.03, technical references relate to the Insolvency Act and Rules 1986 as amended by the Insolvency Act 2000.

The CVA requirements also apply to PVAs pursuant to paragraph 4 of the Insolvent Partnerships Order 1994.

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5.3 TECHNICAL HELPSHEET 2 ADM, CVA, IVA POST EA2002/IA2000

IPA Technical Helpsheet 2 for administrations after Enterprise Act 2002 (relevant date 15/09/03) and company and individual voluntary arrangements after Insolvency Act 2000 (relevant date 01/01/03) and before Insolvency (Amendment) Rules 2009 (relevant date 06/04/09)

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ADM: Administration

IVA: Individual voluntary arrangement

CVA: Company voluntary arrangement

PVA: Partnership voluntary arrangement

IPA TECHNICAL HELPSHEETS AVAILABLE

IPA Technical Helpsheet 1 ADM, CVA, IVA Pre EA2002/IA2000

IPA Technical Helpsheet 2 ADM, CVA, IVA Post EA2002/IA2000

IPA Technical Helpsheet 2a ADM, CVA, IVA 06/04/09 - 05/04/10

IPA Technical Helpsheet 2b ADM, CVA, IVA Post 06/04/10

IPA Technical Helpsheet 3 ADR, CVL, MVL, WUC, BKY Pre 06/04/09

IPA Technical Helpsheet 3a ADR, CVL, MVL, WUC, BKY 06/04/09 - 05/04/10

IPA Technical Helpsheet 3b ADR, CVL, MVL, WUC, BKY Post 06/04/10

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Pre-appointment work - VAs			
Meetings convened and notice given	N/A	Where proposal by directors, or where chapter 4 of Rules applies, meetings of the company and creditors are to be held not less than 14 nor more than 28 days from the date on which the nominee's report is filed in court - Rule 1.9. Where proposal by directors or chapter 4 of Rules applies, nominee should send the notices at least 14 days before the day fixed for the meeting - Rule 1.9. Where the nominee is the administrator or liquidator, at least 14 days notice of the meetings to be given to creditors and members - Rule 1.11. Where moratorium, meetings of creditors and the company are to be summoned for a date within 28 days of the date on which the moratorium came into force - Rule 1.48	Where an interim order is in force, meeting is to be held not less than 14 days from date nominee's report is filed in court nor more than 28 days from the date on which the report is considered by the court - Rule 5.17. Where an interim order is not obtained meeting to be held not less than 14 nor more than 28 days from the date on which the nominee's report is filed in court - Rule 5.17. Notices shall be sent by the nominee at least 14 days before the day fixed for the meeting to be held - Rule 5.17 Notice to be given to all creditors specified in the debtor's statement of affairs and any other creditors of whom the nominee is aware - Rule 5.17

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Post meeting reports	N/A	Copy of chairman's report to be filed in court within four days of the meeting - Rule 1.24(3) Copy of chairman's report to court and form 1.1 to be sent to registrar forthwith - Rule 1.24(5) Copy of chairman's report to be sent to creditors immediately after it has been filed in court - Section 4 (6).	Copy of chairman's report to be filed in court within four days of the meeting - Rule 5.27(3). Copy to be sent to creditors immediately after chairman's report has been filed in court - Rule 5.27(4)
Content of reports	N/A	Rule 1.24(2)	Rule 5.27(2)
Appointment formalities			
Filing with the registrar	Due within 7 days of the order or, where appointed by the holder of a floating charge or by the directors or the company, within 7 days of the date the administrator receives notice from the person appointing him - Paragraph 46 (4) & (6) Sch B1	See requirements for post meeting reports above	See requirements for post meeting reports above
Notification to creditors	Due as soon as is reasonably practicable - Paragraph 46(3) Sch B1	See requirements for post meeting reports above	See requirements for post meeting reports above

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Notification to others	For other relevant parties and time frame, see Rule 2.27(2). Notice to the company due as soon as is reasonably practicable - Paragraph 46(2), Sch B1	See requirements for post meeting reports above	Approval to be advised to Secretary of State immediately chairman's report has been filed in court - Rule 5.29
Content of notices	See relevant Rules	See requirements for post meeting reports above	See requirements for post meeting reports above
Advertising	Advertisement in Gazette and appropriate newspaper due as soon as is reasonably practicable - Paragraph 46(2) and Rule 2.27	N/A	N/A
Financial issues			
Filing of periodic statutory receipts and payments accounts with the registrar	Copy of six-monthly reports, containing R&Ps, to be filed within one month of the end of the period covered by the report, unless extended by the court - Rule 2.47 (and see Reports to Creditors below)	Not less often than once in every 12 month period beginning with the date of appointment. Due to be filed within 2 months of the end of the period to which the abstract relates - Rule 1.26(2) and (3)	N/A

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Other parties to whom accounts must be sent	Creditors - see requirements for periodic reporting below	Court, company, creditors, members and, where the company is not in liquidation, auditors - Rule 1.26(2)	Not less often than once in every 12 month period beginning with the date of appointment an abstract of receipts and payments accounts should be sent to the debtor, the creditors and the court. Due to be issued within two months of the period end - Rule 5.31
ISA	N/A	N/A	N/A
Meeting formalities during the conduct of the case			
Timing of meetings	Unless exempted by Paragraph 52(1), Sch B1, initial creditors' meeting to be held as soon as reasonably practicable after the company enters administration AND within ten weeks of the date the company entered administration - Paragraph 51, Sch B1	N/A	N/A
Notice to creditors/ members	At least 14 days notice required - Rule 2.35 (4)	N/A	N/A
Advertising	No timescale specified - notice should be published in same newspaper as that in which the appointment was advertised - Rule 2.34(1)	N/A	N/A

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Chairman	Where not the administrator, the chairman is to be nominated by him in writing - Rule 2.36	N/A	N/A
Calculation of claims for voting	Rules 2.38 - 2.42	N/A	N/A
Reporting of outcome	Decision of meeting to be reported to court, registrar and creditors as soon as reasonably practicable after the conclusion of the meeting - Paragraph 53(2) Sch B1 and Rule 2.46	N/A	N/A
Reports to creditors			
Reports to be issued	Copy of proposals to be sent to registrar and creditors as soon as reasonably practicable and within eight weeks of the company entering administration - Paragraph 49. Reports due for the period of six months from the date the company entered administration and every subsequent six month period. To be issued to creditors, court and registrar within one month of the end of the period covered by the report, unless extended by the court - Rule 2.47	Not less often than once in every 12 month period beginning with the date of appointment, supervisor required to report on progress and efficacy of arrangement - due to be issued/ filed within 2 months of the end of the period to which it relates - Rule 1.26(2) and (3)	Not less often than once in every 12 month period beginning with the date of appointment supervisor required to report on progress and efficacy of arrangement - due to be issued/ filed within 2 months of the end of the period to which it relates - Rule 5.31

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Content of reports	Rule 2.47(1) and (2)	Where the fee payable to the supervisor exceeds the estimate provided in the proposal or the nominee's comments, this should be reported to creditors in the next report, and additional information provided - SIP 3.	Where the fee payable to the supervisor exceeds the estimate provided in the proposal or the nominee's comments, this should be reported to creditors in the next report, and additional information provided -SIP 3.
Creditors' committees			
Certificate of constitution	To be sent to registrar as soon as reasonably practicable - Rule 2.51(5)	Depends on proposals	Depends on proposals
First meeting	To be called not later than six weeks after the first establishment of the committee - Rule 2.52(3)	Depends on proposals	Depends on proposals
Reporting requirements	No statutory requirements for periodic reporting	Depends on proposals	Depends on proposals
Other statutory filing			
With the registrar and / or court	Notice of any extension of the administrator's term of office by consent to be filed in court and with registrar as soon as is reasonably practicable - Paragraph 78(5) Sch B1 Any court order extending the term of office to be notified to the registrar as soon as reasonably practicable - Paragraph 77(2) Sch B1		

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Closure formalities			
Notice of final meeting	N/A	N/A	N/A
Advertisement of final meeting	N/A	N/A	N/A
Report to creditors	Where automatic end - Rule 2.111(2) Where purpose achieved and administrator appointed by the holder of a floating charge or by the directors/ company, report within 5 business days - Rule 2.113(5). Alternatively, administrator can publish a notice in Gazette and same newspaper used to advertise appointment - Rule 2.113(6) Where administrator intends to apply to court for an order ending administration - Rule 2.114(3) and (4) Where moving from administration to CVL - Rule 2.117(2) Where moving from administration to dissolution - Rule 2.118(2)	Notice of completion of arrangement and report, including summary of all receipts and payments, to be sent to creditors and members not more than 28 days after the final completion or termination of the arrangement - Rule 1.29 Final report should include a statement of the amount, if any, paid to unsecured creditors out of the prescribed part - Rule 1.29(4)	Notice that arrangement has been fully implemented or terminated and report, including summary of all receipts and payments, to be sent within 28 days of final completion/ termination - Rule 5.34 (1).

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Filing with the registrar/court	Where automatic end: notice to the Registrar as soon as reasonably practicable and to the Court within 5 days of ceasing to act - Rule 2.111 Where administration ended by court order: notify Registrar - Rule 2.116 Where objective achieved and administrator appointed by the holder of a floating charge or by the directors/company: notice to Registrar and to Court - Rule 2.113/Paragraph 80, Schedule B1 Where moving from administration to CVL: notice to Registrar and copy to Court as soon as reasonably practicable - Rule 2.117 and Paragraph 83(5) Sch B1 Where moving from administration to dissolution: notice to Registrar and copy to Court as soon as reasonably practicable - Rule 2.118 and Paragraph 84(5) Sch B1	Copy of notice to creditors and report summarising all receipts and payments to be sent to registrar and filed in court within 28 days of final completion/termination of arrangement - Rule 1.29 (3)	Registrar - N/A Copy of notice and report to creditors to be filed in court within 28 days of final completion or termination - Rule 5.34 (3).

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Final receipts and payments account	Covered by above requirements to report/file to Court, Registrar of Companies and creditors. The final account shall include a statement of the amount paid to unsecured creditors by virtue of the application of Section 176A(2)/(3) - Rule 2.47.	Covered by requirements above	Covered by requirements above
Other/ Subsequent notices	N/A	N/A	Notice of completion or termination of arrangement to be issued to Secretary of State within 28 days of completion or termination - Rule 5.34(3).

The CVA requirements also apply to PVAs pursuant to paragraph 4 of the Insolvent Partnerships Order 1994.

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5.4 TECHNICAL HELPSHEET 2A ADM, CVA, IVA

06/04/09 - 05/04/10

IPA Technical Helpsheet 2a for administrations and company and individual voluntary arrangements after Insolvency (Amendment) Rules 2009 (relevant date 06/04/09) and before Insolvency (Amendment) Rules 2010 (relevant date 06/04/10)

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ADM: Administration

IVA: Individual voluntary arrangement

CVA: Company voluntary arrangement

PVA: Partnership voluntary arrangement

IPA TECHNICAL HELPSHEETS AVAILABLE

IPA Technical Helpsheet 1 ADM, CVA, IVA Pre EA2002/IA2000

IPA Technical Helpsheet 2 ADM, CVA, IVA Post EA2002/IA2000

IPA Technical Helpsheet 2a ADM, CVA, IVA 06/04/09 - 05/04/10

IPA Technical Helpsheet 2b ADM, CVA, IVA Post 06/04/10

IPA Technical Helpsheet 3 ADR, CVL, MVL, WUC, BKY Pre 06/04/09

IPA Technical Helpsheet 3a ADR, CVL, MVL, WUC, BKY 06/04/09 - 05/04/10

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Pre-appointment work - VAs			
Meetings convened and notice given	N/A	Where proposal by directors, or where chapter 4 of Rules applies, meetings of the company and creditors are to be held not less than 14 nor more than 28 days from the date on which the nominee's report is filed in court - Rule 1.9. Where proposal by directors or chapter 4 of Rules applies, nominee should send the notices at least 14 days before the day fixed for the meeting - Rule 1.9. Where the nominee is the administrator or liquidator, at least 14 days notice of the meetings to be given to creditors and members - Rule 1.11. Where moratorium, meetings of creditors and the company are to be summoned for a date within 28 days of the date on which the moratorium came into force - Rule 1.48	Where an interim order is in force, meeting is to be held not less than 14 days from date nominee's report is filed in court nor more than 28 days from the date on which the report is considered by the court - Rule 5.17. Where an interim order is not obtained meeting to be held not less than 14 nor more than 28 days from the date on which the nominee's report is filed in court - Rule 5.17. Notices shall be sent by the nominee at least 14 days before the day fixed for the meeting to be held - Rule 5.17 Notice to be given to all creditors specified in the debtor's statement of affairs and any other creditors of whom the nominee is aware - Rule 5.17

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Post meeting reports	N/A	Copy of chairman's report to be filed in court within four days of the meeting - Rule 1.24(3) Copy of chairman's report to court and form 1.1 to be sent to registrar as soon as reasonably practicable - Rule 1.24(5) Copy of chairman's report to be sent to creditors immediately after it has been filed in court - Section 4 (6).	Copy of chairman's report to be filed in court within four days of the meeting - Rule 5.27(3). Copy to be sent to creditors immediately after chairman's report has been filed in court - Rule 5.27(4)
Content of reports	N/A	Rule 1.24(2)	Rule 5.27(2)
Appointment formalities			
Filing with the registrar	Due within 7 days of the order or, where appointed by the holder of a floating charge or by the directors or the company, within 7 days of the date the administrator receives notice from the person appointing him - Paragraph 46 (4) & (6) Sch B1	See requirements for post meeting reports above	See requirements for post meeting reports above
Notification to creditors	Due as soon as is reasonably practicable - Paragraph 46(3) Sch B1	See requirements for post meeting reports above	See requirements for post meeting reports above

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Notification to others	For other relevant parties and time frame, see Rule 2.27(2). Notice to the company due as soon as is reasonably practicable - Paragraph 46(2), Sch B1	See requirements for post meeting reports above	Approval to be advised to Secretary of State immediately chairman's report has been filed in court - Rule 5.29
Content of notices	See relevant Rules	See requirements for post meeting reports above	See requirements for post meeting reports above
Advertising	Advertisement in Gazette and in such other manner as the administrator thinks fit as soon as is reasonably practicable - Paragraph 46(2) and Rule 2.27	N/A	N/A
Financial issues			
Filing of periodic statutory receipts and payments accounts with the registrar	Copy of six-monthly reports, containing R&Ps, to be filed within one month of the end of the period covered by the report, unless extended by the court - Rule 2.47 (and see Reports to Creditors below)	Not less often than once in every 12 month period beginning with the date of appointment. Due to be filed within 2 months of the end of the period to which the abstract relates - Rule 1.26(2) and (3)	N/A

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Other parties to whom accounts must be sent	Creditors - see requirements for periodic reporting below	Court, company, creditors, members and, where the company is not in liquidation, auditors - Rule 1.26(2)	Not less often than once in every 12 month period beginning with the date of appointment an abstract of receipts and payments accounts should be sent to the debtor, the creditors and the court. Due to be issued within two months of the period end - Rule 5.31
ISA	N/A	N/A	N/A
Meeting formalities during the conduct of the case			
Timing of meetings	Unless exempted by Paragraph 52(1), Sch B1, initial creditors' meeting to be held as soon as reasonably practicable after the company enters administration AND within ten weeks of the date the company entered administration - Paragraph 51, Sch B1	N/A	N/A
Notice to creditors/ members	At least 14 days notice required - Rule 2.35 (4)	N/A	N/A
Advertising	No timescale specified - notice should be Gazetted and may be advertised in such other manner as the IP thinks fit. - Rule 2.34(1)	N/A	N/A

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Chairman	Where not the administrator, the chairman is to be nominated by him in writing - Rule 2.36	N/A	N/A
Calculation of claims for voting	Rules 2.38 - 2.42	N/A	N/A
Reporting of outcome	Decision of meeting to be reported to court, registrar and creditors as soon as reasonably practicable after the conclusion of the meeting - Paragraph 53(2) Sch B1 and Rule 2.46	N/A	N/A
Reports to creditors			
Reports to be issued	Copy of proposals to be sent to registrar and creditors as soon as reasonably practicable and within eight weeks of the company entering administration - Paragraph 49. Reports due for the period of six months from the date the company entered administration and every subsequent six month period. To be issued to creditors, court and registrar within one month of the end of the period covered by the report, unless extended by the court - Rule 2.47	Not less often than once in every 12 month period beginning with the date of appointment supervisor required to report on progress and efficacy of arrangement – due to be issued/filed within 2 months of the end of the period to which it relates - Rule 1.26(2) and (3)	Not less often than once in every 12 month period beginning with the date of appointment supervisor required to report on progress and efficacy of arrangement – due to be issued/filed within 2 months of the end of the period to which it relates - Rule 5.31

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Content of reports	Rule 2.47(1) and (2)	Where the fee payable to the supervisor exceeds the estimate provided in the proposal or the nominee's comments, this should be reported to creditors in the next report, and additional information provided - SIP 3.	Where the fee payable to the supervisor exceeds the estimate provided in the proposal or the nominee's comments, this should be reported to creditors in the next report, and additional information provided -SIP 3.
Creditors' committees			
Certificate of constitution	To be sent to registrar as soon as reasonably practicable - Rule 2.51(5)	Depends on proposals	Depends on proposals
First meeting	To be called not later than six weeks after the first establishment of the committee - Rule 2.52(3)	Depends on proposals	Depends on proposals
Reporting requirements	No statutory requirements for periodic reporting	Depends on proposals	Depends on proposals
Other statutory filing			
With the registrar and / or court	Notice of any extension of the administrator's term of office by consent to be filed in court and with registrar as soon as is reasonably practicable - Paragraph 78(5) Sch B1 Any court order extending the term of office to be notified to the registrar as soon as reasonably practicable - Paragraph 77(2) Sch B1		

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Closure formalities			
Notice of final meeting	N/A	N/A	N/A
Advertisement of final meeting	N/A	N/A	N/A
Report to creditors	Where automatic end - Rule 2.111(2) Where purpose achieved and administrator appointed by the holder of a floating charge or by the directors/ company, report within 5 business days - Rule 2.113(5). Alternatively, administrator can publish a notice in the Gazette and in the same newspaper used to advertise appointment - Rule 2.113(6) Where administrator intends to apply to court for an order ending administration - Rule 2.114(3) and (4) Where moving from administration to CVL - Rule 2.117(2) Where moving from administration to dissolution - Rule 2.118(2)	Notice of completion of arrangement and report, including summary of all receipts and payments, to be sent to creditors and members not more than 28 days after the final completion or termination of the arrangement - Rule 1.29 Final report should include a statement of the amount, if any, paid to unsecured creditors out of the prescribed part - Rule 1.29(4)	Notice that arrangement has been fully implemented or terminated and report, including summary of all receipts and payments, to be sent within 28 days of final completion/ termination - Rule 5.34 (1).

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Filing with the registrar/court	Where automatic end: notice to the Registrar as soon as reasonably practicable and to the Court within 5 days of ceasing to act - Rule 2.111 Where administration ended by court order: notify Registrar - Rule 2.116 Where objective achieved and administrator appointed by the holder of a floating charge or by the directors/company: notice to Registrar and to Court - Rule 2.113/Paragraph 80, Schedule B1 Where moving from administration to CVL: notice to Registrar and copy to Court as soon as reasonably practicable - Rule 2.117 and Paragraph 83(5) Sch B1 Where moving from administration to dissolution: notice to Registrar and copy to Court as soon as reasonably practicable - Rule 2.118 and Paragraph 84(5) Sch B1	Copy of notice to creditors and report summarising all receipts and payments to be sent to registrar and filed in court within 28 days of final completion/termination of arrangement - Rule 1.29 (3)	Registrar - N/A Copy of notice and report to creditors to be filed in court within 28 days of final completion or termination - Rule 5.34 (3).

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Final receipts and payments account	Covered by above requirements to report/file to Court, Registrar of Companies and creditors. Final account shall include a statement of the amount paid to unsecured creditors by virtue of the application of Section 176A(2)/(3) - Rule 2.47.	Covered by requirements above	Covered by requirements above
Other/ Subsequent notices	N/A	N/A	Notice of completion or termination of arrangement to be issued to Secretary of State within 28 days of completion or termination - Rule 5.34(3)

The CVA requirements also apply to PVAs pursuant to paragraph 4 of the Insolvent Partnerships Order 1994.

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5.5 TECHNICAL HELPSHEET 2B ADM, CVA, IVA POST 06/04/10

IPA Technical Helpsheet 2b for administrations and company and individual voluntary arrangements after the Insolvency (Amendment) Rules 2010 and Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (relevant date 06/04/10)

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Financial issues	300
Meeting formalities during the conduct of the case	301
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Creditors' committees	303
Other statutory filing	304
Closure formalities	304

ADM: Administration
IVA: Individual voluntary arrangement

CVA: Company voluntary arrangement
PVA: Partnership voluntary arrangement

IPA TECHNICAL HELPSHEETS AVAILABLE

IPA Technical Helpsheet 1 ADM, CVA, IVA Pre EA2002/IA2000
 IPA Technical Helpsheet 2 ADM, CVA, IVA Post EA2002/IA2000
 IPA Technical Helpsheet 2a ADM, CVA, IVA 06/04/09 - 05/04/10
 IPA Technical Helpsheet 2b ADM, CVA, IVA Post 06/04/10
 IPA Technical Helpsheet 3 ADR, CVL, MVL, WUC, BKY Pre 06/04/09
 IPA Technical Helpsheet 3a ADR, CVL, MVL, WUC, BKY 06/04/09 - 05/04/10
 IPA Technical Helpsheet 3b ADR, CVL, MVL, WUC, BKY Post 06/04/10

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Pre-appointment work - VAs			
Meetings convened and notice given	N/A	Where proposal by directors, or where chapter 4 of Rules applies, meetings of the company and creditors are to be held not more than 28 days from the date on which the nominee's report is filed in court - Rule 1.9. Where proposal by directors or chapter 4 of Rules applies, nominee should send the notices at least 14 days before the day fixed for the meeting - Rule 1.9. Where the nominee is the administrator or liquidator, at least 14 days notice of the meetings to be given to creditors and members - Rule 1.11. Notice by electronic means permissible in all cases where prior consent - Rule 12A.10 Where moratorium, meetings of creditors and the company are to be summoned for a date within 28 days of the date on which the moratorium came into force - Rule 1.48	Where an interim order is in force, meeting is to be held not less than 14 days from date nominee's report is filed in court nor more than 28 days from the date on which the report is considered by the court - Rule 5.17(1)(b). Where an interim order is not obtained, meeting to be held not more than 28 days from the date on which the nominee received the document and statement in section 256A(2) - Rule 5.17(1)(a). Notices shall be sent by the nominee at least 14 days before the day fixed for the meeting - Rule 5.17(2) Notice to be given to all creditors specified in the debtor's statement of affairs and any other creditors of whose address the nominee is aware - Rule 5.17(3) Notice by electronic means permissible in all cases where prior consent Rule 12A.10

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Post meeting reports	N/A	Copy of chairman's report to be filed in court within 4 business days of the meeting - Rule 1.24(3) Copy of chairman's report and Form 1.1 to be sent to registrar as soon as reasonably practicable - Rule 1.24(5) Notice of result of meeting to be sent to creditors as soon as reasonably practicable after it has been filed in court - S4(6), Rule 1.24(4)	Where an Interim Order has been obtained, a copy of chairman's report is to be filed in court within four business days of the meeting - Rule 5.27(3). Notice of result of meeting to creditors as soon as is reasonably practicable after chairman's report has been filed in court or, if no interim order had been obtained, within 4 business days of the creditors' meeting - S259(1), Rule 5.27(4A)
Use of Websites		Reports may be made available to creditors via a website, although a hardcopy must be provided on request - Rule 12A.12	Reports may be made available to creditors via a website, although a hardcopy must be provided on request - Rule 12A.12
Content of reports	N/A	Rule 1.24(2)	Rule 5.27(2)
Appointment formalities			
Filing with the registrar	Due within 7 days of the order or, where appointed by the holder of a floating charge or by the directors or the company, within 7 days of the date the administrator receives notice from the person appointing him - Paragraph 46 (4) & (6) Sch B1	See requirements for post meeting reports above	N/A

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Notification to creditors	Due as soon as is reasonably practicable - Paragraph 46(3) Sch B1 Notice by electronic means permissible where prior consent - Rule 12A.10	See requirements for post meeting reports above	See requirements for post meeting reports above
Notification to others	For other relevant parties and time frame, see Rule 2.27(2). Notice to the company due as soon as is reasonably practicable - Paragraph 46(2), Sch B1	See requirements for post meeting reports above	Approval to be advised to Secretary of State as soon as reasonably practicable and in any event within 14 days - Rule 5.29
Content of notices	See relevant Rules and SIP16 where a pre-pack sale has been conducted	See requirements for post meeting reports above	See requirements for post meeting reports above
Advertising	Advertisement in Gazette and in such other manner as the administrator thinks fit as soon as is reasonably practicable - Paragraph 46(2) and Rule 2.27(1). For contents of advertisement(s), see Rules 2.27(1A) and 12A.33 – 12A.41	N/A	N/A

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Financial issues			
Filing of periodic statutory receipts and payments accounts with the registrar	Copy of six-monthly reports, containing R&Ps, to be filed within one month of the end of the period covered by the report, unless extended by the court – Rule 2.47 (and see Reports to Creditors below)	Abstract of all receipts and payments or a statement that there have been no such receipts and payments to accompany the progress report, to be filed within 2 months of the end of each 12 month period – Rules 1.26A(4) and (6) (and see Reports to Creditors below)	N/A
Other parties to whom accounts must be sent	Creditors – see Reports to Creditors below	Company, creditors, members and, where the company is not in liquidation, auditors – Rule 1.26A(4) (and see Reports to Creditors below)	For each period of 12 months ending with anniversary of commencement, an abstract of receipts and payments accounts should be sent to the debtor and the creditors. Due to be issued within 2 months of the period end – Rule 5.31A (and see Reports to Creditors below)
ISA	N/A	N/A	N/A

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Meeting formalities during the conduct of the case			
Timing of meetings	Unless exempted by Paragraph 52(1), Sch B1, initial creditors' meeting to be held as soon as reasonably practicable after the company enters administration AND within ten weeks of the date the company entered administration - Paragraph 51, Sch B1	N/A	N/A
Notice to creditors/ members	At least 14 days notice required - Rule 2.35 (4)	N/A	N/A
Advertising	Notice should be Gazetted as soon as reasonably practicable after the invitation is sent to creditors and may be advertised in such other manner as the IP thinks fit. - Rule 2.34(1) & (1A). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39; and additional matters - Rule 2.35(4A)	N/A	N/A
Chairman	Where not the administrator, the chairman is to be nominated by him in writing - Rule 2.36	N/A	N/A
Calculation of claims for voting	Rules 2.38 - 2.42	N/A	N/A

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Reporting of outcome	Decision of meeting to be reported to court, registrar and creditors as soon as reasonably practicable after the conclusion of the meeting - Paragraph 53(2) Sch B1 and Rule 2.46	N/A	N/A
Reports to creditors (and, where applicable, members)			
Reports to be issued	Copy of proposals to be sent to registrar and creditors as soon as reasonably practicable and within eight weeks of the company entering administration - Paragraph 49. Reports due for the period of six months from the date the company entered administration and every subsequent six month period. To be issued to creditors and registrar within one month of the end of the period covered by the report, unless extended by the court - Rule 2.47	For each period of 12 months from anniversary of commencement, supervisor to report on the progress and prospects for the full implementation of the arrangement – due to be issued/filed within 2 months of the end of the period to which it relates - Rule 1.26A(4), (5) and (6) The report must also be sent to members unless the Court has dispensed with the requirement – Rule 1.26A(4) and (7).	For each period of 12 months from anniversary of commencement, supervisor to report on the progress and prospects for the full implementation of the arrangement – due to be issued/filed within 2 months of the end of the period to which it relates - Rule 5.31

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Content of reports	Rule 2.47(1) – (2B)	Where the fee payable to the supervisor exceeds the estimate provided in the proposal or the nominee's comments, this should be reported to creditors in the next report, and additional information provided – SIP 3.	Where the fee payable to the supervisor exceeds the estimate provided in the proposal or the nominee's comments, this should be reported to creditors in the next report, and additional information provided –SIP 3.
Creditors' committees			
Certificate of constitution	To be sent to registrar as soon as reasonably practicable – Rule 2.51(5)	Depends on proposals	Depends on proposals
First meeting	To be called not later than six weeks after the first establishment of the committee – Rule 2.52(3)	Depends on proposals	Depends on proposals
Reporting requirements	No statutory requirements for periodic reporting	Depends on proposals	Depends on proposals

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Other statutory filing			
With the registrar and / or court	If proposals deemed approved, as soon as reasonably practicable after the period when creditors can request a meeting, notice of date deemed approved and copy proposals to be filed with registrar, court (and creditors) – Rule 2.33 (5A) Notice of any extension of the administrator's term of office by consent to be filed in court and with registrar as soon as is reasonably practicable - Paragraph 78(5) Sch B1 Any court order extending the term of office to be notified to the registrar as soon as reasonably practicable - Paragraph 77(2) Sch B1	No other statutory filing during course of Arrangement	No other statutory filing during course of Arrangement
Closure formalities			
Notice of final meeting	N/A	N/A	N/A
Advertisement of final meeting	N/A	N/A	N/A

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Reports to creditors (and, where applicable, members)	Where automatic end - Rule 2.111(2) Where purpose achieved and administrator appointed by the holder of a floating charge or by the directors/ company, report within 5 business days - Rule 2.113(5). Alternatively, administrator can publish a notice in the Gazette and in such other manner as the administrator thinks fit - Rule 2.113(6) Where administrator intends to apply to court for an order ending administration - Rule 2.114(3) and (4) Where moving from administration to CVL - Rule 2.117A Where moving from administration to dissolution - Rule 2.118(2)	Notice of completion of arrangement and report, including summary of all receipts and payments, to be sent to creditors and members not more than 28 days after the final completion or termination of the arrangement - Rule 1.29 Final report should include a statement of the amount, if any, paid to unsecured creditors out of the prescribed part - Rule 1.29(4)	Notice that arrangement has been fully implemented or terminated and report, including summary of all receipts and payments, to be sent within 28 days of final completion/ termination - Rule 5.34 (1) – (2).

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	ADM (Appointments from 06/04/10*)	CVA (Appointments from 06/04/10)	IVA (Appointments from 06/04/10)
Filing with the registrar/court	Where automatic end: notice to the Registrar as soon as reasonably practicable and to the Court within 5 business days of ceasing to act - Rule 2.111 Where administration ended by court order: notify Registrar - Rule 2.116 Where objective achieved and administrator appointed by the holder of a floating charge or by the directors/company: notice to the Court and Registrar - Rule 2.113/Paragraph 80, Sch B1 Where moving from administration to CVL: notice to Registrar and copy to Court as soon as reasonably practicable - Rule 2.117A and Paragraph 83(5) Sch B1 Where moving from administration to dissolution: notice to Registrar and copy to Court as soon as reasonably practicable - Rule 2.118 and Paragraph 84(5) Sch B1	Copy of notice to creditors and report summarising all receipts and payments to be sent to registrar and filed in court within 28 days of final completion/termination of arrangement - Rule 1.29 (3)	Registrar - N/A Where an Interim Order was obtained, copy of notice and report to creditors to be filed in court, within 28 days of final completion or termination - Rule 5.34 (3A).

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Final receipts and payments account	Covered by above requirements to report/file to Court, Registrar of Companies and creditors. The final account shall include a statement of the amount paid to unsecured creditors by virtue of the application of Section 176A(2)/(3) - Rule 2.47.	Covered by requirements above. The account should take the form of a cumulative summary for the duration of the arrangement. Final report should include a statement of the amount, if any, paid to unsecured creditors out of the prescribed part - Rule 1.29(4)	Covered by requirements above
Other/ Subsequent notices	N/A	N/A	Notice of completion or termination of arrangement to be issued to Secretary of State within 28 days of completion or termination - Rule 5.34(3)

* N/A to Administration Orders where applications made prior to 06/04/10 or to Administrations preceded by Liquidations commencing before 06/04/10

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5.6 TECHNICAL HELPSHEET 3 ADR, CVL, MVL, WUC, BKY PRE 06/04/09

IPA Technical Helpsheet 3 for administrative receiverships, voluntary liquidations, compulsory liquidations and bankruptcies before Insolvency (Amendment) Rules 2009 and Legislative Reform (Insolvency) (Advertising Requirements) Order 2009 (relevant date 06/04/09)

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ADR Administrative Receivership
MVL Members' Voluntary Liquidation
BKY Bankruptcy

CVL Creditors' Voluntary Liquidation
WUC Compulsory Liquidation

IPA TECHNICAL HELPSHEETS AVAILABLE

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IPA Technical Helpsheet 2 ADM, CVA, IVA Post EA2002/IA2000
IPA Technical Helpsheet 2a ADM, CVA, IVA 06/04/09 - 05/04/10
IPA Technical Helpsheet 2b ADM, CVA, IVA Post 06/04/10
IPA Technical Helpsheet 3 ADR, CVL, MVL, WUC, BKY Pre 06/04/09
IPA Technical Helpsheet 3a ADR, CVL, MVL, WUC, BKY 06/04/09 - 05/04/10
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Pre-appointment work					
Meetings convened and notice given	N/A	Notices to be sent to creditors not less than seven days before the meeting - Section 98(1)(b) Notice to be published in the gazette and in two newspapers circulating in the locality of the company's principal place of business - Section 98(1)(c) Meeting notice to comply with SIP9	N/A	N/A	N/A
Post meeting reports	N/A	To be sent within 28 days of the meeting - Rule 4.49	N/A	N/A	N/A

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Content of reports	N/A	Report to include details of the resolutions passed at the section 98 meeting and a summary of the statement of affairs - Rule 4.49 and SIP 8 Report to contain an estimate of the value of the prescribed part and the company's net property, with a statement as to whether, and if so, why, the liquidator intends to apply to court for an order under section 176A(5). Rule 4.49(2)/(3)	N/A	N/A	N/A
Appointment formalities					
Filing with the registrar	N/A - Appointor's responsibility within 7 days of appointment	Within 14 days of appointment - Section 109	Within 14 days of appointment -Section 109	Due forthwith - Rule 4.106(4)	N/A

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Notification to creditors	Within 28 days of appointment - Section 46(1)(b)	Within 28 days of appointment - Rule 4.49	Within 28 days of appointment - Rule 4.139(4)	No statutory timescale for SoS appointments - Section 137(4). Dear IP 1 issued February 2001 requires notification to be given within 28 days of appointment On court appointments, notice to be given within 28 days of appointment to creditors and contributories or as directed by the Court - Rule 4.102(5)	No statutory timescale for SoS or court appointments - Section 296(4) and 297(7). For SoS appointments Dear IP 1 issued February 2001 states notification within 28 days of appointment.
Notification to others	To the company, due forthwith - Section 46(1)(a)	Directors should be issued with a letter advising them of the restrictions on the re-use of company name - Dear IP 5, 2001	N/A	N/A	N/A
Content of notices	Contents set out in Rule 3.2(2)	See requirements for post meeting reports above	N/A	For SoS appointments, see Section 137(5)	For SoS appointments, see Section 296(5)

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Advertising	Notice to be published in Gazette and an appropriate newspaper - due forthwith - Section 46(1) (a) and Rule 3.2 (3)	Notice to be published in Gazette within 14 days of appointment - Section 109. Notice to be published in appropriate newspaper on receipt of certificate of appointment - Rule 4.106(1)	Notice to be published in Gazette within 14 days of appointment - Section 109.	For appointments by creditors' meeting, notice to be published in an appropriate newspaper, on receiving certificate of appointment - Rule 4.106	For appointments by creditors' meetings notice to be advertised forthwith after receiving certificate of appointment - Rule 6.124
Financial issues					
Filing of periodic statutory receipts and payments accounts with the registrar	Due within 2 months of the end of 12 months from the date of appointment and every subsequent period of 12 months -Rule 3.32(1)	Due within 30 days of the first anniversary and thereafter within 30 days of the end of each six month accounting period -Rule 4.223	Due within 30 days of the first anniversary and thereafter within 30 days of the end of each six month accounting period - Rules 4.1(1)(g) and 4.223	N/A	N/A
Other parties to whom accounts must be sent	Appointor, company, any liquidator and every member of the creditors' committee - Rule 3.32(1)	N/A	N/A	N/A	N/A

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ISA	N/A	Prior to 1.4.04, funds to be lodged within 14 days of the end of each six month accounting period from the date of appointment - Regulation 5(2) Insolvency Regulations 1994. From 1.4.04, no statutory obligation to use ISA.	Prior to 1.4.04, funds to be lodged within 14 days of the end of each six month accounting period from the date of appointment - Regulation 5(2) Insolvency Regulations 1994. From 1.4.04, no statutory obligation to use ISA.	Funds to be credited every 14 days or forthwith if £5,000 or more has been received - Regulation 5(1) Insolvency Regulations 1994.	Funds to be credited every 14 days or forthwith if £5,000 or more has been received - Regulation 20 Insolvency Regulations 1994.
Meeting formalities during the conduct of the case					
Timing of meetings	To be held within 3 months of appointment (not required, if company in liquidation) - S48	Creditors and members meetings to be convened within three months of each anniversary - S105	A general meeting of the company to be convened within three months of each anniversary - S93	No fixed timescale	No fixed timescale
Notice to creditors/ members	14 days notice required - Section 48(2)	21 days notice to be given - Rule 4.54(3)	For notice provisions, see the company's articles/ Section 307 CA 2006	21 days notice required - Rule 4.54(3)	21 days notice required - Rule 6.81(2)
Advertising	In same newspaper as that in which appointment was published - Rule 3.9(6)	N/A	N/A	N/A	N/A

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Chairman	Where not the officeholder, chairman to be authorised in writing - Rule 3.10	Where not the officeholder, chairman to be authorised in writing - Rule 4.56(2)		Where not the convenor, chairman to be authorised in writing - Rule 4.55	Where not the convenor, chairman to be authorised in writing - Rule 6.82(2)
Calculation of claims for voting	Rule 3.11	Rule 4.67	Subject to the provisions of the company's articles	Rule 4.67	Rule 6.93
Reports to creditors during the conduct of a case					
Reports to be issued	Copy of Section 48 report should be sent to all creditors within three months of appointment or notice published per Section 48(2)(b), unless liquidator appointed, (in which case, Section 48(4) applies).	N/A	N/A	N/A	N/A

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Content of reports	The report should contain an estimate of the value of the prescribed part and the company's net property and state whether, and if so, why, the receiver intends to apply to court under section 176A(5) - Rule 3.8(5)-(7)	N/A	N/A	N/A	N/A
Creditors' committees					
Certificate of constitution	File with Registrar (no statutory timescale) - Rule 3.17(4)	File with Registrar (no statutory timescale) - Rule 4.153(6)		File in court (no statutory timescale) - Rule 4.153(5)	File in court (no statutory timescale) - Rule 6.151(5)
First meeting	To be called within 3 months of establishment of the committee - Rule 3.18(3)	To be held within 3 months of the later of the appointment of the liquidator or the establishment of the committee - Rule 4.156(2)	N/A	To be held within 3 months of the later of the appointment or the establishment of the committee - Rule 4.156(2)	To be held within 3 months of the later of the appointment or the establishment of the committee - Rule 6.153(2)

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Reporting requirements	No statutory requirements for periodic reporting	Unless directed otherwise reports due at least once every six months - Rule 4.168(2)	N/A	Unless directed otherwise reports due at least once every six months - Rule 4.168(2)	Unless directed otherwise reports due at least once every six months - Rule 6.163(2)
Other statutory filing					
With the registrar and /or court	Section 48 report to be filed with registrar within 3 months of appointment - Section 48(1)	Special resolution to be filed within 15 days of being passed - Section 84(3) and Section 29 CA 2006. Statement of affairs to be filed with registrar within 7 days - Rule 4.34(3).	Special resolution to be filed with registrar within 15 days of being passed - Section 84(3) and Section 29 CA 2006 Declaration of solvency to be filed with registrar within 15 days of the passing of the winding up resolution - Section 89(3)	N/A	N/A

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Closure formalities					
Notice of final meeting	N/A	28 days notice to creditors required - Rule 4.126	General meeting required by Section 94. For notice provisions, see the company's articles/ Section 307 CA 2006.	28 days notice required to be given to creditors (Rule 4.125(1)) and 21 days notice of intention to vacate office to OR together with notice of meeting - Rule 4.137 and Article 1 chapter 22 Dear IP ME	28 days notice of final meeting to be given to creditors and the bankrupt (Rule 6.137(1)) and 21 days notice of intention to vacate office to OR together with notice of meeting - Rule 6.145 and Article 1 chapter 22 Dear IP ME
Advertisement of final meeting	N/A	Notice to be published in gazette at least one month before the meeting - Section 106(2)	Notice to be published in gazette at least one month before the meeting - Section 94(2)	Notice to be published in gazette at least one month before the meeting -Rule 4.125(1)	N/A

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Content of final notices/ reports	N/A	The account of the winding up under Section 106 shall include a statement as to the amount paid to unsecured creditors by virtue of the application of Section 176A - Rule 4.126		Notice to the OR should include details of any property which has not been realised, applied or distributed - Rule 4.137(3). Report to final meeting should include a statement of the amount paid to unsecured creditors out of the prescribed part - Rule 4.125(2A)	Notice to the OR should include details of any property which has not been realised, applied or distributed - Rule 6.145(3)
Filing with the registrar and/or court	Form 405(2) to be filed within 14 days of the receiver ceasing to act - Section 45(4)	Return of final meeting and account of the winding up to be submitted to registrar within one week of final meeting - Section 106(3)	Return of final meeting and account of the winding up to be submitted to registrar within one week of final meeting - Section 94(3)	Notice to be given to Registrar that final meeting has been held under Section 146 (no statutory timescale) - Section 172(8) Notice to court that final meeting has been held/ summoned and copy of final report (no statutory timescale) - Rule 4.125(4)	Notice to court that final meeting has been held/ summoned and copy of final report (no statutory timescale) - Rule 6.137(4).

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Final receipts and payments account	To be filed with registrar, company, appointor and every member of the creditors' committee within two months of the receiver ceasing to act - Rule 3.32(1)(b)	As above	As above	Account of receipts and payments to be sent to Secretary of State within 14 days of final meeting (if quorate) or 14 days of report to court if final meeting inquorate - Regulation 14(3) of the Insolvency Regulations 1994	Account of receipts and payments to be sent to Secretary of State within 14 days of final meeting (if quorate) or 14 days of report to court if final meeting inquorate - Regulation 28(3) Insolvency Regulations 1994
Other/ Subsequent notices	Notice of vacation of office to be given by the AR as soon as reasonably practicable to the company, the liquidator (if any) and creditors' committee - Rule 3.35(1)			Copy of final notice and report, which was sent to court, to be sent to Secretary of State (no statutory timescale) - Rule 4.125(4)	Copy of final notice and report, which was sent to court, to be sent to OR (no statutory timescale) - Rule 6.137(4)

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5.7 TECHNICAL HELPSHEET 3A ADR, CVL, MVL, WUC, BKY 06/04/09 - 05/04/10

IPA Technical Helpsheet 3a for administrative receiverships, voluntary liquidations, compulsory liquidations and bankruptcies after Insolvency (Amendment) Rules 2009 (relevant date 06/04/09) and before Insolvency (Amendment) Rules 2010 (relevant date 06/04/10)

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ADR Administrative Receivership
MVL Members' Voluntary Liquidation
BKY Bankruptcy

CVL Creditors' Voluntary Liquidation
WUC Compulsory Liquidation

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IPA Technical Helpsheet 1 ADM, CVA, IVA Pre EA2002/IA2000
IPA Technical Helpsheet 2 ADM, CVA, IVA Post EA2002/IA2000
IPA Technical Helpsheet 2a ADM, CVA, IVA 06/04/09 - 05/04/10
IPA Technical Helpsheet 2b ADM, CVA, IVA Post 06/04/10
IPA Technical Helpsheet 3 ADR, CVL, MVL, WUC, BKY Pre 06/04/09
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Pre-appointment work					
Meetings convened and notice given	N/A	Notices to be sent to creditors not less than seven days before the meeting - Section 98(1A) (b) Notice to be published in the gazette and may be advertised in such other manner as the directors think fit - Section 98(1A) Meeting notice to comply with SIP9	N/A	N/A	N/A
Post meeting reports	N/A	To be sent within 28 days of the meeting - Rule 4.49	N/A	N/A	N/A

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Content of reports	N/A	Report to include details of the resolutions passed at the section 98 meeting and a summary of the statement of affairs- Rule 4.49 and SIP 8 Report to contain an estimate of the value of the prescribed part and the company's net property, with a statement as to whether, and if so, why, the liquidator intends to apply to court for an order under section 176A(5). Rule 4.49(2)/(3).	N/A	N/A	N/A
Appointment formalities					
Filing with the registrar	N/A - Appointor's responsibility within 7 days of appointment	Within 14 days of appointment - Section 109	Within 14 days of appointment -Section 109	Due as soon as reasonably practicable - Rule 4.106(4)	N/A

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Notification to creditors	Within 28 days of appointment - Section 46(1) (b)	Within 28 days of appointment - Rule 4.49	Within 28 days of appointment - Rule 4.139(4)	No statutory timescale for SoS appointments - Section 137(4). Dear IP 1 (Feb 2001) requires notification to be given within 28 days of appointment. On court appointments notice to be given within 28 days of appointment to creditors and contributories or as directed by the Court - Rule 4.102(5)	No statutory timescale for SoS or court appointments - Section 296(4) and 297(7). For SoS appointments Dear IP 1 (Feb 2001) states notification within 28 days of appointment
Notification to others	To the company, due as soon as reasonably practicable - Section 46 (1)(a)	Directors should be issued with a letter advising them of the restrictions on the re-use of company name - Dear IP 5, 2001	N/A	N/A	N/A
Content of notices	Contents set out in Rule 3.2(2)	See requirements for post meeting reports above	N/A	For SoS appointments see section 137(5)	For SoS appointments, see Section 296(5)

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Advertising	Notice to be published in Gazette and may be advertised in such other manner as the AR thinks fit - due as soon as reasonably practicable - Section 46(1) (a) and Rule 3.2 (3)	Notice to be published in Gazette within 14 days of appointment and may be advertised in such other manner as the liquidator thinks fit -Section 109 and Rule 4.106(1)	Notice to be published in Gazette within 14 days of appointment and may be advertised in such other manner as the liquidator thinks fit - Section 109 and Rule 4.106(1).	For appointments by creditors' meeting, notice to be gazetted and may be advertised in such other manner as the liquidator thinks fit - Rule 4.106	For appointments by creditors' meetings, notice to be gazetted and may be advertised in such other manner as the trustee thinks fit as soon as reasonably practicable after receiving certificate of appointment - Rule 6.124
Financial issues					
Filing of periodic statutory receipts and payments accounts with the registrar	Due within 2 months of the end of 12 months from the date of appointment and every subsequent period of 12 months -Rule 3.32(1)	Due within 30 days of the first anniversary and thereafter within 30 days of the end of each 6-month accounting period -Rule 4.223	Due within 30 days of the first anniversary and thereafter within 30 days of the end of each 6-month accounting period - Rules 4.1(1)(g) and 4.223	N/A	N/A
Other parties to whom accounts must be sent	Appointor, company, any liquidator and every member of the creditors' committee -Rule 3.32(1)	N/A	N/A	N/A	N/A

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ISA	N/A	No statutory obligation to use ISA	No statutory obligation to use ISA.	Funds to be credited every 14 days or as soon as reasonably practicable if £5,000 or more has been received - Regulation 5(1) Insolvency Regulations 1994	Funds to be credited every 14 days or forthwith if £5,000 or more has been received - Regulation 20 Insolvency Regulations 1994.
Meeting formalities during the conduct of the case					
Timing of meetings	To be held within 3 months of appointment (not required, if company in liquidation) - Section 4	Creditors and members meetings to be convened within three months of each anniversary - Section 105	A general meeting of the company to be convened within three months of each anniversary - Section 93	No fixed timescale	No fixed timescale
Notice to creditors/ members	14 days notice required - Section 48(2)	21 days notice to be given - Rule 4.54(3)	For notice provisions see the company's articles/ section 307 CA 2006.	21 days notice required -Rule 4.54(3)	21 days notice required -Rule 6.81(2)

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Advertising	Notice to be Gazetted and may be advertised in such other manner as the AR thinks fit as soon as reasonably practicable - Rule 3.9(6)	Notice shall be Gazetted and may be advertised in such other manner as the convenor thinks fit -Rule 4.54. BUT annual meetings do not require gazette notices (Rule 6 of Insolvency (Amendment) Rules 2010)	Notice shall be Gazetted and may be advertised in such other manner as the convenor thinks fit -Rule 4.54. BUT annual meetings do not require gazette notices (Rule 6 of Insolvency (Amendment) Rules 2010)	Notice shall be Gazetted and may be advertised in such other manner as the convenor thinks fit -Rule 4.54	Where the convenor thinks fit notice shall be Gazetted as soon as reasonably practicable and may be advertised in such other manner as the convenor thinks fit - Rule 6.81
Chairman	Where not the officeholder, chairman to be authorised in writing - Rule 3.10	Where not the officeholder, chairman to be authorised in writing - Rule 4.56(2)		Where not the convenor, chairman to be authorised in writing - Rule 4.55	Where not the convenor, chairman to be authorised in writing - Rule 6.82(2)
Calculation of claims for voting	Rule 3.11	Rule 4.67	Subject to the provisions of the company's articles	Rule 4.67	Rule 6.93

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Reports to creditors during the conduct of a case					
Reports to be issued	Copy of Section 48 report should be sent to all creditors within three months of appointment or notice published in accordance with section 48(2)(b), unless liquidator appointed (in which case, Section 48(4) applies).	N/A	N/A	N/A	N/A
Content of reports	The report should contain an estimate of the value of the prescribed part and the company's net property and state whether, and if so, why, the receiver intends to apply to court under section 176A(5) – Rule 3.8(5)-(7)	N/A	N/A	N/A	N/A

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Creditors' committees					
Certificate of constitution	File with Registrar (no statutory timescale) - Rule 3.17(4)	File with Registrar (no statutory timescale) - Rule 4.153(6)		File in court (no statutory timescale) - Rule 4.153(5)	File in court (no statutory timescale) - Rule 6.151(5)
First meeting	To be called within 3 months of establishment of the committee - Rule 3.18(3)	To be held within 3 months of the later of the appointment of the liquidator or the establishment of the committee - Rule 4.156(2)	N/A	To be held within 3 months of the later of the appointment or the establishment of the committee - Rule 4.156(2)	To be held within 3 months of the later of the appointment or the establishment of the committee - Rule 6.153(2)
Reporting requirements	No statutory requirements for periodic reporting	Unless directed otherwise reports due at least once every six months - Rule 4.168(2)	N/A	Unless directed otherwise reports due at least once every six months - Rule 4.168(2)	Unless directed otherwise reports due at least once every six months - Rule 6.163(2)

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Other statutory filing					
With the registrar and /or court	Section 48 report to be filed with registrar within 3 months of appointment - Section 48(1)	Special resolution to be filed within 15 days of being passed - Section 84(3) and Section 29 CA2006. Statement of affairs to be filed with registrar within 7 days - Rule 4.34(3)	Special resolution to be filed with registrar within 15 days of being passed - Section 84(3) and Section 29 CA 2006 Declaration of solvency to be filed with registrar within 15 days of the passing of the winding up resolution - Section 89(3)	N/A	N/A
Closure formalities					
Notice of final meeting	N/A	28 days notice to creditors required - Rule 4.126	General meeting required by Section 94. For notice provisions, see the company's articles/ Section 307 CA 2006.	28 days notice required to be given to creditors (Rule 4.125(1)) and 21 days notice of intention to vacate office to OR together with notice of meeting - Rule 4.137 and Article 1 chapter 22 Dear IP ME	28 days notice of final meeting to be given to creditors and the bankrupt (Rule 6.137(1)) and 21 days notice of intention to vacate office to OR together with notice of meeting - Rule 6.145 and Article 1 chapter 22 Dear IP ME

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Advertisement of final meeting	N/A	Notice to be published in gazette at least one month before the meeting - Section 106(2)	Notice to be published in gazette at least one month before the meeting - Section 94(2)	Notice to be published in gazette at least one month before the meeting - Rule 4.125(1)	N/A
Content of final notices/ reports	N/A	The account of the winding up under Section 106 shall include a statement as to the amount paid to unsecured creditors by virtue of the application of section 176A- Rule 4.126.		Notice to the OR should include details of any property which has not been realised, applied or distributed - Rule 4.137(3). Report to final meeting should include a statement of the amount paid to unsecured creditors out of the prescribed part - Rule 4.125(2A)	Notice to the OR should include details of any property which has not been realised, applied or distributed - Rule 6.145(3)

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Filing with the registrar and/or court	Form 405(2) to be filed within 14 days of the receiver ceasing to act - Section 45(4)	Return of final meeting and account of the winding up to be submitted to registrar within one week of final meeting - Section 106(3)	Return of final meeting and account of the winding up to be submitted to registrar within one week of final meeting - Section 94(3)	Notice to be given to Registrar that final meeting has been held under Section 146 (no statutory timescale) - Section 172(8) Notice to court that final meeting has been held/ summoned and copy of final report (no statutory timescale) - Rule 4.125(4)	Notice to court that final meeting has been held/ summoned and copy of final report (no statutory timescale) - Rule 6.137(4).
Final receipts and payments account	To be filed with registrar, company, appointor and every member of the creditors' committee within two months of the receiver ceasing to act - Rule 3.32(1)(b)	As above	As above	Account of receipts and payments to be sent to Secretary of State within 14 days of final meeting (if quorate) or 14 days of report to court if final meeting inquorate - Regulation 14(3) of the Insolvency Regulations 1994	Account of receipts and payments to be sent to Secretary of State within 14 days of final meeting (if quorate) or 14 days of report to court if final meeting inquorate - Regulation 28(3) of the Insolvency Regulations 1994

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Other/ Subsequent notices	Notice of vacation of office to be given by the AR as soon as reasonably practicable to the company, the liquidator (if any) and creditors' committee - Rule 3.35(1)			Copy of final notice and report, which was sent to court, to be sent to Secretary of State (no statutory timescale) - Rule 4.125(4)	Copy of final notice and report, which was sent to court, to be sent to OR (no statutory timescale) - Rule 6.137(4)

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5.8 TECHNICAL HELPSHEET 3B ADR, CVL, MVL, WUC, BKY POST 06/04/10

IPA Technical Helpsheet 3b for administrative receiverships, voluntary liquidations, compulsory liquidations and bankruptcies after the Insolvency (Amendment) Rules 2010 and Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 (relevant date 06/04/10)

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ADR Administrative Receivership
MVL Members' Voluntary Liquidation
BKY Bankruptcy

CVL Creditors' Voluntary Liquidation
WUC Compulsory Liquidation

IPA TECHNICAL HELPSHEETS AVAILABLE

IPA Technical Helpsheet 1 ADM, CVA, IVA Pre EA2002/IA2000
IPA Technical Helpsheet 2 ADM, CVA, IVA Post EA2002/IA2000
IPA Technical Helpsheet 2a ADM, CVA, IVA 06/04/09 - 05/04/10
IPA Technical Helpsheet 2b ADM, CVA, IVA Post 06/04/10
IPA Technical Helpsheet 3 ADR, CVL, MVL, WUC, BKY Pre 06/04/09
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IPA Technical Helpsheet 3b ADR, CVL, MVL, WUC, BKY Post 06/04/10

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Pre-appointment work					
Meetings convened and notice given	N/A	Notices to be sent to creditors not less than seven days before the meeting - Section 98(1A) (b) (electronic means permissible where prior consent R 12A.10) Notice to be published in the gazette and may be advertised in such other manner as the directors think fit - Section 98(1A) Notice to contain details of purpose and venue - Rule 4.53D Meeting notice to comply with SIP9	N/A	N/A	N/A
Post meeting reports	N/A	To be sent within 28 days of the meeting - Rule 4.49	N/A	N/A	N/A

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Content of reports	N/A	Report to include details of the resolutions passed at the section 98 meeting and a summary of the statement of affairs- Rule 4.49 and SIP 8 Report to contain an estimate of the value of the prescribed part and the company's net property, with a statement as to whether, and if so, why, the liquidator intends to apply to court for an order under section 176A(5) - Rule 4.49(2)/(3)	N/A	N/A	N/A
Use of Websites	N/A	Reports may be made available to creditors via a website, although a hardcopy must be provided on request - Rule 12A.12	N/A	N/A	N/A

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Appointment formalities					
Filing with the registrar	N/A - Appointor's responsibility within 7 days of appointment	Within 14 days of appointment - Section 109	Within 14 days of appointment -Section 109	Due as soon as reasonably practicable - Rule 4.106(4)	N/A
Notification to creditors	Within 28 days of appointment -Section 46(1) (b) Notice by electronic means permissible where prior consent - Rule 12A.10	Within 28 days of appointment - Rule 4.49 Notice by electronic means permissible where prior consent - Rule 12A.10	Within 28 days of appointment - Rule 4.139(4) Notice by electronic means permissible where prior consent - Rule 12A.10	No statutory timescale for SoS appointments -Section 137(4). Dear IP 1 (Feb 2001) requires notification to be given within 28 days of appointment. On court appointments, notice to be given within 28 days of appointment to creditors and contributories or as directed by the Court - Rule 4.102(5) Notice by electronic means permissible where prior consent - Rule 12A.10	No statutory timescale for SoS or court appointments - Section 296(4) and 297(7). For SoS appointments, Dear IP 1 (Feb 2001) states notification within 28 days of appointment. Notice by electronic means permissible where prior consent - Rule 12A.10

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Notification to others	To the company, due as soon as reasonably practicable - Section 46 (1)(a)	Directors should be issued with a letter advising them of the restrictions on the re-use of company name – Dear IP 5, 2001	N/A	N/A	N/A
Content of notices	Contents set out in Rule 3.2(2)	See requirements for post meeting reports above	N/A	For SoS appointments see section 137(5)	For SoS appointments, see Section 296(5)

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Advertising	Notice to be published in Gazette and may be advertised in such other manner as the AR thinks fit - due as soon as reasonably practicable - Section 46(1) (a) and Rule 3.2 (3). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39; and additional matters - Rule 3.2(4)	Notice to be published in Gazette within 14 days of appointment and may be advertised in such other manner as the liquidator thinks fit - Section 109(1) and Rule 4.106A(1). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39	Notice to be published in Gazette within 14 days of appointment and may be advertised in such other manner as the liquidator thinks fit - Section 109(1) and Rule 4.106A(1). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39	Notice to be published in Gazette as soon as reasonably practicable and may be advertised in such other manner as the liquidator thinks fit - Rule 4.106A(2). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39; and additional matters - Rule 4.106A(3) (Applies to all routes of appointment - Court, creditors, SoS.)	For appointments by creditors' meetings, notice to be gazetted and may be advertised in such other manner as the trustee thinks fit as soon as reasonably practicable after receiving certificate of appointment - Rule 6.124(1). Notice to contain standard contents - Rules 12A.33 & 12A.35 / 12A.38 & 12A.40; and additional matters - Rule 6.124 (1A). (No gazette notices required for appointments by Court or SoS.)

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Financial issues					
Filing of periodic statutory receipts and payments accounts with the registrar	Due within 2 months of the end of 12 months from the date of appointment and every subsequent period of 12 months - Rule 3.32(1)	Due within 2 months of the first anniversary, with the Progress Report, and thereafter with each subsequent progress report - Rule 4.49C(5) and (7)	Due within 2 months of the first anniversary, with the Progress Report and thereafter with each subsequent progress report - Rule 4.49C(5) and (7)	Due within 2 months of the first anniversary of appointment, with the Progress Report and thereafter with each subsequent progress report - Rule 4.49B(2) and (7)	N/A
Other parties to whom accounts must be sent	Appointor, company, any liquidator and every member of the creditors' committee - Rule 3.32(1)	N/A	N/A	N/A	N/A
ISA	N/A	No statutory obligation to use ISA	No statutory obligation to use ISA.	Funds to be credited every 14 days or as soon as reasonably practicable if £5,000 or more has been received - Regulation 5(1) Insolvency Regulations 1994.	Funds to be credited every 14 days or forthwith if £5,000 or more has been received - Regulation 20 Insolvency Regulations 1994.

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Meeting formalities during the conduct of the case					
Timing of meetings	To be held within 3 months of appointment (not required, if company in liquidation) - Section 48	Annual meetings no longer required in England & Wales. General power to call meetings - Rule 4.54 Resolutions may be passed by correspondence - Rule 4.63A	Annual meetings no longer required in England & Wales. General power to call meetings - Rule 4.54 Resolutions may be passed by correspondence - Rule 4.63A	Annual progress reports required (see below). General power to call meetings - S168 Resolutions may be passed by correspondence - Rule 4.63A	Annual progress reports required (see below). General power to call meetings - Rule 6.81 Resolutions may be passed by correspondence - Rule 6.88A
Notice to creditors/members	14 days notice required - Section 48(2) Notice by electronic means permissible where prior consent. Rule 12A.10	14 days notice to be given - Rule 4.54(3) Notice by electronic means permissible where prior consent - Rule 12A.10	For notice provisions see the company's articles/ section 307 CA 2006. Notice by electronic means permissible where prior consent - Rule 12A.10	14 days notice required - Rule 4.54(3) Notice by electronic means permissible where prior consent - Rule 12A.10	14 days notice required - Rule 6.81(2) Notice by electronic means permissible where prior consent - Rule 12A.10

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Advertising	Notice to be Gazetted and may be advertised in such other manner as the AR thinks fit as soon as reasonably practicable - Rule 3.9(6). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39; and additional matters - Rule 3.9(6A)	Notice shall be Gazetted and may be advertised in such other manner as the convenor thinks fit- Rule 4.54(6). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39; and additional matters - Rule 4.54(7)	Notice shall be Gazetted and may be advertised in such other manner as the convenor thinks fit. Rule 4.54(6). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39; and additional matters - Rule 4.54 (7)	Notice shall be Gazetted and may be advertised in such other manner as the convenor thinks fit -Rule 4.54(6). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39; and additional matters - Rule 4.54 (7)	Notice shall be Gazetted as soon as reasonably practicable and may be advertised in such other manner as the convenor thinks fit - Rule 6.81(4). Notice to contain standard contents - Rules 12a.33 & 12A.35 / 12A.38 & 12A.40; and additional matters - Rule 6.81(5)
Chairman	Where not the officeholder, chairman to be authorised in writing - Rule 3.10	Where not the officeholder, chairman to be authorised in writing - Rule 4.56(2)		Where not the convenor, chairman to be authorised in writing - Rule 4.55	Where not the convenor, chairman to be authorised in writing - Rule 6.82(2)
Calculation of claims for voting	Rule 3.11	Rule 4.67	Subject to the provisions of the company's articles	Rule 4.67	Rule 6.93

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Reports to creditors during the conduct of a case					
Reports to be issued	Copy of Section 48 report should be sent to all creditors within three months of appointment or notice published in accordance with section 48(2)(b), unless liquidator appointed (in which case, Section 48(4) applies).	Liquidator to send annual progress report to Registrar, members and creditors within 2 months of each anniversary of appointment or within 2 months of being replaced as Liquidator – Section 104A and Rule 4.49C	Liquidator to send annual progress report to Registrar and the members within 2 months of each anniversary of appointment or within 2 months of being replaced as Liquidator – Section 92A and Rule 4.49C	Liquidator to send annual progress report to Registrar and creditors within 2 months of each anniversary of appointment or within 2 months of being replaced as Liquidator – Rule 4.49B	Trustee to send annual progress report to creditors within 2 months of each anniversary or within 2 months of being replaced as Trustee – Rule 6.78A
Content of reports	The report should contain an estimate of the value of the prescribed part and the company's net property and state whether, and if so, why, the receiver intends to apply to court under section 176A(5) – Rule 3.8(5)-(7)	Report should contain details of the liquidator's progress, the basis of remuneration (or attempts made to fix the basis), a statement of remuneration charged and expenses incurred during the period (whether or not paid) and a statement of creditors' rights to request further information – Rule 4.49C(5) (refers to 4.49B)	As per CVL – Rule 4.49C(5), with references to "creditors" being replaced with "members".	Report should contain details of the liquidator's progress, the basis of remuneration (or attempts made to fix the basis), a statement of remuneration charged and expenses incurred during the period (whether or not paid) and a statement of creditors' rights to request further information – Rule 4.49B	Report should contain details of the Trustee's progress, the basis of remuneration (or attempts made to fix the basis), a statement of remuneration charged and expenses incurred during the period (whether or not paid) and a statement of creditors' rights to request further information – Rule 6.78A

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Use of Websites	Reports may be made available to creditors via a website, although a hardcopy must be provided on request - Rule 12A.12	Reports may be made available to creditors via a website, although a hardcopy must be provided on request - Rule 12A.12	Reports may be made available to creditors via a website, although a hardcopy must be provided on request - Rule 12A.12	Reports may be made available to creditors via a website, although a hardcopy must be provided on request - Rule 12A.12	Reports may be made available to creditors via a website, although a hardcopy must be provided on request - Rule 12A.12
Creditors' committees					
Certificate of constitution	File with Registrar as soon as reasonably practicable - Rule 3.17(4)	File with registrar as soon as reasonably practicable - Rule 4.153(6)		Not filed	File in court as soon as reasonably practicable - Rule 6.151(5)
First meeting	To be called within 6 weeks of establishment of the committee - Rule 3.18(3)	To be held within 6 weeks of the later of the appointment of the liquidator or the establishment of the committee - Rule 4.156(2)	N/A	To be held within 6 weeks of the later of the appointment of the liquidator or the establishment of the committee - Rule 4.156(2)	To be held within 6 weeks of the establishment of the committee - Rule 6.153(2)
Reporting requirements	No statutory requirements for periodic reporting	Unless directed otherwise reports due at least once every six months - Rule 4.168(2)	N/A	Unless directed otherwise, reports due at least once every six months - Rule 4.168 (2)	Unless directed otherwise, reports due at least once every six months - Rule 6.163(2)

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Other statutory filing					
With the registrar and /or court	Section 48 report to be filed with registrar within 3 months of appointment – Section 48(1)	Special resolution to be filed with registrar within 15 days of being passed – Section 84(3) and Section 29 CA2006. Statement of affairs to be filed with registrar within 5 business days – Rule 4.34(3).	Special resolution to be filed with registrar within 15 days of being passed – Section 84(3) and Section 29 CA2006. Declaration of solvency to be filed with registrar within 15 days of the passing of the winding up resolution – Section 89(3)	N/A	N/A
Closure formalities					
Draft final report	N/A	Draft of the final report to be sent to each creditor 8 weeks before holding the final meeting. – Rule 4.49D	N/A	Draft of the final report to be sent to each creditor 8 weeks before holding the final meeting. – Rule 4.49D	Draft of the final report to be sent to each creditor 8 weeks before holding the final meeting. – Rule 6.78B

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Notice of final meeting	N/A	28 days notice to creditors required - Rule 4.126 Notice by electronic means permissible where prior consent - Rule 12A.10	General meeting required by Section 94. For notice provisions see the company's articles/ Section 307 CA2006.	28 days notice required to be given to creditors (Rule 4.125(1)) Notice to creditors by electronic means permissible where prior consent - Rule 12A.10 21 days notice of intention to vacate office to OR together with notice of meeting - Rule 4.137	28 days notice of final meeting to be given to creditors and the bankrupt (Rule 6.137(1)) Notice to creditors by electronic means permissible where prior consent - Rule 12A.10 21 days notice of intention to vacate office to OR together with notice of meeting - Rule 6.145
Advertisement of final meeting	N/A	Notice to be published in gazette at least one month before the meeting - Section 106(2). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39; and additional matters - Rule 4.126(1A) & (1C)	Notice to be published in gazette at least one month before the meeting - S94(2). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39; and additional matters - Rule 4.126A(1) & (3)	Notice to be published in gazette at least one month before the meeting - Rule 4.125(1B). Notice to contain standard contents - Rules 12A.33-34 / 12A.38-39; and additional matters - Rule 4.125 (1A) & (1C)	Notice to be published in gazette as soon as reasonably practicable after giving notice to creditors - Rule 6.137(1A). Notice to contain standard contents - Rules 12a.33 & 12A.35 / 12A.38 & 12A.40; and additional matters - Rule 6.137(1B)

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Content of final notices/reports	N/A	The account of the winding up under Section 106 shall include the detailed matters specified in Rule 4.126(1E), (4) & (5).	The account of the winding up under Section 94 shall include the detailed matters specified in Rule 4.126A(4)	Notice to the OR should include details of any property which has not been realised, applied or distributed - Rule 4.137(3). Report to final meeting should include the matters specified in Rule 4.125(2), (2A) - (2D)	Notice to the OR should include details of any property which has not been realised, applied or distributed - Rule 6.145(3). Report to final meeting should include matters specified in Rule 6.137(2), (2A) - (2C)
Use of Websites	Reports may be made available to creditors via a website, although a hardcopy must be provided on request. Rule 12A.12	Reports may be made available to creditors via a website, although a hardcopy must be provided on request. Rule 12A.12	Reports may be made available to creditors via a website, although a hardcopy must be provided on request. Rule 12A.12	Reports may be made available to creditors via a website, although a hardcopy must be provided on request. Rule 12A.12	Reports may be made available to creditors via a website, although a hardcopy must be provided on request. Rule 12A.12

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Filing with the registrar and/or court	Form LQ02 to be filed within 14 days of the receiver ceasing to act - Section 45(4)	Return of final meeting and account of the winding up (i.e. final meeting report – Rule 4.126(1E)) to be submitted to registrar within one week of final meeting - Section 106(3)	Return of final meeting and account of the winding up (i.e. final meeting report – Rule 4.126A(4)) to be submitted to registrar within one week of final meeting - Section 94(3)	Notice to be given to Registrar that final meeting has been held under section 146 (no statutory timescale) - S172(8) Notice to court that final meeting has been held/ summoned and copy of final report (no statutory timescale) - Rule 4.125(4)	Notice to court that final meeting has been held/ summoned and copy of final report (no statutory timescale) - Rule 6.137(4)
Final receipts and payments account	To be filed with registrar, company, appointor and every member of the creditors' committee within two months of the receiver ceasing to act - Rule 3.32(1)(b)	As above	As above	Account of receipts and payments to be sent to SoS within 14 days of final meeting (if quorate) or 14 days of report to court if final meeting inquorate - Regulation 14(3) of the Insolvency Regulations 1994	Account of receipts and payments to be sent to SoS within 14 days of final meeting (if quorate) or 14 days of report to court if final meeting inquorate - Regulation 28(3) of the Insolvency Regulations 1994

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Other/ Subsequent notices	Notice of vacation of office to be given by the AR as soon as reasonably practicable to the company, the liquidator (if any) and creditors' committee - Rule 3.35(1)			Copy of final notice and report, which was sent to court, to be sent to Secretary of State (no statutory timescale) - Rule 4.125(4)	Copy of final notice and report, which was sent to court, to be sent to OR (no statutory timescale) - Rule 6.137(4)

* N/A to liquidations following a pre-06/04/10 administration or liquidation.

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6.1 THE STRAIGHTFORWARD CONSUMER IVA PROTOCOL 2013 VERSION

IVA PROTOCOL

Straightforward consumer individual voluntary arrangement hereinafter referred to as a Protocol Compliant Individual Voluntary Arrangement (PCIVA)

Purpose of the protocol

- 1.1 The purpose of the protocol is to facilitate the efficient handling of straightforward consumer individual voluntary arrangements (IVAs) (as described below). The protocol recognises that the IVA supports a valid public policy objective by providing debt relief for individuals in financial distress. It also recognises that at the centre of this process there is a person, who needs to understand the process and the associated paperwork and the impact that the IVA will have on their lives.

Scope of the protocol

- 2.1 The protocol is a voluntary agreement, which provides an agreed standard framework for dealing with straightforward consumer IVAs and applies to both IVA providers and creditors. By accepting the content of the protocol, IVA providers and creditors agree to follow the processes and agreed documentation that forms part of the protocol. IVA providers indicate their acceptance of the content of the protocol by drawing up a proposal based on the standard documentation, and which states that it follows the protocol. Creditors are expected to abide by the terms of the protocol in relation to proposals drawn up on that basis.
- 2.2 Creditors who are members of the British Bankers' Association have indicated their support for the protocol process in a letter attached at Annex 1. A list of BBA members can be found at www.bba.org.uk
- 2.3 It is accepted that an IVA is a regulated process under statute, which requires certain work to be undertaken, which may have a cost unconnected with the size of the IVA.
- 2.4 The protocol does not override the regulatory framework relevant to each party (Annex 2).

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- 2.5 For the avoidance of doubt, IVA provider means both insolvency practitioners and IVA provider firms employing insolvency practitioners. References to creditor in this protocol refer to both creditors and the agents who vote on their behalf and act in accordance with their instructions in relation to an IVA.
- 2.6 The efficient operation of the protocol will be monitored and reviewed by a standing committee. The standing committee is a representative group, its membership reflecting the participants in the IVA process (debtor, creditor, IP, regulatory bodies and government). The terms of reference of the standing committee and details of its current membership are attached at (Annex 3). The committee's role will include communication and consultation, where necessary, on future developments on the IVA protocol.

The straightforward consumer IVA

- 3.1 Not all cases can be classified as a straightforward consumer IVA. A person suitable for a straightforward consumer IVA is likely to be :
- In receipt of a regular income either from employment or from a regular pension.
 - Have 3 or more lines of credit from 2 or more creditors.
- 3.2 Age is not a consideration, nor is the debt level, though both factors will impact on the overall viability of the IVA.
- 3.3 The protocol is suitable for both home owners and non home owners. There should be no circumstances where the individual would be forced to sell their property instead of releasing equity. The only exceptions would be where this was proactively proposed by the individual.
- 3.4 For individuals whose circumstances do not meet the above criteria an IVA may still be the most appropriate means of dealing with their financial problems but their case is unlikely to be suitable for the full application of the protocol procedures. The following are indicators that a person's circumstances are unsuitable for the application of the protocol.
- Disputed debts - there should be no known material disputes in relation to the debt.
 - Investment properties - those with investment properties would not be

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suitable for a straightforward consumer IVA.

- Possibility of full and final settlement - where a full and final settlement is possible in the first year.

- 3.5 A reasonably steady income stream is necessary in order to be suitable for the application of the protocol. There is nothing to prevent this protocol being applied to individuals who are self-employed, when that self-employment produces regular income. Where income is uneven/unpredictable, (e.g. people with more than 20% of their income coming from bonuses or commission), this should be highlighted in the proposal and the accompanying summary sheet.
- 3.6 The protocol does not require that the debtor has to follow the protocol process, even though his or her situation may fit within the definition of a straightforward consumer IVA. Where this occurs, but elements of the protocol are still used, this should be highlighted in the proposal and the accompanying summary sheet.

Transparency and co-operation

Transparency

- 4.1 All parties should act openly and disclose all relevant matters.
- 4.2 The proposal should disclose any previous attempts to deal with the debtor's financial problems (e.g. informal payment plans, refinancing, debt management plan, previous IVA or bankruptcy) together with a disclosure by the debtor if there were any dealings with the nominee or businesses connected with the nominee and an explanation of why these attempts were unsuccessful. There should also be disclosed any payments made by the debtor in relation thereto.

Specific attention is drawn to Statement of Insolvency Practice 3 (SIP 3) and the nominee is reminded as to the information that is required to be disclosed either in the debtor's proposal or the nominee's report.

- 4.3 The nominee will enquire of the debtor as to whether he/she has made any payments in connection with the matters set out in clause 4.2 to any party prior to contacting the nominee's organisation. Unless separately disclosed in accordance with SIP 3, the nominee shall record within his/her report the amount, date and nature of any such payments made by

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the debtor in the last 12 months prior to proposing the IVA.

- 4.4 All parties to this protocol must publish their processes for dealing with complaints and details of relevant regulatory authorities, in accordance with current requirements. Any complaints should be dealt with in accordance with existing processes.

Cooperation with the standing committee

- 4.5 Only when provided with all relevant information will the standing committee be able to monitor and review the efficient operation or otherwise of the protocol. Information required for this purpose will be determined by the standing committee. Such information, other than that which is commercially sensitive or which needs to be withheld for reasons of confidentiality, will be provided by IVA providers and creditors at the request of the standing committee.
- 4.6 All parties may provide information to the standing committee which will enable it to determine the effectiveness or otherwise of the protocol. Similarly, behaviour which does not comply with the terms of the protocol may be reported to the standing committee. However, the standing committee does not override existing regulatory procedures.

Obligations on insolvency practitioners

Advertising

- 5.1 Advertisements and other forms of marketing should be clearly distinguishable as such and have regard to the OFT Debt Management Guidance and all relevant codes of practice, in particular to the principles of legality, decency, honesty and truthfulness. Any telemarketing should comply with the codes relevant to that activity.
- 5.2 The IVA provider should not promote or seek to promote their services, in such a way (e.g. by 'cold calling') or to such an extent as to amount to harassment or in a way that causes fear or distress.
- 5.3 Where an IVA provider advertises for work via a third party, the IVA provider is responsible for ensuring that the third party observes all applicable advertising codes and OFT guidance. Similarly, where an IVA provider accepts from or makes referrals to others, they should also comply with

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the advertising codes. Third party advertisements should declare any links to IVA providers.

Advice

- 6.1 When approached by an individual in financial difficulty, the IVA provider will ensure the individual receives appropriate advice in the light of their particular circumstances, leading to a proposed course of action to resolve their debt problem. Full information on the advantages and disadvantages of all available debt resolution processes should be provided (eg by use of the guide entitled 'In Debt? Dealing With Your Creditors' which may be made available by the provider or can be found on the Insolvency Service website at www.bis.gov.uk/insolvency/Publications/publications-by-theme/dealing-with-debt-publications. Non-financial considerations should be taken into account.
- 6.2 It is accepted that for some, bankruptcy is not a preferred option as it could lead to loss of employment or membership of a professional body, which then has other financial consequences. Others may wish to avoid the perceived stigma of bankruptcy.

Verification of information contained in the proposal

Assets

- 7.1 As required in any IVA, steps should be taken to ensure that the value of all realisable assets is appropriately reflected in the statement of affairs. This may require independent evidence of valuation to be obtained in the case of material assets.

Liabilities

- 7.2 Full details should be obtained from the debtor of all known and potential creditors. The IVA provider should use their best endeavours to verify the outstanding balances by obtaining statements, letters or copies of agreements from each creditor dated within 6 weeks of the debtor's first approach to the IVA provider, and updated as necessary to reflect any changes prior to the issue of the IVA proposal. If for whatever reason the IVA provider is unable to verify any material creditor balances, this should be identified in the Nominee's report.

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Income

- 7.3 Income should be verified by means of 3 months of pay slips, or a suitable equivalent for the self-employed, and bank statements (in the case of weekly pay slips, it is sufficient to check a selection to cover the 3 month period). In the absence of pay slips (e.g. if they have been lost), then bank statements should be checked.
- 7.4 If the debtor lives with any person aged 18 or over, and there is reasonable expectation that this person will pay board and lodging to the debtor, this payment must be added to the debtor's income in full.

Expenditure

- 7.5 The expenditure statement should be forward-looking and in line with StepChange Debt Charity guidelines (formerly CCCS) or the Common Financial Statement (CFS). Generally, there should be no deviation from the expenditure guidelines. However, where additional expenditure is necessary, for example due to special dietary requirements or increased heating bills due to caring for elderly relatives or above average work-related travel costs, this should be clearly explained.
- 7.6
- a) If the debtor wishes to continue to pay for health insurance or payment protection insurance, the proposal should contain a note stating why this is considered to be essential expenditure.
 - b) Where the debtor is below the age of 55 at date of entry into the IVA, only minimum contributions to the pension scheme should be allowed. Where the debtor is aged 55 or above at the date of entry into the IVA, an average of the last 6 months' pension contributions should be allowed, subject to a contribution limit of £75 above the minimum pension contribution allowed by the scheme per month. If no minimum contribution is stated by the scheme, debtor contributions will be restricted to 4% of the debtor's gross salary. Where the debtor is a member of multiple schemes, these limits should be applied to the aggregate amount of the debtor's contributions.
- 7.7 The expenditure elements that require formal verification are:
- Secured loan payments - verification by sight of relevant mortgage or bank statements.

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- Rent – verification by sight of rent agreement or relevant bank statement entries.
- Council tax – verification by sight of council tax bill or relevant bank statement entries.
- Vehicle Finance – verification by means of relevant HP/Finance agreement.
- Pension – verification by sight of pension scheme documentation and/or wage slip/pension contribution statement.
- Other financial commitments such as endowment policies, life policies, health insurance and payment protection insurance – verification by reference to appropriate documentation.

7.8 Where information for verification purposes, which is readily available and is not excessive, is sought from creditors, this information will be provided free of charge whether the request is made by the IVA provider or the individual.

7.9 The nominee's report will include a statement that the income and expenditure have been verified by the nominee in accordance with the protocol and provide details of the means used where the individual is self-employed.

Use of standard documentation

- 8.1 The use of standard documentation will streamline the IVA process and enable creditors to quickly identify those cases which are protocol compliant and also the key information contained therein.
- 8.2 For protocol compliant IVAs, IPs should use the agreed standard conditions (Annex 4) and the summary sheet (Annex 5). There is no standard format for the IVA proposal.
- 8.3 All documentation should state clearly that the IVA follows the protocol and that the agreed format IVA documentation has been used, and which version of the protocol or Standard Conditions is being used. There is no requirement to send out the protocol Standard Conditions to creditors, but the provider must make clear how a copy of these can be obtained. A hard copy must be made available on request without charge. Similarly, any variation from the protocol (for example special dietary requirements, see paragraph 7.5) should be clearly identified in all relevant paperwork.

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During the IVA**Home equity (Net worth)**

9.1 Six months prior to the expiry of the IVA (hereinafter referred to as the review date), there should be an attempt to release the debtor's net worth in the property. The review date would normally be after month 54, unless the IVA has been extended for any reason. However, subject to 9.3 below, where the debtor is unable to obtain a remortgage, the supervisor will have the discretion to consider accepting one of the following alternative proposals:

- a third party sum equivalent to 85% of the value of the debtor's interest in the property; or
- 12 additional monthly contributions (with the aggregate sum paid to the supervisor being limited to 85% of the value of the debtor's interest in the property).

9.2 The amount of the net worth to be released will be based upon affordability from income and will leave the debtor with at least 15% of his/her net worth in the property. Where it is appropriate to remortgage the property, the specific limits will be:

- Remortgages would be a maximum of 85% Loan To Value (LTV).
- The incremental cost of the remortgage, including cost of any new repayment vehicle, will not exceed 50% of the monthly contribution at the review date.
- The net worth released will not exceed 100p in the £ excluding statutory interest.
- The remortgage term does not extend beyond the later of the debtor's State retirement age or the existing mortgage term.
- The amount of money introduced into the arrangement will be the mortgage proceeds less the costs of the remortgage, including any costs to redeem any existing mortgage and/or secured loan

Examples illustrating the calculation of available net worth are in Annex 7

9.3 If the amount of the debtor's net worth net of remortgage costs in the home at the review date is under £5k, it is considered de minimis, and does not have to be released, and there would be no adjustment to the IVA term.

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- 9.4 The monthly payments arising from the remortgage will be deducted from the contribution. If the increased cost of the mortgage means that monthly contributions fall below £50 per month, such monthly contributions are stopped, and the IVA is concluded.
- 9.5 A clause detailing the above as set out in Annex 6 is to be included, where appropriate, in the individual's proposal and the summary sheet (Annex 5) will identify that this clause is included.
- 9.6 The debtor should be provided with a clear written explanation illustrating the possible net worth to be released, taking into account:
- a) no increase in property value as stated in the proposal;
 - b) the current value inflated by 4% pa (simple interest) at the review date;
 - c) the estimated outstanding mortgage at the review date.
- 9.7 At the time the debtor is asked to release the net worth in his/her property, the supervisor, or a suitable member of his/her staff, must advise him/her that he/she should seek advice from an independent financial adviser, such advice to include the most appropriate mortgage vehicle and the length of the proposed repayment term.
- 9.8 For the purpose of the release of net worth the property shall be subject to an independent professional valuation on an open market basis.

Use of discretion, variation and failure

- 10.1 The supervisor has the discretion to admit claims of £1,000 or less, or claims submitted that do not exceed 110% of the amount stated by the debtor in the proposal, without the need for additional verification.
- 10.2 The supervisor should ensure that he/she is provided with copies of payslips (or other supporting evidence) every 12 months. The supervisor is required to review the debtor's income and expenditure once in every 12 months, using the CCCS guidelines or the CFS. Where appropriate, and at the request of the supervisor, the debtor must verify increases in outgoings by providing documentary evidence. The debtor will be required to increase his/her monthly contribution by 50% of any increase in the net surplus as shown in the original proposal one month following such review.

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- 10.3 The supervisor will be able to reduce the contribution by up to 15% in total (relative to the original proposal or last agreed variation) without referring back to creditors, to reflect changes in income and expenditure, such change to be reported in the next annual review.
- 10.4 Where the individual is employed, the debtor must report any overtime, bonus, commission or similar to the supervisor if not included in the original surplus calculation, where the sum exceeds 10% of the debtor's normal take home pay. Disclosure to the supervisor will be made within 14 days of receipt and 50% of the amount (over and above the 10%) shall be paid to the supervisor within 14 days of the disclosure. Failure to disclose any such overtime, bonus, commission or similar by the debtor will be considered a breach of the IVA and the supervisor shall notify the creditors in the next annual report with proposals for how the breach is to be rectified.
- 10.5 (a) A debtor who is subject to redundancy whilst in an IVA must:
- Inform his/her supervisor within 14 days of notice of redundancy, regardless of whether he/she has received or is to receive any redundancy payment;
 - Inform his/her supervisor of the amount of any redundancy payment within 14 days;
 - Pay to the supervisor within 14 days of receipt of any redundancy payment any amount in excess of 6 months net take home pay (as set out at the last annual review date). If there is no amount in excess of 6 months net take home pay no payment is required;
 - Where possible, continue to make monthly contributions into the IVA as set out at the last annual review date;
 - Keep the supervisor informed of any changes in employment status.

Where the debtor is unable to make contributions this will be reviewed by the supervisor.

At the point new employment is obtained the supervisor will review the debtor's IVA contributions and at that point there will be an expectation that any remaining redundancy funds will be paid into the IVA, and the debtor's performance in this regard will be reported to creditors.

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- 10.5 (b) Failure to disclose any such entitlement to redundancy payment will be considered a breach of the IVA.
- 10.6 A debtor will be allowed a payment break of up to 6 months once during the term of the IVA without any modification being required at the discretion of the supervisor. The term of the IVA will be extended by the length of the payment break so that the debtor will make the same number of contributions as agreed in the original proposal. An agreed payment break will not constitute a breach. Where the supervisor agrees a payment break, the creditors should be notified within 3 months from the date of agreement. At the conclusion of an agreed payment break the supervisor shall if necessary review the position and consult with creditors where appropriate.
- 10.7 Where the individual has failed to disclose exceptional income, the term of the IVA may be extended by up to a maximum of 6 months to recover any sums due (to correct the breach), without any modification being required.
- 10.8 Where the individual is unable to remedy any breach of the arrangement, the supervisor must report within 28 days to the creditors and either issue a Certificate of Termination or if the Supervisor feels it appropriate seek creditor views to do one of the following:
- vary the terms of the arrangement, or
 - issue a certificate ("Certificate of Termination") terminating the arrangement by reason of the breach; and/or
 - present a petition for the individual's bankruptcy

Reporting to creditors

- 11.1 The annual report to creditors prepared by the IVA provider should include details of the individual's income and expenditure, based on information obtained including payslips and P60s. The individual should also be asked to provide verified details of their expenditure and any material changes to it. Where the supervisor has used his or her discretion to vary the contribution, in accordance with 10.3, that should also be recorded in the annual report.

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Obligations on creditors**Treatment of customers**

- 12.1 In all dealings with a customer proposing an IVA under this protocol, creditors will continue to treat the customer in accordance with the regulatory standards and codes of practice to which they are subject, as set out in Annex 2.
- 12.2 Throughout the duration of a protocol compliant IVA, creditors will treat their customer as referred in 12.1. Furthermore, creditors will co-operate with the duly appointed nominee and supervisor in relation to the efficient operation of this protocol.
- 12.3 Lenders should take reasonable measures to avoid offering further credit to individuals known to have an IVA in place, unless this is in justifiable circumstances (e.g. for re-mortgage purposes). However, it should be recognised that relevant information is not always readily available to creditors and may sometimes be withheld by debtors.

Acceptance of protocol compliant IVAs

- 13.1 It is understood that one of the aims of the protocol is to improve efficiency in the IVA process and to this extent creditors and IVA providers will avoid the need for modifications of an IVA proposal wherever possible. This does not affect the right of creditors to vote for or against an IVA proposal.
- 13.2 Where a creditor or their agent on their behalf votes against a protocol compliant IVA proposal, their reason for so doing should be disclosed to the IVA provider.
- 13.3 By voting in favour of a protocol compliant IVA, creditors accept that the supervisor has discretion as referred to in section 10 above and in the standard terms, and should not challenge the use of that discretion.
- 13.4 Creditors should make reasonable endeavours to provide a proof of debt (in the form required by the IVA provider) and proxy form within 14 days of receipt of an IVA proposal and if possible at least 7 days before the date of the meeting called to approve the proposal.

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- 13.5 Creditors not submitting claims within 4 months of the meeting to approve the proposal or by the date of the first dividend (whichever is the later) will be entitled to participate and receive their full share of dividends (subject to the requirement for the supervisor to adjudicate the authenticity and value of the claim), but are not entitled to disturb a distribution made prior to the submission of their claim.

Income and expenditure

- 14.1 Creditors will normally accept income and expenditure statements drawn up on the basis of generally accepted standard financial statements and verified in accordance with this protocol, as the basis of a protocol compliant IVA proposal. For this purpose standard financial statements includes the CCCS guidelines and the CFS, once revised (and any revisions in respect thereof).
- 14.2 Creditors will follow the guidance in the Banking/Lending Code (or any Code that replaces it)

Use of agents

- 15.1 It will be the responsibility of creditors to ensure that any agents carrying out instructions or acting on their behalf in relation to a protocol compliant IVA, do so in accordance with this protocol and in accordance with applicable regulatory requirements.
- 15.2 Where a creditor requires communication regarding the debt due or the IVA proposal to be sent via its agent, the creditor should ensure that details of the appropriate contact are provided to relevant IVA providers.

Sale of debt

- 16.1 Where debt is sold when an IVA is proposed but before it has been approved, creditors should ensure that the debt buyer is a signatory to the Banking/Lending Code or follows the principles contained in the Banking/Lending Code and complies with the Office of Fair Trading (OFT) Debt Collection Guidance.

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6.2 DEBT MANAGEMENT (AND CREDIT REPAIR SERVICES) GUIDANCE

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FOREWORD

The primary aim of this guidance is to assist licensees engaging in, and/or those proposing to engage in, debt advice/debt management activities and/or providing credit information services (including credit repair) in ensuring that they meet the standards expected by the Office of Fair Trading (OFT). It does this by setting out how the fitness test under section 25 of the Consumer Credit Act 1974 (the Act) will be applied in respect of debt advice/debt management activities and the provision of credit information services. It also describes the various regulatory powers the OFT may use where it identifies non-adherence to these standards.

This guidance has a much broader application than simply to debt management plans and debt management businesses and its scope is set out in paragraphs 1.10 -1.12 of the Introduction. As such, it seeks to clarify the standards the OFT expects of all parties involved in the debt advice/debt management process.

The guidance also seeks to clarify what the OFT expects in terms of licensees' responsibilities for the activities of their agents or other third parties with whom they do business.

In the OFT's view, the extent to which a licensee may fail to adhere to the standards set out in this guidance and engages in unfair or improper business practices, may be, to some degree, directly related to the effectiveness and appropriateness (or otherwise) of its business practices and procedures. This guidance sets out what the OFT expects in terms of licensees', and applicants', regulatory compliance, business policies, practices and procedures, including training and monitoring.

This guidance is not designed to be a comprehensive checklist of behaviour. We cannot anticipate all possible variants of business behaviour, or the future range of debt management options that may become available to consumers. The guidance sets out what, in the OFT's view, may constitute unfair or improper practices and provides some illustrative examples. The examples given are based on our own experience of enforcement, the findings from the compliance review we published in 2010 (including stakeholder feedback), OFT complaint information and issues brought to our attention by organisations representing consumers and businesses and by regulators.

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The guidance is not exhaustive and we expect businesses to have regard to the spirit as well as the letter of the guidance. Acts or omissions not included in the guidance may also be taken into account by the OFT in determining an applicant's or licensee's fitness.

We consider that debtors should take responsibility for engaging appropriately in the debt recovery process, to the extent that it is possible for them to do so. For example, it is important that they maintain regular and effective communication with their creditors, whether directly or via an appointed representative, so that information available to the creditor (and to any third party pursuing repayment of the debt on the creditor's behalf) is kept accurate and up to date. The debtor should advise the creditor (and/or the debtor's appointed representative), in a timely manner, of any relevant change of circumstances that is likely to significantly impact on (any assessment of) his ability to meet his repayments.

This guidance document replaces previous versions of our guidance on debt management.

This guidance is set out as follows:

Chapter 1 (Introduction) includes an explanation of the section 25 'fitness test' under the Act, followed by the scope and purpose of the guidance.

Chapter 2 (Overarching Principles of Fair Business Practice) sets out overarching principles of consumer protection and fair business practice which, in our view, apply to all licensees.

Chapter 3 (Unfair or Improper Business Practices) sets out the standards expected of all licensees operating in the debt management sector with regards to the marketing of their services, making contact with consumers, the quality of advice provided, the provision of pre-contract information, contracts, and other documentation provided to consumers, and the nature of the debt management service provided. It also sets out the standards we expect from licensees offering credit information services (which include commercial 'credit repair' services) and from creditors in respect of their dealings with third parties representing consumers. The chapter sets out in further detail the type of behaviour the OFT considers may fall within the category of 'unfair or improper' business practices which, if engaged in, will call into question a person's fitness to retain, or be granted, a licence. Our aim is to help businesses understand the OFT's expectations in relation to a range of practical situations.

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Chapter 4 (Regulatory Compliance and Enforcement) sets out our approach to regulation (including what we expect from businesses in terms of their policies, practices and procedures) and provides further information on the range of regulatory tools available to us.

The **Annexes** provide further information on a range of issues covered in the guidance, specify other relevant legislation and guidance, and contain a full list of all referenced documents/legislation with links to websites (where available).

This revised guidance has been produced at a time of some considerable uncertainty in the regulatory landscape. However, we believe that the **principles** of fair business practice it contains will continue to be relevant to all those involved in the provision of debt advice, debt management and credit information services (including credit repair), notwithstanding future changes to the regulatory regime. We will continue to work with all appropriate parties over forthcoming years to seek to ensure that guidance for those operating in this sector is reviewed and/or further developed as necessary.

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1 INTRODUCTION

Fitness (the 'section 25 test')

- 1.1 The Consumer Credit Act 1974 and its subordinate legislation ('the Act') provide a framework to protect consumers when dealing with those engaged in consumer credit business and/or ancillary credit businesses, including licensable activities such as the provision of debt counselling, debt adjusting and credit information services (including credit repair).
- 1.2 All businesses¹ engaged in the provision of debt advice, debt management and credit information services² are required to hold an appropriate standard consumer credit licence³ or operate under the cover of an appropriate group⁴ consumer credit licence issued by the Office of Fair Trading (OFT). The OFT has a duty under section 25 of the Act to take steps to ensure that licences are only given to, and retained by, those who are fit to hold them (the 'section 25 test').⁵
- 1.3 The licence categories required by businesses engaged in the provision of debt advice, debt management services and credit information services are set out below. In addition, those who effect introductions to consumers seeking consolidation loans (or other forms of credit) to businesses that provide such loans are likely to require the category of credit brokerage.⁶

Category E - Debt counselling

- The giving of advice to debtors or hirers about the liquidation of debts due under consumer credit agreements or consumer hire agreements.

¹ For the purposes of this guidance, references to 'businesses' include, where applicable and appropriate, organisations or individuals that do not charge for their services or are non-profit seeking - for example, charities.

² References to credit information services in this guidance relate to licence categories H1/3 - Credit information services (including credit repair) and H - Credit information services (excluding credit repair).

³ See Do you need a credit licence? (OFT147).

⁴ See Group licensing regime - Guidance for consumer credit group licence holders and applicants (OFT990rev).

⁵ For more information on the factors the OFT considers when assessing fitness and our categorising and approach to 'credit risk' see Consumer Credit Licensing - General guidance for licensees and applicants on fitness and requirements (OFT 969).

⁶ See also section 145 of the Consumer Credit Act 1974.

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Category D - Debt adjusting

- In relation to debts due under consumer credit agreements or consumer hire agreements, negotiating with the creditor or owner, on behalf of the debtor or hirer, terms for the discharge of debt; or taking over, in return for payments by a debtor or hirer, his obligation to discharge a debt; or any similar activity concerned with the liquidation of the debt.

Category H1/3 - Credit information services (including credit repair⁷)

- The taking of steps on behalf of an individual, or the giving of advice to an individual in relation to the taking of any such steps, with a view to:
 - ascertaining whether another credit information agency, as defined in the Act,⁸ holds information relevant to the financial standing of an individual
 - ascertaining the contents of such information
 - securing the correction of, the omission of anything from, or the making of any other kind of modification of, such information or
 - securing that an agency which holds such information about an individual stops holding it or does not provide it to another person.

Category H - Credit information services (excluding credit repair)

- This category is limited to providing credit information services excluding the altering of, or securing the omission of, information about an individual's financial standing and/or seeking to restrict the availability of such information.

Category C - Credit brokerage

- The effecting of introductions of individuals desiring to obtain credit to persons providing credit in the carrying on of a business and/or to other credit brokers.⁹ In the OFT's view, an introduction may be effected

⁷ www.ofc.gov.uk/news-and-updates/press/2008/111-08

⁸ See section 145 (7D) of the Consumer Credit Act 1974 for the meaning of 'credit information agency'. past or present, or, where the

⁹ See section 145(2) of the Act.



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if it is only one way - for instance, the debtor is introduced to a creditor by being given an application form for credit by a third party, such as an accountant, but that creditor is not in turn introduced to the debtor by the broker.

- 1.4 Section 25 of the Act provides that, in considering fitness, the OFT shall have regard to any matters which appear to it to be relevant and in particular any evidence tending to show that an applicant, licensee, or its employees, agents or associates,¹⁰ applicant is a body corporate, any person appearing to the OFT to be a controller of the body corporate or an associate of such person has:
- committed any offence involving fraud or other dishonesty or violence
 - failed to comply with the Act or any other enactment regulating the provision of credit to individuals or other consumer protection legislation
 - failed to comply with the requirements of Part 16 of the Financial Services and Markets Act 2000 so far as they relate to the consumer credit jurisdiction operated by the Financial Ombudsman Service
 - practiced discrimination in connection with the carrying on of any businesses
 - engaged in business practices appearing to the OFT to be deceitful, oppressive or otherwise unfair or improper, whether unlawful or not.
- 1.5 The Act also requires that in determining whether a person is fit to hold a licence, the OFT shall have regard to the skills, knowledge and experience in relation to an ancillary credit business, of that person and other persons who will participate in any business carried on by him under a licence, and any practices and procedures to be implemented in connection with any such business. Licensees and new applicants operating in those areas considered by the OFT to be high risk credit sectors, such as debt advice, debt management and provision of credit repair services, are subject to greater scrutiny to ensure that they have appropriate regard to the standards that the OFT expects of those engaged in regulated debt-adjusting, debt counselling and the provision of credit information services (including credit repair) as set out in this guidance and other relevant OFT guidance.

¹⁰ Including business associates as referred to in section 25(3) of the Act.

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Sector specific guidance

- 1.6 Section 25A of the Act requires the OFT to prepare and publish guidance in relation to how it determines, or how it proposes to determine, whether persons are fit to hold a consumer credit licence. The OFT must have regard to its guidance in carrying out its functions under the Act.

Purpose of the guidance

- 1.7 This guidance sets out the standards that the OFT expects licensees¹¹ providing debt advice, debt management and credit repair services to adhere to. To assist licensees and applicants in meeting these standards, it identifies the types of behaviour the OFT considers falls within the category of unfair or improper business practices and which, if engaged in, may call into question a person's fitness to retain or be given a licence and to continue to engage in activities such as the provision of debt advice, debt management services and/or credit repair services either under a standard licence or under cover of a group licence.¹²
- 1.8 Where the OFT has evidence which calls into question 'fitness', we can take action to refuse or revoke the credit licences of those concerned, or to exclude, or seek the exclusion of, an individual member from the cover of a group licence. Where we are dissatisfied with any matter in connection with the licensee's business we may take appropriate action to change behaviour.¹³
- 1.9 This guidance also provides a basis against which the OFT and its enforcement partners in Local Authority Trading Standards Services (LATSS) can undertake assessments of whether applicants and licensees have the appropriate skills, knowledge, experience, business practices and procedures, to be licensed by the OFT to operate a relevant ancillary credit business (the 'competence assessment').

¹¹ For the purposes of this guidance, references to 'licensees' also applies (where appropriate and applicable) to persons operating under the cover of an appropriate group licence. with any matter in

¹² Some of the practices identified in chapter 3 of this guidance document as 'unfair or improper' may also constitute criminal offences.

¹³ We can be 'dissatisfied' with a business even if the matter that causes us to be dissatisfied is insufficient to call into question fitness to hold a licence. The threshold for 'dissatisfaction' for the purposes of section 33A of the Act is lower than that for (un)fitness for the purposes of section 25. It follows that any matter identified in this guidance as potentially relevant to a consideration of 'fitness' may also, depending on the circumstances, provide a basis for the OFT to be dissatisfied.

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Scope of the guidance

1.10 This guidance applies to persons¹⁴ who provide debt advice, debt management and/or credit information services. It applies, therefore, to standard licence holders and applicants (and their employees) providing advice and assistance to consumers on how to deal with their debts and the range of debt management options available to them. For the avoidance of doubt, this includes all debt management businesses¹⁵ (whether profit-seeking or free-to-client service providers), insolvency practitioners (IPs), approved intermediaries for Debt Relief Orders (DROs),¹⁶ Debt Arrangement Scheme (DAS) approved money advisers,¹⁷ mortgage arrears counsellors, independent financial advisers, introducers and other intermediaries, lead generation and claims management businesses, which are engaged in the licensable activities of debt counselling, debt adjusting or the provision of credit information services (including credit repair). All such businesses should fully adhere to this guidance, where applicable. This guidance also applies to persons or organisations covered by an appropriate group licence such as Citizens Advice Bureaux and Advice UK members who provide debt advice, and to IPs. As such, this guidance has a much broader application than simply to 'debt management businesses'.

1.11 When we refer to debt management 'options' in this guidance, this includes – but is not limited to – informal arrangements such as debt management plans, token repayments offers and full and final settlement offers and formal insolvency procedures/statutory schemes such as Individual Voluntary Arrangements (IVAs), Debt Relief Orders (DRO), Protected Trust Deeds (PTDs), Trust Deeds, the Debt Arrangement Scheme (DAS) and bankruptcy.¹⁸

¹⁴ This guidance is relevant to all persons involved in the provision of advice to consumers and/or who may negotiate with creditors in relation to restructuring consumer credit debts and personal insolvency on behalf of consumers, whether on a commercial or non-commercial basis

¹⁵ Irrespective of their funding model.

¹⁶ See www.insolvency.gov.uk

¹⁷ See www.dasscotland.gov.uk or www.aib.gov.uk

¹⁸ In Scotland bankruptcy is sometimes called sequestration.

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- 1.12 All creditors¹⁹ are expected to have regard to this guidance when providing their clients with debt advice and when discussing and/or agreeing an informal debt management plan and/or when dealing with third parties acting on behalf of clients.

2 OVERARCHING PRINCIPLES OF FAIR BUSINESS PRACTICE

- 2.1 In the OFT's view there are a number of overarching principles of consumer protection and fair business practice which apply to all debt counselling and debt adjusting activities and the provision of credit information services (including credit repair).
- 2.2 Licensees should be aware that consumers they come into contact with in the course of engaging in these activities may tend to be over-indebted, vulnerable, in need of help and/or may have restricted options available to them. It is therefore vital that when providing services to such consumers in particular, having regard to their best interests should be a paramount consideration - and the commercial interests of a business should never be prioritised to the detriment of the consumer.
- 2.3 In general terms, licensees should ensure they are transparent and fair in their dealings with consumers. This should include signposting consumers to suitable and effective redress mechanisms where appropriate and available. If licensees adhere to these principles then this should help ensure that consumers receive a consistent standard of service and receive debt advice appropriate to their individual circumstances.
- 2.4 Licensees should also ensure they have effective mechanisms in place to help them seek to identify- and subsequently appropriately deal with- particularly vulnerable clients. Most debtors may be regarded as 'vulnerable', to some degree, by virtue of their financial circumstances. Of these, some may be, permanently or temporarily, rendered particularly vulnerable by virtue of the fact that they are significantly constrained in terms of their ability to engage appropriately with those pursuing them for the repayment of debts owed. Debtors with mental health issues and/or with mental capacity limitations (amongst other types of actually or potentially vulnerable individuals) may fall into this category.

¹⁹ See sub-section of Chapter 3 of this guidance document entitled 'Creditor's responsibilities'. See also sector specific OFT guidance for creditors and other businesses involved in debt recovery: Irresponsible Lending (OFT1107) and Debt Collection (OFT664rev).

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Transparency

2.5 Licensees should provide clear and accurate information, explanations and advice, in a timely manner, in all of their dealings with consumers. Licensees should also be transparent in their dealings with their client's creditors (and creditors' representatives), providing clear and accurate information in a timely manner, such that their client's interests are not adversely affected. Licensees' marketing, advertising and promotion should accurately reflect the services actually offered by the licensee, the cost of those services, and whether any aspect of the service will be offered by a third party and/or at an additional cost. We expect licensees to be appropriately transparent at all times about, for example:

- a. their identity (including contact information) and relationships with relevant business associates or third parties so it is clear to consumers who they are dealing with²⁰
- b. all relevant government authorisations/registrations and memberships of professional bodies, trade organisations, codes of conduct and/or relevant consumer redress schemes
- c. the commercial nature of the business (if applicable) and the cost of the service including all fees. Licensees should also not use misleading or look-a-like trading names, websites, or any other marketing suggesting they are a charitable or government organisation when this is not the case
- d. the full range of options available to consumers. The key benefits and actual or potential disadvantages associated with each debt management option should be clearly set out (including any particular risks to consumers which might be associated with any such option(s)), the existence of impartial information²¹ and, where appropriate,²² the availability of help and debt advice from not-for-profit advice organisations.²³

²⁰ Businesses have a number of obligations in law (including under the Consumer Credit Act 1974, the Companies Act 2006 and the Electronic Commerce (EC Directive) Regulations 2002), to disclose certain information to consumers and should refer to the relevant legislation and/or guidelines. See Annexe C for a list of other relevant guidance and legislation. The OFT would consider it to be a matter of good practice for licensees to display their consumer credit licence numbers on their web-sites and documentation.

²¹ See paragraph 3.23b.

²² See paragraph 3.23g.

²³ See Annexe A for what we mean by a 'not-for-profit advice organisation'.

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e. how they are using/processing personal data supplied to them

It is particularly important that licensees are transparent where consumers have to deal with more than one party at a time. Some business models operated by licensees necessitate a consumer dealing with a number of businesses at once - for example, where one business will market the service, another may provide the advice and a third supplies the actual debt management option.

Licensees should be transparent about any relevant business associations and make it easy for consumers to identify who they are dealing with at each stage, who is responsible for each constituent element of the process, and who to complain to if things go wrong.

We would generally expect licensees to obtain a consumer's informed consent prior to referral to a third party business associate. We consider that this principle should apply equally when consumers are being transferred between associated businesses within the same group of companies.

Fairness

2.6 Licensees must act honestly and treat consumers fairly.²⁴ They should ensure that:

- a. all advice given and action taken has regard to the best interests of the consumer and is appropriate to his individual circumstances²⁵
- b. consumers receive sufficient information, in a timely manner, about the available options identified as suitable for their individual circumstances and the reasons why these are considered suitable (as opposed to other options that are considered unsuitable)
- c. reasonable care is taken to provide accurate information when dealing with (including advertising to) consumers from different countries in the UK, due to the differences in law, court procedures, possible enforcement

²⁴ This is a key principle under the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs) which prohibit unfair commercial practices which distort consumers' transactional decisions. See Annexe C for 'Other Relevant Legislation and Guidance'.

²⁵ Whilst also having appropriate regard to the legitimate interests of other parties, such as creditors.

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actions, and the debt management options available to the consumer, in the different jurisdictions

- d. they do not operate business models which, by their very nature, are likely to be unfair to consumers.²⁶

Redress

- 2.7 Licensees should respond to complaints appropriately, fairly and in a timely manner. Rules that set out in detail how businesses should handle complaints are published in the FSA's Handbook. These rules apply to businesses that are, or have been, regulated by the FSA or the OFT.²⁷ The rules largely reflect common sense and good business practice. In simple terms, they require consumer credit licence holders to have effective and clear procedures for dealing with any complaints fairly and reasonably. Businesses' complaints procedures must take into account, amongst other matters, the time limits for dealing with complaints and the consumer's ultimate right to refer an unresolved dispute to the Financial Ombudsman Service.²⁸
- 2.8 Licensees' complaints handling procedures should be transparent and clearly published on any websites operated by the licensee. We would expect licensees to make it clear to their clients if they are signed up to a complaint/redress scheme operated by a trade association/professional body. The OFT would consider a licensee's failure to provide consumers with information on their rights (including how to complain when things go wrong), failure to co-operate with the Financial Ombudsman Service, or adverse information about the licensee from the Financial Ombudsman Service, as factors relevant to a consideration of fitness.²⁹

²⁶ See paragraph 4.4 of this guidance document.

²⁷ Section 226A of the Financial Services and Markets Act 2000 provides that a complaint, relating to an act or omission of a business licensed under a standard consumer credit licence qualifies to be dealt with by the Financial Ombudsman Service, if certain conditions are satisfied.

²⁸ For more information see the Financial Ombudsman Service website:

www.financial-ombudsman.org.uk

www.financial-ombudsman.org.uk/publications/technical_notes/QG6.pdf

www.financial-ombudsman.org.uk/publications/pdf/guide_complaints_handlers.pdf

²⁹ In 2010, the OFT's compliance review found that industry awareness of, and compliance with, the Financial Ombudsman Service's scheme for resolving consumer credit complaints, was low. See the OFT's Debt management guidance compliance review September 2010 (OFT1274).

www.offt.gov.uk/shared_offt/business_leaflets/credit_licences/OFT1274.pdf

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- 2.9 Section 25(2) of the Act states that the OFT shall have regard to the business practices and procedures implemented in connection with consumer credit businesses, consumer hire businesses or ancillary credit businesses in determining fitness for the purposes of the section 25 test. When formulating their business practices and procedures, in order to facilitate the avoidance of engaging in unfair or improper practices, we would expect debt management businesses, and businesses providing debt advice and/or credit information services, to have regard to these general principles and to give effect to their practices and procedures in such a way as to facilitate these general principles being followed in practice.

Licence holders' responsibility for third parties

- 2.10 If licensees (or those operating under cover of an appropriate group licence) choose to do business (or continue to do business) with third parties whose conduct is inconsistent with fitness to hold a licence, then their own fitness may be called into question.
- 2.11 Licensed businesses can not ignore the unfair or improper practices of others with whom they have business relationships. It is not for the OFT to be prescriptive as to how choices about third party selection are made. However, we would expect to see that care had been taken in the selection process, complaints to the licensee about such third parties are properly investigated, and that effective action is taken as necessary to ensure that similar problems do not recur.
- 2.12 Similarly, licensees should satisfy themselves that third parties with which they do businesses are appropriately licensed.³⁰ We would also expect licensees to satisfy themselves that such licensed third parties operate complaints procedures that follow the FSA's complaints handling rules.

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³⁰ See paragraphs 3.7 - 3.9 inclusive for specific guidance on licensees' responsibilities when dealing with introducers, intermediaries or other generators of client leads or referrals.



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3 UNFAIR OR IMPROPER BUSINESS PRACTICES

LEAD GENERATION, DIRECT MARKETING AND PERSONAL VISITS

Lead generation, sourcing and referring clients

- 3.1 Businesses offering debt management services source their clients in a variety of ways either directly or via third parties. Third party businesses may specialise in generating leads for referral on to businesses offering debt management services, or this may be done as an adjunct to their main businesses. A fee/commission may be paid for referrals.
- 3.2 'Lead generation' will usually involve some form of marketing used to generate interest or an enquiry into a service or product from consumers. In terms of debt management services, this often results in consumers' personal details being obtained which are sold on to businesses offering such services (this includes IPs). The more information that can be obtained from consumers – for example, on their income and debt levels – the more valuable the client lead becomes to a debt management business, and therefore to the business seeking the leads.

Businesses specialising in 'lead generation' use various marketing methods to generate leads, particularly online via search engines or through 'direct marketing'. In their attempt to generate high volumes of leads these businesses often operate a large number of different websites and normally across different business sectors. In the OFT's experience, marketing used by businesses specialising in lead generation often contains misleading content apparently designed to induce consumers into providing their personal details. It is also often not made clear to consumers that they are passing on their details to a 'lead generation' business rather than directly to a business offering debt management services.

- 3.3 'Referrals' and 'introductions' of clients – for example, from financial/mortgage advisers and other intermediaries, creditors and credit brokers, to businesses offering debt management services and IPs – differ from more specialist 'lead generation' since, in the case of the former, the referral or introduction is made as an adjunct to – or in support of – the main business. For example, where an independent financial adviser finds that his client may require specialist help with his debt problem he may 'refer' or 'introduce' his client to a debt management business.

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- 3.4 If during the process of generating leads and/or referring consumers on to another business, a business gives any form of advice to debtors about the liquidation of debts due under consumer credit agreements, it needs to be licensed to cover its engagement in debt counseling (it requires a category E credit licence) and should have appropriate regard to this guidance.
- 3.5 Similarly, where a business refers a consumer's details on to a potential lender or to another credit broker, it is likely to be engaged in credit brokerage and would need to be appropriately licensed (it requires a category C credit licence) and should have regard to OFT guidance for Credit Brokers and intermediaries (OFT 1388).³¹
- 3.6 Businesses offering debt management services may, themselves, be involved in purchasing leads or referrals as well as selling leads or referrals. For example, a debt management business may 'introduce' a consumer to an IP.

Licensees' responsibilities when dealing with third party generators of client leads, referrers or introducers

- 3.7 The OFT expects licensees to take appropriate responsibility for ensuring that third party providers of client leads or referrals that they deal with are appropriately licensed (if applicable) and adhere to this and other relevant guidance to the extent that it is applicable to them. Failure to do so would be a matter relevant to a consideration of the licensee's own fitness to retain a licence.
- 3.8 We would expect any debt management business that has contracted with a third party to generate client leads on its behalf to take reasonable steps to ensure that:
- the third party business is appropriately licensed where applicable. If it provides any debt advice to consumers in the course of generating debt management leads then the third party business will need to hold a licence with the debt counselling licence category (Category E). If it effects introductions to persons providing credit in the carrying on of a business of consumers desiring to obtain credit (or other credit brokers) then it will need to hold a licence with the credit brokerage

³¹ www.oft.gov.uk/OFTwork/credit/credit-brokers

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licensing category (Category C). These licensing requirements also apply to call centres based outside the UK if the service provided is directed at UK consumers

- b. if a business is engaging in licensable activities from websites then all domain names through which it does so must be included on any relevant consumer credit licence that it holds³²
- 3.9 Prior to entering into a contract with- and/or obtaining leads from- a third party (whether that business is itself engaged in licensable activity or not), the OFT would expect a licensee to take reasonable steps to satisfy itself that:
 - a. any advice, website content or other advertising (including pay-per-click) provided/produced by that third party is clear and transparent about the nature of the service being provided and does not breach the Consumer Protection from Unfair Trading Regulations 2008
 - b. the third party is registered with the Information Commissioner's Office (ICO) and has processes in place to ensure that when handling personal information and passing on consumer's personal details, it complies with relevant data protection requirements³³
 - c. when cold calling or contacting consumers directly, the third party has processes in place to ensure that it complies with the rules governing electronic marketing set out in the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECRs).

The extent of what is appropriate and the checks the licensee undertakes of third parties will depend, to some extent, on the number, frequency and type of lead or referral. For example, single or occasional instances where consumers are simply referred by independent financial advisers may trigger the need for less rigorous or frequent checks than would be the case where, for example, a specialist lead generator provides licensees regularly and directly with personal client data.

³² This requirement applies to any businesses engaged in any form of licensable activity. In accordance with section 24 of the Act, a standard consumer credit licence authorises the licensee to carry on a business under the name or names specified in the licence, but not under any other name.

³³ The Information Commissioner's Office has issued guides for organisations on how to comply with the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 - see Annexe C.

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Direct marketing

- 3.10 Direct marketing is any marketing or advertising material or communication directed at particular individuals, typically by email, SMS, MMS, telephone, fax or post.
- 3.11 When carrying out direct marketing activities, debt management businesses or lead generators acting on their behalf must comply with the Data Protection Act 1998 (DPA) and with the PECRs - which govern how electronic marketing and advertising, including cold calling, should be carried out. Although the ICO has the enforcement lead in this area, the OFT considers breaches of the PECRs or the DPA by a licensee, or its associate, as constituting business practices that may be unfair and/or improper within the meaning of section 25(2A)(e) of the Act and consequently matters that it can take into account in considering fitness to hold a consumer credit licence.
- 3.12 Examples of unfair or improper business practices with regards to lead generation and direct marketing include:
- lead generators falsely claiming to, or implying that they, offer debt management services
 - not making the true nature of the service to be provided sufficiently clear to consumers via website or other advertising content or when using other direct marketing contact methods such as, for example, telephone calls or text messaging
 - failing to be sufficiently clear as to what the consumer's details (personal data) will be used for

For example, where it is the case, lead generators should make it sufficiently clear to the consumer during a call, that it is a sales call, with the purpose of gathering personal data in order to sell that data on to another business (if the consumer consents).

- failing to declare the existence of a financial interest in a lead or referral, including 'pay per click'
- failing to declare, on request by the consumer, the nature of any relevant association, or prior arrangement, with the third party providing the service being offered, such as a debt management business

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- f. falsely claiming or implying contact is being made on behalf of the government or charities and/or making any other false or misleading claims or statements regarding 'status'.

For example, operating websites which look like and/or are designed to look like, the web-site of a charity or a government body.³⁴

- g. licensees dealing with 'known' non-compliant lead generation businesses.

For example, accepting consumer leads obtained from lead generation firms where it is known, or reasonably ought to be known, that they are employing the use of misleading marketing material, and/or making misleading claims via web-sites or other media.

- h. referring leads to unlicensed service providers (with a view to the service provider providing licensable services) and/or to licensed service providers who provide services of a type inconsistent with that described in advertising or in other communications to consumers

Prior consent

- i. making or instigating unsolicited calls or faxes to any number on the Telephone Preference Service (TPS)³⁵ register or the Fax Preference Service (FPS) register without the customer's specific consent, or to a consumer who has previously notified the caller that he does not wish to be contacted
- j. sending or instigating electronic mail (text message, email, voicemail) and/or making automated calls, for the purposes of marketing, without obtaining prior informed consent from the consumer to whom they are sent³⁶
- k. failing to actively obtain the consumer's informed consent before transferring his call or passing on his details to a third party³⁷

³⁴ See OFT press notice of 7 March 2009 about its action to close 'look alike' websites.

www.oft.gov.uk/news/press/2009/26-09

³⁵ www.tpsonline.org.uk

³⁶ See Regulations 19 and 22 of PECRs 2003 - See Annexe B for further information

³⁷ See text box adjacent to paragraph 3.49f of this guidance document.

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- l. failing to display privacy notices³⁸ in a way that the consumer's legal rights under the DPA will be clearly brought to his attention in such a way as to make him fully aware of his rights and how to exercise them.

The OFT would expect any privacy notice to be clearly displayed in a sufficiently prominent position such that it is likely to come to the attention of the borrower.

We would expect it to explain the way in which the licensee intends to use consumers' personal information, and what it requires from consumers in terms of 'consent' prior to being able to do so, clearly, transparently, and in plain and intelligible language.

- m. failing to provide a sufficiently clear and easy method for consumers to cancel their consent
- n. failing to disclose where the consumer's details were obtained from, upon receipt of a request from the consumer to do so

High pressure sales techniques

- o. engaging in pressure selling or coercion and/or taking advantage of a consumer's vulnerability or lack of awareness of the relevant law or available debt solutions
- p. using 'call scripts' or similar material(s) which facilitate or encourage pressure selling or coercion.

Cold calling by personal visits

- 3.13 There must be no cold calling by personal visit for the purpose of promoting or selling debt management services. It is an offence under section 154 of the Act to canvass debt adjusting, debt counselling and credit information services off trade premises including during visits to consumers' homes.

³⁸ A 'privacy notice' is a document that discloses the ways a party gathers, uses, manages and discloses a customer's personal data.

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Visits not prohibited by section 154 of the Act

3.14 Where visits are made at the explicit request of the consumer, they may be subject to The Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008³⁹ (commonly called the Doorstep Selling Regulations). Where the Regulations apply, they should be strictly adhered to. Most importantly, consumers must be given a seven day cooling off period in which to cancel the contract. In addition, during the visit, licensees must not engage in any aggressive commercial practices, including those specifically prohibited by the CPRs.

3.15 Examples of unfair or improper business practices relating to cold calling by personal visit include:

- a. making an appointment to visit, or visiting, consumers at an unreasonable or inconvenient time of day (from the consumer's perspective), unless in accordance with the consumer's express and informed consent
- b. ignoring a consumer's request to leave and/or not to return⁴⁰
- c. undertaking visits to consumers' homes which are unnecessarily and/or unreasonably long⁴¹
- d. engaging in any form of pressure selling or coercion
- e. failing to provide the consumer with the 'Notice of the Right to Cancel' in a sufficiently prominent position in any contract and in accordance with The Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008.

³⁹ For further information on the requirements on businesses under the Consumer's Home or Place of Work etc Regulations 2008 see Annexe B.

⁴⁰ A salesman ignoring such a request by a consumer is likely to be considered to be engaging in a banned practice under the CPRs – see paragraph 25 of schedule 1 to the CPRs.

⁴¹ In the OFT's view, a visit which exceeds three hours would normally be considered too long. This is also the period considered by the Direct Selling Association (DSA) in its Consumer Code of Practice as being 'normally' too long. The DSA's code is approved by the OFT under the Consumer Codes Approval Scheme. www.dsa.org.uk

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GENERAL MARKETING, ADVERTISING AND OTHER COMMUNICATIONS

- 3.16 All marketing, advertising and promotion and other oral or written representations⁴² should be clear, accurate and truthful and should not mislead, either expressly or by implication or omission.⁴³
- 3.17 Where this guidance identifies warnings and caveats that we consider should be provided in relation to the services to be provided, these should be accorded equal prominence to the material in the advertisement which they are intended to qualify.
- 3.18 Examples of unfair or improper business practices occurring in various types of marketing, advertising and other communications⁴⁴ include:
- failing to make it sufficiently clear, in a timely manner or at all, that a service is being offered by a commercial organisation and/or that it is chargeable
 - falsely claiming or implying that help and debt advice is provided on a free,⁴⁵ impartial or independent basis, where the provider has a profit-seeking motive
 - falsely claiming or implying help or advice is being provided by a charitable organisation or a government or other public body.

For example, advertising a contact number as a charitable or government 'helpline'.

⁴² This guidance applies to all forms of marketing, advertising and promotion across all media types. This includes online marketing such as paid for/sponsored listings and advertisements on internet search engines, contextual advertising (targeted advertisements based on the content of websites on which the adverts appear) and all marketing content on paid-for and non-paid-for online space including new media such as social networking websites, forums and blogs.

⁴³ Licensees must comply with the CPRs. Additionally, the Advertising Standards Authority (ASA) is a self-regulatory body and an 'established means' for resolving complaints about adverts' non-compliance with the CPRs (as well as non-adherence to the CAP and BCAP codes of practice www.asa.org.uk/Advertising-Codes.aspx). See Annexes B and C for further information and for links to OFT guidance on the CPRs. Adverts on TV and radio are also regulated by the Office of Communications (Ofcom).

⁴⁴ The examples given will be applicable to varying degrees, dependent on the circumstances and form of communication chosen.

⁴⁵ The 'committees of advertising practice' have published joint guidance on the use of the word 'free' – See Annexes B and C.

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- d. falsely claiming or implying that a trader or his practices, services and/or products are authorised, approved, endorsed or supported by the Government or any public/private body ⁴⁶ (such as, for example, a professional body or trade organisation)

An example is using names, websites, web-pages, imagery, logos, statements or any marketing communication or action that falsely claims or implies government, official, or charitable status, backing or association.

Another example is claiming or implying that IVAs or other debt management options, which are governed by legislation, are generically endorsed by the Government.

- e. unauthorised use of the OFT name or logo, including the OFT approved consumer code logo, ⁴⁷ or suggesting that the business is 'approved' by the OFT in any way
- f. failing to provide consumers with sufficiently clear and adequate information on fees

This applies to licensed businesses whether directly providing the product/service themselves or otherwise marketing it

For example:

- i. failing to explain sufficiently clearly to consumers what the fees are for the debt management services being offered, how they are calculated, and what service(s) they cover

⁴⁶ Falsely claiming that a trader (including his commercial practices) or a product or service has been approved, endorsed or authorised by a public or private body when they have not or making such a claim without complying with the terms of the approval, endorsement or authorisation, is a banned practice under the CPRs – see paragraph 4 of Schedule 1 to the CPRs.

⁴⁷ Falsely claiming to be a signatory to a code of conduct, displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation, and claiming that a code of conduct has an endorsement from a public or other body which it does not have, are all banned practices under the CPRs – see paragraphs 1, 2 and 3 of Schedule 1 to the CPRs. Claiming that a trader is a member of an OFT Approved Code scheme, when it is not, would also be likely to be a breach of the CPRs.

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- ii. where it is not possible to state exact fee levels, for example for IVAs/PTDs, failing to provide estimates/average levels that sufficiently clearly indicate the likely/anticipated costs involved
- g. failing to explain, or misleading consumers about, likely adverse effects on the consumer's credit rating

For example:

- i. claiming or implying that there is no risk of adverse impact to the consumer's credit rating
- ii. claiming or implying that entering into a IVA, PTD or DRO will be kept private (whereas in fact the consumer's details will be held on a public register)⁴⁸
- iii. claiming or implying that entering into a debt management arrangement will 'repair' or 'fix' the consumer's credit rating.
- h. providing unbalanced/biased information on the characteristics (including the key risks) associated with the advertised debt management option

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⁴⁸ The Insolvency Service maintains the Individual Insolvency Register which gives details of bankruptcies, current IVAs and fast track voluntary arrangements, Debt Relief Orders (DROs) and current bankruptcy restrictions orders and undertakings. The Accountant in Bankruptcy (AIB) maintains the Register of Insolvencies which holds information on bankruptcies awarded by Scottish courts and PTDs. The AIB also maintains the DAS register which details applications for current debt payment programmes under DAS. Access to the DAS register is restricted to creditors and potential creditors. DAS approved money advisers may also inspect the register on behalf of a consumer. The IVA Register for Northern Ireland is maintained by the Northern Ireland Insolvency Service (DETINI). The Bankruptcy and Liquidation Register for Northern Ireland is maintained by the Northern Ireland Court Service.



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Examples would include

- Emphasising the advantages of an option at the expense of the actual or potential disadvantages.
 - Downplaying, or not providing in equal detail and prominence, sufficient and suitable explanations, warnings and/or caveats, about the actual or potential disadvantages, negative effects and/or risks of entering into the debt management option. For example, by only displaying material information in the small print, or terms and conditions.
 - Giving inaccurate, unbalanced or biased comparisons of different debt management options.
- i. failing to make it clear that a debt management option is only available to consumers in a certain country in the UK (for example, Scotland) when this is the case
 - j. inappropriately claiming or implying that the service will free the consumer of the need to repay his debts
 - k. marketing claims management services for unenforceable agreements as a 'debt management solution'⁴⁹
 - l. when promoting debt management plans, emphasising the 'savings' or monthly payment reductions to be made by rescheduling debts without making it equally clear that creditors are not obliged to agree to a debt management plan, or freeze interest and charges, and that rescheduling debts will usually lead to:
 - i. an increase in the total sum to be repaid
 - ii. an extended repayment period, and
 - iii. impairment of the consumer's credit rating.
 - m. claiming or implying a licensee can guarantee an outcome favourable to

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⁴⁹ For further information on the application of the guidance to claims management companies see Annex A.



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the consumer in negotiations with creditors, in particular:

- i. the freezing of interest and charges
- ii. the cessation of contact from, or enforcement action by, creditors
- iii. that creditors are obliged to accept a debt management plan or that it is binding on creditors once set up
- iv. that creditors will readily agree to a particular debt repayment offer/proposal and not clearly stating the acceptance criteria for an IVA/PTD
- v. that a licensee can successfully negotiate an early settlement with creditors

There is no guarantee that a creditor will accept a payment offer in full and final settlement of a debt. Marketing should not include any unsubstantiated claims of amounts that a creditor would be prepared to accept.

- vi. claiming or implying that it is 'guaranteed' that creditors will 'write off' a given percentage of a consumer's debt under an IVA/PTD, without clarifying the conditions which must be adhered to.
- n. where the arrangement with the licensee will lead to a period in which contractual payments to creditors – or a portion of them – are not made by the consumer or are retained (permanently or for an extended period) by the licensee – failing to:
 - i. include a prominent warning⁵⁰ of this fact in the marketing
 - ii. include a prominent warning that this may cause the consumer to fall into, or fall further into, arrears
 - iii. outline how soon after the consumer has made the first payment to the licensee, money will be distributed to creditors

⁵⁰ For example, where money paid by consumers to licensees is retained by licensees rather than being passed on to creditors, warning the consumer that this money is still owed by him to the creditors unless/until it is passed on.

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- iv. ensure the consumer's creditors are informed without delay of the reason for, and the period for which, the payments will not be paid/will be retained by the licensee
- o. when promoting IVAs and/or PTDs, stating or implying that there are no risks involved and/or failing to clearly provide appropriate warnings and caveats, including:
 - i. if the arrangement fails this could lead to bankruptcy
 - ii. homeowners may be required to release equity to pay off some or all of their debts
 - iii. if the homeowner has to remortgage his property to release the equity, his ability to obtain a mortgage may be restricted and is likely to be on less favourable terms. For example, the mortgage may attract higher interest rates
 - iv. where the homeowner is unable to obtain a remortgage, the IVA can be extended for up to 12 months
 - v. there are restrictions on the debtor's expenditure whilst in the arrangement
 - vi. the relevant creditor acceptance/objection criteria required for approval
 - vii. only unsecured debts included within the IVA or PTD may be written off at the end of the period and that those not included will remain outstanding.
- p. using printed advertisements that are not easily legible
- q. failing to sufficiently clearly identify any marketing communications as such. For example, advertorials⁵¹ or similar content on Facebook/ Twitter pages
- r. failing to inform the consumer that other debt management options are available and may be suitable for him (where this is the case)

⁵¹ Not clearly identifying a paid for promotion in editorial content in the media is a banned practice under the CPRs – see paragraph 11 of schedule 1 to the CPRs.

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- s. using endorsements, consumer testimonials or case studies which are false,⁵² over exaggerated (to a material degree) and/or which do not relate to the advertised service
- t. making false or unsubstantiated statements about the size, pre-eminence and experience of the business
- u. claiming or implying that the consumer will definitely be debt free in a specified period of time or making statements emphasising a 'debt free life'
- v. claiming or implying that a debt management option is a stress free and/or immediate solution
- w. **inappropriately**⁵³ asking or instructing consumers to make contact on telephone numbers that are premium rate numbers
- x. conducting telephone conversations with consumers, who have called on premium rate service numbers, over an unreasonably prolonged period

Callers should be informed in any promotional material of the likely total cost of the premium rate service including the price per minute of calls, the likely duration of the call, and the total cost which the consumer will incur if he calls for the full duration.

Online marketing and advertising

3.19 Licensees who advertise or sell online or by email must comply with the Electronic Commerce (EC Directive) Regulations 2002. Before using internet based and social media⁵⁴ marketing, licensees should consider whether they can exercise adequate control over its content, whether it is an appropriate medium and whether the appropriate information, warnings and caveats, can be included sufficiently prominently, such that the information conveyed is sufficiently legible, accurate, truthful and not misleading.

⁵² A trader falsely representing himself as a consumer is a banned practice under the CPRs – see paragraph 22 of Schedule 1 to the CPRs.

⁵³ For example, this would be inappropriate where a licensee did not have 'prior permission' from PhonepayPlus ('PPP') to operate a premium rate service and/or it was otherwise in breach of the PPP Code of practice – perhaps, for example, because it was referring customers wishing to pursue complaints to a premium rate service number. Whether licensees have complied with the PPP code of practice, which sets out a number of requirements in respect of premium rate services, is a relevant consideration for the OFT with regards to fitness to hold a consumer credit licence. <http://code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011.pdf>

⁵⁴ For example, micro blogging and social networking services such as 'Twitter' and 'Facebook'.

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For example, the OFT considers that search engine sponsored links, certain contextual adverts⁵⁵ and online messaging forums which limit the number of characters are **unlikely** to be an appropriate means of providing consumers with sufficiently balanced and adequate information on how to deal with their debt problems.

Licensees should therefore take appropriate care to ensure that when promoting themselves or their products or services in this manner, the information conveyed, in isolation, is accurate, truthful and not misleading.

3.20 Examples of unfair or improper practices specific to online marketing include:

- a. operating 'look-a-like' websites designed to attract consumers seeking free, charitable or government help or advice⁵⁶
- b. using false or misleading⁵⁷ keywords and descriptive text, meta tags,⁵⁸
- c. using misleading online advice tools or misleading budget calculators designed to induce consumers to make contact or provide personal details by: embedded links and website/webpage URLs when promoting or advertising online, including on internet search engines and in contextual advertising
 - i. asserting that a certain debt management option is suitable for a consumer in the absence of having carried out a sufficiently full assessment of his individual financial circumstances (including income and expenditure) to be able to take an informed view
 - ii. encouraging a consumer to provide misleading information about his financial circumstances in order for him to appear suitable for a particular debt solution

⁵⁵ For example, Google's 'AdSense' and 'Adwords' products.

⁵⁶ See OFT press notice of 7 March 2009 about its action to close 'look alike' websites.
www.of.gov.uk/news/press/2009/26-09

⁵⁷ Including terms normally associated with charities or government or trademarked names of other organisations, without the relevant permission, even if allowed/suggested by Internet Search Engines.

⁵⁸ A 'meta tag' is a line of HTML coding that contains data about a web-page.

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- iii. failing to provide sufficiently clear warnings that income and expenditure data needs to be accurate
- iv. failing to provide appropriate warnings, caveats and balanced information on the relevant debt management options.
- d. inaccurately describing a website as a 'comparison tool/service' or implying it is run by a debt management business, when it is a lead generation website.

Where a comparison of third parties' services or products is offered, the existence of any business association with, and/or commercial interest in, any of those third parties, should be disclosed.

ADVICE

Advice in the best interest of consumers

- 3.21 All advice given to consumers at any stage, and any action taken, should be appropriate to the consumer's individual circumstances. When advising consumers on how to deal with their debt problems and/or in considering taking a consumer on as a client, licensees should provide information and advice which is accurate, sufficiently clear and appropriate for the consumer.
- 3.22 Licensees should not inappropriately incentivise debt advisers (including staff, agents and third parties), for example, by way of targets, commission or any other incentive, such that they might be induced to target consumers with particular debt management options, products and services, which may not be appropriate for the consumers given their individual needs and circumstances.⁵⁹

For example, basing a pre-determined staff incentive, such as a commission payment, purely on the type of debt management option the consumer was recommended.

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⁵⁹ See paragraph 2.2.



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3.23 Examples of unfair or improper business practices include:

- a. failing to provide a clear and balanced explanation of all the options available to the consumer, including the relevant advantages, disadvantages, eligibility criteria,⁶⁰ the debts eligible for inclusion, the costs, and risks associated, with each debt solution option.

For example, the possible effects on the consumer's credit rating, employment status⁶¹ and home⁶²

- b. failing to provide the consumer with, or actively signpost the consumer to, a source of impartial information on the range of debt management options available in the consumer's home country⁶³
- c. failing to carry out a realistic and reliable assessment, taking appropriate account of the consumer's financial position (including income and expenditure), personal circumstances (including the reason for the financial difficulty, whether it is temporary or longer term and any previous debt management arrangement entered into, including the reason for any failure) and other relevant factors (such as reasonably foreseeable future changes to employment status), before advising consumers on a particular course of action to take
- d. failing to take reasonable care in providing appropriate advice when dealing with consumers from different countries in the UK by not paying proper regard to the differences in the debt management options available to the consumer, and the differences in possible enforcement action, law, and court procedures, in the different jurisdictions

⁶⁰ For example, a consumer's situation will have to fulfil certain criteria before the official receiver will make a Debt Relief Order (DRO).

⁶¹ For example, undischarged bankrupts may not be able to hold a position as a company director.

⁶² Certain forms of insolvency may lead to the consumer losing his home – or control of his home – or may require him to release equity in his property by obtaining a re-mortgage. A consumer's ability to rent may also be affected.

⁶³ It is important that debtors should be made aware of the range of debt management options (potentially) available to them. Useful sources of information include the Insolvency Service's guide 'In Debt? Dealing with your creditors' (June 2009) for consumers in England and Wales, the Department of Enterprise, Trade and Investment's (Northern Ireland) guide 'In Debt? Dealing with your creditors' (September 2011) or the Scottish Government's 'Debt Advice and Information Package' (DAIP)63 (November 2010).

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For example, licensees should not ignore the location of where the consumer resides and the debt options available to him in that jurisdiction until after legal proceedings are issued, and then inform the consumer that no further help can be given to him because the licensee has no expertise in the law of that country.

- e. failing to reasonably explain to the consumer why the licensee recommends a particular debt solution and why other options are not considered to be (as) suitable or viable
- f. failing to take proper account of, and to make appropriate adjustments to, practices and procedures in order to accommodate the consumer's individual needs or requests.

For example, where a consumer may have mental health issues and/or mental capacity limitations,⁶⁴ reading difficulties, or where his first language may not be English.

- g. failing to refer⁶⁵ the consumer, where appropriate, to a not-for-profit advice organisation⁶⁶ for further help. This may include under circumstances in which he:
 - i. has priority⁶⁷ debt problems and/or an immediate 'emergency'⁶⁸ that the licensee is unable or unwilling to assist with and/or
 - ii. does not have enough disposable income to meet the cost of paying the fees charged by the licensee.

This may be the case if the consumer is on a very low fixed income (pension/benefits).

⁶⁴ See Annexe B for further information regarding mental capacity and mental health issues. that the licensee is unable or unwilling to assist with and/or

⁶⁵ Where the licensee does not have an appropriate referral mechanism in place, it should, for example, provide adequate contact details of not-for-profit organisations.

⁶⁶ See Annexe A for further information on not-for-profit organisations which provide free and impartial debt advice. Some local authorities (in particular in Scotland) provide free debt advice to consumers.

⁶⁷ Where it is identified that the consumer is experiencing problems paying his priority debts the licensee should not wait until an emergency arises. As a general principle, a priority debt is one for which non-payment could result in the consumer losing his home, his liberty or essential goods or services. Therefore, licensees must take care to understand which goods and services are essential to an individual and help him prioritise his debt repayments so these can be retained.

⁶⁸ For example, legal threats or court action, and especially those which may result in the loss of the consumer's home, or access to essential goods or services.



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- h. failing to refer or actively signpost the consumer to an alternative provider, or for further advice, in instances where the licensee is unable to offer the consumer the appropriate solution itself, or through existing third party arrangements

Where the licensee recommends a particular course of action, the consumer should not experience any unnecessary delay in seeking further advice or assistance, purely because the licensee cannot offer that particular option itself.

- i. failing to involve the consumer in the decision making process from the outset and/or failing to take appropriate steps with a view to ensuring that he understands all of his options and the consequences and implications of any recommended course of action, in order for him to be better enabled to make informed choices
- j. failing to advise consumers of the importance of paying priority debts, such as mortgage payments, rent, council tax, utility payments, court fines, income tax and child support payments including any arrears already incurred on those debts
- k. failing to advise consumers not to ignore correspondence or other contact from creditors or those acting on behalf of creditors
- l. failing to explore and take account of the consumer's reasonable expectations, desired outcome, preferences, and attitude to risk
- m. actively discouraging the consumer from shopping around for alternative sources of debt advice
- n. using technical language and jargon and not explaining the options available in a way that the average consumer could understand such that the consumer might be constrained in his ability to reach an informed decision
- o. failing to explain a formal insolvency procedure, and the licensee's role within it, sufficiently clearly and accurately.

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For example:

- Failing to explain that applications for a Debt Relief Order (DRO) can only be made by an approved intermediary.⁶⁹
- Failing to explain that 'certificates of sequestration' can only be granted by authorised persons.⁷⁰

Preparing financial statements and making debt repayment offers

- 3.24 Financial statements sent to creditors should be accurate and realistic and should present a sufficiently clear and complete picture of the consumer's income and expenditure, their debts and the availability of any surplus income. The format of financial statements should be well-structured and uniform, in a way that encourages consistent responses from creditors and reduces queries and delay (for example, as set out in the Common Financial Statement (CFS), or equivalent).⁷¹ Financial statements should be capable of easy revision should the consumer's circumstances substantively change.
- 3.25 Debt repayment offers to creditors, such as debt management plan proposals, should be realistic, sustainable and take appropriate account of the consumer's interests.⁷²
- 3.26 Examples of unfair or improper business practices include:
- a. failing to take reasonable steps to verify the consumer's identity, income, or outgoings⁷³

While we would expect licensees to take reasonable steps to verify income and expenditure by appropriate means, what is 'reasonable' and 'appropriate' will depend on the circumstances and the nature of the service being provided in each case.

⁶⁹ An approved intermediary is someone who has been approved by a competent authority chosen by the Government.

⁷⁰ See regulation 3(1) of the Bankruptcy (Certificate for Sequestration) (Scotland) Regulations 2010.

⁷¹ The Common Financial Statement (CFS) is an industry recognised budgeting format licensed by the Money Advice Trust www.cfs.moneyadvicetrust.org

⁷² Repayment offers to creditors should be based on a true and accurate assessment of the individual's circumstances.

⁷³ This is primarily aimed at debt management businesses and commercial debt advisers rather than advice providers in the not-for-profit advice sector.

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The OFT considers estimates of certain expenditure items to be reasonable where more precise figures and evidence may not be readily available. Industry recognised standard expenditure guidelines or their equivalent⁷⁴ may be used, where appropriate, as an indicator of a consumer's outgoings. Care should be taken to ensure that individual circumstances, that might require a necessary deviation from expenditure guidelines, are taken into account as appropriate.

- b. failing to seek or to obtain an appropriate explanation from the consumer under circumstances in which he indicates that his expenditure is particularly high or low
- c. failing to take full account of the consumer's priority debts when setting his monthly repayments to creditors
- d. manipulating the representation of a consumer's income and/or expenditure to fit the criteria for a particular service or to facilitate his acceptance on a debt management plan by creditors.

For example, by making inappropriate use of industry recognised trigger figures/guidelines and/or setting expenditure levels too low (and which are likely to be exceeded by the consumer).

- e. failing to provide creditors with a transparent account of a consumer's income and expenditure in a timely manner or at all
- f. failing to obtain consent from the consumer prior to contacting his creditors
- g. failing to obtain confirmation from the consumer as to the accuracy of the financial statement prior to it being sent to creditors
- h. failing to send a copy of any financial statement sent to creditors (including any accompanying letters) to the consumer
- i. encouraging consumers to mislead creditors about their financial standing

⁷⁴ Expenditure guidelines have been developed by the Money Advice Trust as part of the Common Financial Statement (CFS) and by the Consumer Credit Counseling Service (CCCS budget guidelines).

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- j. recommending clearly unaffordable debt management plans
- k. failing to sufficiently clearly warn consumers of the consequences of not keeping up repayments
- l. where a licensee is aware that a particular creditor refuses to deal with it (for whatever reason and whether or not the licensee regards this refusal as justified), failing to inform the consumer⁷⁵ that the (named) creditor won't deal with the licensee as soon as it is aware that the consumer has an outstanding account with that creditor.

Changes to contractual repayment

3.27 Any advice given to the consumer to cancel a contractual repayment, including direct debits or standing orders, prior to the debt repayment plan being agreed with creditors, should be demonstrably in the best interests of the consumer. Licensees should clearly warn consumers of the risks and consequences of this course of action. The OFT would normally expect that regular payments to creditors (even if lower than the contractual ones) should continue to be made wherever possible. Where this course of action has been recommended and adopted by the consumer, he should be advised to notify his creditors, without delay, of the fact that he is following advice to this effect.

3.28 Examples of unfair or improper business practices include:

- a. failing to clearly inform and warn the consumer of the actual or potential consequences if there will be, or is likely to be, a period in which reduced or no payments to creditors are made

For example, because the licensee takes the first payment under the plan as an initial arrangement fee, because there may be a delay in distributing payments to creditors, or because the licensee has stopped or reduced payments for the purpose of saving a lump sum to offer to specific creditors at a later date as a full and final settlement.

- b. advising consumers to make payments to accounts at a rate lower than the rate at which any interest and other charges are accruing or may accrue, unless this is demonstrably in their best interests

⁷⁵ It may also be appropriate for licensees to inform the OFT.

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For example, if there is insufficient disposable income, due to the need to meet essential expenditure and/or priority debt liabilities.

In such a case, a sufficiently clear explanation should be given to the consumer as to why this course of action is necessary and its implications.

- c. failing to inform consumers if it subsequently becomes clear that the course of action advised by the licensee, such as to cancel direct debits or reduce the level of contractual payments, is not producing results in the consumer's best interests (for example because creditors are not agreeing to freeze interest) in order that he can take whatever action is in his best interest, including possibly withdrawing from the debt management plan
- d. treating all unsecured consumer debts as non-priority debts without considering the individual's personal circumstances

For example, for some people with a disability, a debt to their telephone provider could be considered a priority debt, due to the individual's need to maintain contact with family and carers. In all such instances, decisions in this regard should be reasonably justifiable.

CHARGING FOR DEBT MANAGEMENT AND RELATED SERVICES

- 3.29 The OFT has particular concerns where there is a lack of transparency about the fees, and the methodology surrounding the calculation of fees, that are charged for debt management and related services.
- 3.30 This is particularly the case where the consumer is charged an initial set-up fee (to cover the cost of setting up and/or administering a debt management plan) - particularly if he is not made aware that his initial fee is being used for this purpose - and believes that it has been distributed to his creditors. As a consequence, the consumer is immediately placed into arrears, or further into arrears, with his creditors, and may not even be aware that this is the case.

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- 3.31 Such a fee structure may also deter consumers from terminating a contract with their debt management provider, particularly in circumstances where they are dissatisfied with the service provided. Where the Financial Services (Distance Marketing) Regulations 2004 apply and the consumer cancels the contract within the 14-day cooling off period, the licensee should refund any sum paid less any reasonable charge for services already provided within that period, with the consumer's consent.⁷⁶
- 3.32 The OFT is also aware of a practice of some licensees 'switching' clients between different debt management options and charging unjustifiable duplicate or additional fees for doing so.
- 3.33 Licensees should be sufficiently transparent about all fees and costs associated with the service that they are providing and include such information on their websites and in their advertising content, pre-contract information and in discussions with consumers. Providing this information better enables consumers to understand the total cost of the service being provided, what is included in the service provided, to shop around and consider other options should they wish to do so and ultimately to make better informed choices.
- 3.34 Examples of unfair or improper business practices include:
- failing to make it sufficiently clear in marketing, advice, pre-contract information and contracts, that fees are charged for debt management services, what the fees are and/or how they are calculated and what they cover
- The fees charged by the licensee for its services should be distinguished from other external costs, for example, bankruptcy fees.
- failing to disclose the existence of any relevant commission or other incentive payable between the licensee and third parties
 - failing to disclose, upon receipt of a request by the consumer, the amount of any relevant commission or other incentive payable between the licensee and third parties

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⁷⁶ See regulation 13(6) of the Financial Services (Distance Marketing) Regulations 2004.



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- d. requiring any payment from a consumer prior to the licensee having agreed with him the terms of his contract

Licensees should not take any money from a consumer's bank account prior to having received his specific authorisation to do so, or once that specific authorisation has been withdrawn. Money should only be withdrawn from accounts where specific authorisation has been given by the consumer to take money from the specific account that is the subject of the authorisation.

- e. accepting payment for fees (including initial set up fees) by credit card⁷⁷
- f. failing to disclose the fees consumers are being charged, to their creditors. For example, by not clearly setting these out in any financial statement or proposal

If the fees change during the course of a repayment plan (the fees having already been agreed with the consumer), including those fees that affect the amount due to creditors, these should be notified to creditors. For example, in any revised financial statement.

- g. failing to disclose to consumers information about cancellation charges prior to them entering into a formal agreement or arrangement
- h. applying cancellation charges that are unreasonable and/or disproportionate and not based on actual and necessary costs
- i. claiming any fees or charges from a consumer which are not provided for under the contract terms and conditions, or where they are provided for in the contract terms but where such terms are, or are likely to be, unfair under the Unfair Terms in Consumer Contracts Regulations 1999
- j. operating a policy of charging additional fees where a consumer is switched to a different debt management option and where the decision to switch is not based on a material change⁷⁸ in the consumer's circumstances or in the stance⁷⁹ of creditors

⁷⁷ There are alternatives to credit cards which can be used as a convenient means of making payments at a distance, such as debit cards or electronic bank transfers. or other forms of credit

⁷⁸ The OFT may ask licensees to evidence, to its satisfaction, that there was such a material change that justified the consumer being switched to an alternative debt solution.

⁷⁹ For example, creditors indicating that they wish to, or are prepared to, accept revised repayments, perhaps involving the debtor switching to a different debt management option.

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- k. switching consumers between different debt management options and unjustifiably charging additional or duplicate fees for work that has already been carried out and charged for in respect of previous options and does not need to be repeated
- l. failing to obtain the consumer's informed consent prior to switching him to a different debt management option
- m. where it is identified that a consumer has received inappropriate/incorrect advice, charging an additional or duplicate fee for further/revised advice and/or failing to refund or credit the consumer in respect of fees already charged for that (inappropriate/incorrect) advice
- n. asking or instructing consumers seeking to recover refunds of fees to make contact on telephone numbers that are premium rate numbers⁸⁰
- o. failing to make an appropriate refund of fees paid (upfront or otherwise) where any, or part of, the service or outcome(s) that has been promised, under the terms of the contract or otherwise, has not been provided or delivered, at all or to a reasonable standard.⁸¹

PRE-CONTRACT INFORMATION

- 3.35 Consumers should be provided with sufficiently adequate and material information about the nature of the service which is offered, its duration, and actual or likely total cost, and the likely consequences for their credit rating, prior to entering into an agreement. Pre-contract information should be provided in a durable medium, such as a letter, email or brochure which can be retained by the consumer for future reference. Such information should be clear, transparent and in plain and intelligible language and should state clearly the implications (including potential benefits and key risks) of the option being offered.
- 3.36 Licensees should encourage consumers to read documentation carefully and allow consumers adequate time to consider the options and/or proposed service being offered, including allowing the consumer time to seek independent advice if he wishes to do so.

⁸⁰ Paragraph 2.6.2 of the PPP Code of Practice states that service providers must ensure that there are in place customer service arrangements which must include a non-premium rate UK customer service phone number.

⁸¹ See paragraph 3.41d.

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3.37 Where a licensee provides a financial service by means of any distance communication, such as the telephone or the internet, it must meet the requirements of The Financial Services (Distance Marketing) Regulations 2004 (FS(DM)Rs).⁸²

3.38 Examples of unfair or improper business practices include:

- a. failing to provide sufficient information about the licensee for the consumer to be able to easily identify who he is dealing with⁸³
- b. failing to give sufficient information to the consumer as to the nature of the service that is being offered, including the main characteristics of the debt management option and the associated advantages and disadvantages (including the key risks)
- c. failing to set out the total cost and duration of the contract, including what the fees and charges are and what they cover. Where it is not possible to definitively state the total cost or duration of the service, an estimate⁸⁴ can be given, setting out the assumptions on which the estimate is based. Pre-contract information and contracts should set out:
 - i. any upfront fee or deposit, such as an initial arrangement fee
 - ii. any periodic or supervisory management fees
 - iii. any other costs likely to be incurred under the contract and under what circumstances these would be payable

For example, details of any cancellation charges and/or a warning to the effect that additional fees may apply if the consumer is subsequently transferred to a different debt management option.

- iv. where appropriate, an explanation of how the fees are calculated

⁸² See Annexe B for further information on the FS(DM)Rs.

⁸³ Licensees should adhere to all relevant legislation and guidance in respect of their disclosure obligations, including obligations under the Companies Acts, The Electronic Commerce (EC Directive) Regulations 2002, The Financial Services (Distance Marketing) Regulations 2004 and the ICO's guidelines. The OFT would consider it to be a matter of good practice for licensees to display their consumer credit licence numbers on their web-sites and documentation

⁸⁴ Where an 'estimate' is provided it should be clearly set out that this is the case.

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For example, if a fee is calculated as a percentage of a consumer's disposable income.

- v. what constituent elements of the service the specified fee covers
- vi. the duration (or estimated duration) of the contract
- vii. the total cost over the duration (or estimated duration) of the contract
- d. where the first consumer payments are retained by the licensee rather than being disbursed to the creditors (whether as an initial arrangement fee or deposit), failing to warn the consumer that, as a consequence, he will not initially be meeting his contractual repayments to his creditors and will therefore go into arrears or further into arrears
- e. failing to provide adequate information to the consumer about the likely effect of the debt management option on his credit rating, including whether (and how long) it will show up on his credit report. In particular, he should be informed that following completion of the debts being repaid, he might not be able to obtain credit in the short-term and that there is some likelihood that he may not be able to do so in the medium-to long-term either.

Consumers should not be misled into thinking that their credit ratings will improve earlier than when the payment of their debts is completed, or even immediately thereafter, given that adverse information is generally kept on a consumer's credit report for six years.⁸⁵

Entering into a debt management arrangement may also affect the consumer's access to banking facilities and other financial services.

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⁸⁵ Further information is given in the ICO's 'Credit Explained' leaflet which is available from the ICO's website at www.ico.gov.uk. See Annex C.



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- f. failing to inform the consumer that relevant details relating to his indebtedness will be entered on a public, register⁸⁶ where applicable.
- g. failing to set out clearly the circumstances in which the consumer may withdraw from a debt arrangement and/or receive a refund of any monies paid, with due regard to the principles of contract law in relation to deposits and part-payments. Pre-contract information and contracts should be clear on the circumstances in which the consumer can terminate the contract and receive a full or partial refund of any monies paid

For example, where the consumer has a cancellation right or in circumstances where the total fee differs significantly from the estimate given to the consumer prior to him signing the contract

- h. failing to provide the consumer with sufficiently clear and prominent information on any cancellation rights⁸⁷ he may have, the duration of the cancellation or cooling off period and the conditions for exercising his rights, including information on the amount which the consumer may be required to pay on cancellation of
- i. where a statutory cooling off period applies, misleadingly claiming or implying that it is an extra 'benefit' provided by the licensee
- j. failing to provide a clear explanation to the consumer of the debts that will be included in, and those that will be excluded from, the debt management plan or other informal debt management option, and, in particular, identifying those debts that are being excluded at the discretion of the licensee

⁸⁶ The Insolvency Service maintains the Individual Insolvency Register which gives details of bankruptcies, current IVAs and fast track voluntary arrangements, DROs and current bankruptcy restrictions orders and undertakings. The Accountant in Bankruptcy (AIB) maintains the Register of Insolvencies which holds information on bankruptcies awarded by Scottish courts and PTDs. The AIB also maintains the DAS register which details applications for current debt payment programmes under DAS. Access to the DAS register is restricted to creditors and potential creditors. DAS approved money advisers may also inspect the register on behalf of a consumer. The IVA Register for Northern Ireland is maintained by the Northern Ireland Insolvency Service (DETINI). The Bankruptcy and Liquidation Register for Northern Ireland is maintained by the Northern Ireland Court Service.

⁸⁷ For further information on the consumer's rights to a cooling off period under The Financial Services (Distance Marketing) Regulations 2004 and The Consumer's Home or Place of Work etc Regulations 2008, see Annex B.

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- k. failing to inform the consumer of the basis on which payments to creditors will be allocated, how much will be paid to each creditor, and when they will be paid
- l. failing to inform the consumer of the period within which payments received from him will normally be passed on to creditors (including when the first payments will be made to creditors)
- m. failing to warn the consumer of the importance of meeting priority debts such as mortgage, rent, council tax and utility payments
- n. failing to warn the consumer not to ignore correspondence or other contact from creditors or those acting on behalf of creditors
- o. where a licensee is aware that a particular creditor refuses to deal with it (for whatever reason and whether or not the licensee regards this refusal as justified), failing to inform the consumer that the (named) creditor won't deal with the licensee as soon as it is aware that the consumer has an outstanding account with that creditor
- p. failing to warn the consumer that creditors are not obliged to accept reduced repayments or to freeze interest and that, unless they do so, and/or unless and until this is agreed under a formal statutory solution, repaying the same debt over a longer period of time will lead to an increase in the total amount to be paid
- q. failing to warn the consumer that debt recovery actions, including the issuing of default notices and the instigation of legal proceedings, can ensue⁸⁸ and that these may lead to the consumer incurring further costs
- r. failing to warn the consumer that there is no guarantee⁸⁹ that any current or future legal action or proceedings against him will be suspended or withdrawn
- s. where appropriate to the debt solution (for example in respect of IVAs/PTDs), failing to inform the consumer:
 - i. that if the arrangement fails this could lead to bankruptcy

⁸⁸ Exceptions may exist for certain formal statutory solutions such as IVAs/PTDs.

⁸⁹ Exceptions may exist for certain formal statutory solutions such as IVAs/PTDs.



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- ii. that if the consumer is a homeowner, he may be required to release equity to pay off some or all of his debts
- iii. that if the consumer has to remortgage his property to release the equity, his ability to obtain a mortgage may be restricted and is likely to be offered to him on less favourable terms.⁹⁰

For example, interest rates applied to the mortgage may be higher.

- iv. of the relevant creditor acceptance/objection criteria required for approval.

CONTRACTS

3.39 Licensees' contract terms and conditions with consumers must be fair, written in plain, intelligible language and easily legible. An unfair term for the purposes of the Unfair Terms in Consumer Contracts Regulations 1999 is not binding on consumers.⁹¹

Debt management services contracts

3.40 Examples of unfair or improper business practices include:

- a. failing to provide consumers with contract terms and conditions in writing
- b. failing to set out the nature of the services that are being supplied including the specific debt management option being entered into
- c. failing to set out the total cost (or anticipated likely cost if unknown) and duration of the contract, including the level of the fees and what they cover⁹²
- d. failing to set out the circumstances in which the consumer may terminate the contract and/or receive a refund of any monies paid, with due regard to the principles of contract law in relation to deposits and part payments

⁹⁰ Where the debtor is unable to obtain a mortgage, the IVA can be extended for up to 12 months.

⁹¹ See Annexe C for details of relevant OFT guidance.

⁹² See paragraph 3.38c for information on fees that should be set out in the contract and on what basis estimates might be given.

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- e. failing to include sufficiently clear and prominent information on any cancellation rights the consumer may have, the duration of the cancellation or cooling off period and the conditions for exercising his rights, including information on the amount which the consumer may be required to pay on cancellation.⁹³

Standard contract terms

3.41 Examples of unfair or improper business practices include:

- a. requiring consumers to sign a declaration stating 'I fully understand the requirements of the contract'⁹⁴ or words to the same or similar effect
- b. including any term restricting consumers from corresponding with, or responding to, creditors or others acting on behalf of creditors
- c. including any term which states or implies that the licensee has no liability to the consumer
- d. including any term which states or implies that there are no circumstances in which a consumer is entitled to a refund.

A refund (and in some cases a full refund) may be due to a dissatisfied consumer if the licensee fails to deliver any, or part of, the service or outcome(s) that it has promised to deliver, or agreed to deliver, under the terms of the contract, or the licensee has failed to carry out the service (including conducting negotiations with creditors) within a reasonable time and/or with reasonable care and skill.⁹⁵

⁹³ For further information on the consumer's rights to a cooling off period under The Financial Services (Distance Marketing) Regulations 2004 and The Consumer's Home or Place of Work etc Regulations 2008 see Annex B.

⁹⁴ Such terms are, in the OFT's view, likely to be unfair under the Unfair Terms in Consumer Contracts Regulations 1999. For further guidance and examples see Group 18(e): Consumer declarations in the OFT's guidance Unfair Terms in Consumer Contracts Regulations 1999 (OFT311) and Annexes (OFT311annexes).

www.of.gov.uk/shared_of/reports/unfair_contract_terms/of311.pdf

www.of.gov.uk/shared_of/reports/unfair_contract_terms/of311annexes.pdf

⁹⁵ See section 13 of the Supply of Goods and Services Act 1982.



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HANDLING CLIENT'S MONEY

3.42 Any monies held on behalf of consumers should always be kept in a separate ring-fenced client bank account and not used by the licensee for its own purposes.⁹⁶ Any interest earned on a client bank account should accrue to the benefit of the consumer, not the licensee.

We would expect consumer client monies to be held in a separate ring-fenced bank account in such a way as to be 'protected' in the event of a licensee holding such monies ceasing to trade. Any such monies, held prior to disbursement to creditors, should also be promptly refunded to the client (excluding any reasonable administration fees) where the client withdraws from a debt management plan or other non-statutory debt management option.

3.43 Examples of unfair or improper business practices include:

- a. where a debt management plan or other non-statutory debt management option has been entered into, failing to pay creditors at the earliest reasonable opportunity.

In the OFT's view, this should normally be within five working days from receipt of cleared funds⁹⁷

- b. failing to inform the consumer of the reasons for any delay in distributing payments to creditors in accordance with the contract, whether or not the delay is outside its control
- c. failing to accept responsibility for any delay in distributing payments to creditors in accordance with the contract, where the delay is not outside the licensee's control

⁹⁶ It is unlawful for a licensee to spend consumer client's money on its own account since it is held in trust on behalf of the consumer client and is not the licensee's to spend.

⁹⁷ We are aware of limited circumstances where consumer client's money may be held for longer than five working days without being disbursed to creditors. Where this is the case, the contract should specifically provide for this, the relevant contract term should be clearly brought to the consumer's attention prior to his entering the contract, and relevant creditors should be informed that monies will not be disbursed within five working days, prior to the expiry of the period of five working days following the licensee's receipt of the consumer client's payment.

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- d. where the delay was not beyond the licensee's control, failing to put the consumer back in the position he would have been in had the contract been fulfilled, including making good on any additional interest which would have accrued and on any default charges that have been applied to the account as a result of the delay⁹⁸
- e. failing to take reasonable steps to anticipate, and to the extent that it is reasonably possible prevent, delays
- f. failing to have in place appropriate and robust systems, including contingency plans, to deal with reasonably foreseeable problems, including payment delays, even when the initial cause may not be the licensee's fault
- g. holding monies for consumers, which should otherwise be distributed to creditors to pay off their debts:
 - without the express agreement of the consumer to do so
 - without having fully explained the associated risks and implications to the consumer
 - without ensuring that the consumers' monies held are appropriately protected in the event of the licensee holding such monies ceasing to trade and
 - without having advised creditors that this is the case
- h. making unauthorised withdrawals from the consumer's bank account(s)
- i. failing to promptly⁹⁹ refund to consumers any consumer client monies held prior to disbursement to creditors, where the client withdraws from a debt management plan or other debt solution.

⁹⁸ The law does not impose liability where the reason for delay is beyond the control of the service supplier.

⁹⁹ The OFT would regard 'promptly' in this context to normally be within five working days. Different provisions may apply under certain statutory schemes.



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DEBT MANAGEMENT PLANS¹⁰⁰

3.44 To ensure that the consumer's debt management plan is sustainable and continues to be appropriate to his circumstances, licensees should maintain contact with the consumer and regularly monitor and review his financial situation and circumstances and adapt his debt management plan, as appropriate, to take account of relevant and recent changes.

3.45 Examples of unfair or improper business practices include:

- a. failing to inform the consumer without delay of the outcome of any negotiations with creditors (and advise him appropriately, having regard to his best interests, of the next course of action), including in particular where creditors have:
 - i. refused to deal with the licensee
 - ii. returned payments to the licensee
 - iii. refused the repayment proposal
 - iv. refused to freeze interest
- b. not keeping consumers informed of any material developments in the relationship with creditors and/or not providing them with copies of relevant correspondence or documentation (in particular documentation relating to the issue, or the threat of issue, of default notices or legal proceedings)
- c. where the service provided by the licensee includes debt repayment, failing to:
 - i. proactively monitor the consumer's repayment patterns for any evidence¹⁰¹ which suggests that there may have been material changes in his circumstances

¹⁰⁰ While this subsection on 'Debt Management Plans' primarily relates to debt management plans and other informal debt solutions (specific conditions being applicable to formal solutions such as IVAs), we still expect IPs and their staff or agents, when engaged in licensable credit or ancillary credit activities, to have appropriate regard to the principles underpinning this subsection (as well as having regard to the rest of this guidance document) to the extent that they are applicable and that it is appropriate to do so.

¹⁰¹ For example, the consumer missing repayments when he previously had not done so.

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- ii. re-assess the debt management plan on an annual basis, or as soon as the licensee becomes aware of a material change in the client's financial position (whichever comes sooner), and consider any necessary changes (including bringing the plan to an end) that may need to be made for the benefit of the consumer

Licensees may be in a position to **anticipate** 'reasonably foreseeable' material changes in the client's financial position on the basis of information obtained from the client with a view to drawing up the financial statement. For example, if it is known that the client is soon due to retire – and this will lead to a reduction in his monthly income.

- iii. keep the consumer informed of the outcome of any reassessment. Any proposed changes to the consumer's debt management plan or service should be discussed with him at the earliest reasonable opportunity.
- d. not providing the consumer, at the outset of the service, with a statement of how his payments are being allocated. In addition, where a plan has been agreed, failing to:
 - i. set out the balances owed including any interest charges
 - ii. set out the duration, or likely duration, of the debt management plan
 - iii. set out the fee charged by the licensee
 - iv. keep the consumer informed of any material changes to these arrangements in a timely manner
- e. not providing the consumer with a statement on his position/debt status at least annually or on receipt of a reasonable request to do so. The statement should include the information set out in paragraph 3.38c of this guidance document in addition to the:
 - i. monthly payments to creditors
 - ii. fees charged over the specific period

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- f. failing to advise consumers not to ignore correspondence or other contact from creditors or those acting on behalf of creditors
- g. placing any restrictions on the consumer with regards to corresponding with creditors or others acting on behalf of creditors
- h. where the licensee requires or suggests that the consumer should send to it correspondence received from creditors, the licensee failing to deal with such correspondence appropriately and promptly
- i. failing to maintain adequate records (for example, copies of correspondence and statements of account) relating to each debt management plan, until such time as the contract between the consumer and the licensee is completed or terminated
- j. not undertaking accurate checks of consumers' account details¹⁰² and/or sending inaccurate information to creditors.

CREDIT INFORMATION SERVICES

3.46 Licensees offering credit information services (whether including or excluding credit repair) should set out clearly to consumers the extent of the service that they are able to provide and should not mislead in this regard.

3.47 Examples of unfair or improper business practices include:

- a. misleading consumers about credit reports and the service being offered, for example:
 - i. claiming to be able to remove negative, but accurate, information from a consumer's credit report, such as adverse credit account information and court judgments

Such information can only be removed if it is incorrectly recorded (including, in **some instances**,¹⁰³ where the matter to which the information relates has been discharged).¹⁰⁴

¹⁰² Placing reliance on incorrect account numbers may result in a delay in the setting up of a debt management plan.

¹⁰³ See text box adjacent to paragraph 3.47d of this guidance document.

¹⁰⁴ Adverse credit account information can only be updated by a credit reference agency under the instructions of the creditors who provide and own the data. Creditors will only consider amending their information if it is incorrect.

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- ii. misleading consumers about the length of time that information about IVAs, DROs, Administration Orders, PTDs, Debt Arrangement Schemes (DAS), bankruptcy and/or other adverse information, such as missed payments and account defaults, is held by credit reference agencies and on official registers
- iii. claiming that a 'new' credit record can be created.

For example, claiming that a new credit report can be created simply by changing address.

- iv. claiming or implying the consumer has to use the services of the licensee when corresponding with credit reference agencies or courts

For example, claiming or implying that a particular form of 'template' letter, provided by the licensee, is the only one that can be used as a matter of law.

- b. encouraging or inducing consumers to make misrepresentations and/or commit fraud.¹⁰⁵ For example:
 - i. encouraging the consumer to make misleading representations about his credit status or history to creditors and/or credit reference agencies
 - ii. encouraging the consumer to provide false information on applications for credit.

For example, encouraging him to provide answers which could lead to him recording a higher credit score.

- c. failing to be transparent about the services being offered.

For example, claiming to offer credit repair services when in fact offering services as a creditor or credit broker.

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¹⁰⁵ It's a criminal offence to mislead a court. For example, with a view to trying to have a CCJ/decree removed, or to provide false information on an application for credit.



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- d. failing to inform consumers that credit reference agencies will not respond directly to credit repair businesses and will only send requested credit reports directly to the individual concerned¹⁰⁶

County Court Judgments, High Court Judgments and decrees¹⁰⁷

In Scotland, judgments are called decrees and are issued by the small claims and summary causes sheriff courts.

County Court Judgments (CCJ), High Court Judgments (HCJ) and decrees are entered on to public registers operated by Registry Trust Limited.¹⁰⁸ This includes the Register of Judgments, Orders and Fines (for England and Wales) run on behalf of the Ministry of Justice as well as similar registers for Scotland, Northern Ireland, the Isle of Man and Jersey.

Judgments and decrees are also recorded by credit reference agencies for six full years from the date of judgment.

A judgment can only be removed from the Register and from credit reports if the full amount is paid within one month of the date of the judgment or if the judgment is 'set aside' by the court (this means that the judge has withdrawn the judgment, either because it is wrong or so that a person can defend the claim).

A person can apply to the court to have a judgment set aside where he has a genuine reason. If the judgment is set aside, things will go back to the start of the claim. If a judgment is re-issued and the consumer cannot pay the full amount within one month of the judgment, the new judgment will be put on record for six years from that date. A judgment can be marked 'satisfied' if the full amount due is paid more than a month after the date the judgment was given. However, the entry will remain on the Register and the consumer's credit report for the full six years.

¹⁰⁶ Consumers have a right of access to their credit reference files and where necessary a right to have inaccurate information corrected. A consumer can obtain a copy of his file on request for a fee of £2. Details of how to go about doing this are contained in the ICO's published guidance 'Credit Explained', available on the ICO website. www.ico.gov.uk/upload/documents/library/data_protection/practical_application/credit_explained_leaflet_2005.pdf

¹⁰⁷ For additional information see the Civil Procedure Rules: www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil

¹⁰⁸ The registers operated by Registry Trust can be accessed on the Trust Online website www.trustonline.org.uk.

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CREDITORS' RESPONSIBILITIES¹⁰⁹

3.48 The OFT expects creditors¹¹⁰ to have appropriate regard to this guidance when dealing with third parties acting on the client's behalf. Creditors should not refuse to deal with a debt management business or other third party unless the debt management business or third party failed to comply with relevant consumer protection legislation and/or have appropriate regard to this guidance. Under such circumstances, the creditor should be able to satisfy the OFT that it has an objectively justifiable basis for refusing to deal with the other party if asked to do so. Creditors who provide advice to customers who are behind with their payments should have regard to the spirit of this guidance.

3.49 Examples of potentially unfair or improper business practices include:

- a. refusing to accept payments tendered, including reasonable token payments¹¹¹
- b. refusing to engage, appropriately or at all, with a third party representative, such as a debt adviser at a free advice centre or a debt management businesses, or with a debtor developing his own repayment plan,¹¹² unless there is an objectively justifiable basis for doing so

¹⁰⁹ This guidance primarily focuses on creditors' (and their agents') responsibilities towards third parties acting on the debtor's behalf. For further information on creditors' responsibilities, see the sector specific OFT guidance for creditors and other businesses involved in debt recovery: Irresponsible lending (OFT1107) and Debt collection (OFT664rev)

¹¹⁰ Including debt purchase businesses and agents of creditors.

¹¹¹ Where reasonable payments are tendered by the consumer, or by someone acting on his behalf, it is a principle of law that creditors should not refuse to accept those payments. The OFT considers that, in this context, if the cost to the recipient of processing individual repayments exceeds the amount of such repayments, **consideration** could be given to, for example, accepting the same token repayments but on a less frequent/cumulative basis. That is to say, rather than accepting and processing individual token repayments each week, collect and process them on, for example, a quarterly basis (to reduce the processing costs). The practice of creditors returning payments, or not crediting payments to consumers' accounts, purely because they are received through a debt management business, is a matter which is relevant to a consideration of the fitness of the creditor.

¹¹² For example, using CASHflow – www.cashflow.uk.net

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- c. contacting consumers directly and/or by-passing their appointed representatives without permission to do so from the consumer or his representative, unless there is an objectively justifiable reason for doing so¹¹³

Where those seeking to recover debts refuse to engage with (or bypass) third party representatives and contact debtors directly, the OFT may require them to satisfy us that there was an objectively justifiable basis for doing so.

For example, it may be objectively justifiable to contact the debtor directly where repeated efforts have been unsuccessfully made to communicate with the debtor's representative.

Operating a **policy** of refusing to negotiate with certain third party representatives or with a debtor developing his own repayment plan would not in itself, in the OFT's view, constitute an 'objectively justifiable basis' in this context.

- d. where a creditor is in dispute with a particular consumer representative, not making its position immediately known to the consumer and the representative
- e. operating a policy of only entering into negotiations about, and/or agreeing to freeze, interest and charges, if the consumer has engaged the services of a specific 'representative' with whom the creditor has an arrangement
- f. **inappropriately** passing on consumer's details to lead generators, debt management businesses, creditors, debt collectors or brokers¹¹⁴

Debtor's personal data must be processed fairly and lawfully and only for specified purposes. While it **may** still be possible to **lawfully** pass a debtor's (sensitive) personal data to an **appropriate** third party, in the absence of the debtor's prior consent having been obtained, where one of the other DPA conditions relevant for the purposes of processing **personal** data is met (**and**, where appropriate, one of the other conditions relevant for the purposes of processing **sensitive** personal data is met), the OFT would normally expect the debtor's consent to be sought (as a matter of **good practice**) before doing so.

¹¹³ For example, creditors may be required to send debtors a 'default notice' in accordance with the requirements of section 86E of the Act

¹¹⁴ This may also be a breach of the Data Protection Act 1998.

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COMPLAINTS HANDLING

- 3.50 We would expect licensees to respond to queries and complaints promptly, appropriately and fairly, and explain any undue delays to consumers.
- 3.51 The Financial Ombudsman Service's remit covers the consumer credit activities of all businesses holding a standard consumer credit licence and it has published rules on its website that set out in detail the procedures and requirements that licensees must follow when handling complaints from consumers. These rules apply to all businesses that are regulated by the FSA or the OFT.¹¹⁵
- 3.52 Examples of unfair or improper business practices include:
- not publishing or making readily available to consumers details of complaints procedures
 - failing to provide (or effectively publicise) a non-premium rate UK telephone number as a means by which consumers can pursue complaints
 - not acknowledging receipt of complaints promptly or at all
 - not providing a response to complaints within eight weeks of receipt (in accordance with FSA complaints handling rules – where applicable)
 - not informing a consumer complainant, where appropriate and applicable, that he may refer the complaint to the Financial Ombudsman Service if he is not satisfied with the way that his complaint has been handled by the business concerned.

¹¹⁵ Section 226A of the Financial Services and Markets Act 2000 provides that a complaint, relating to an act or omission of a business licensed under a standard consumer credit licence, qualifies to be dealt with by the Financial Ombudsman Service, if certain conditions are satisfied. The rules on how standard licence holders should handle complaints are published as part of the Financial Services Authority's Handbook – in the section 'Dispute resolution: complaints'.

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4 REGULATORY COMPLIANCE AND ENFORCEMENT

Adherence to the guidance and compliance

- 4.1 The OFT expects licensees and applicants to take reasonable steps (subject to proportionality considerations) to ensure they have suitable business policies, practices and procedures¹¹⁶ in place to facilitate their own compliance and (as appropriate) that of any agents and associates (for example, through training, monitoring, record keeping, disciplinary policies/procedures, contractual requirements, or any other means necessary and appropriate to the business).
- 4.2 We would expect such businesses to have regard to both the letter and spirit of this guidance, other relevant OFT guidance and relevant legal obligations.

Evidence of compliance

- 4.3 Policies, practices and procedures should be documented and capable of inspection by the OFT and/or the relevant local authority Trading Standards Service. They should contain sufficient detail in respect of the actual procedures employed to allow the OFT to be able to form a view as to whether the procedures appear appropriate.
- 4.4 If we form a view that a licensee's or applicant's actual or proposed business model is, or is likely to be, in itself, the reasonably foreseeable cause of significant actual or potential consumer detriment, we are likely to consider the business unfit to hold a consumer credit licence.

For example, if it appears to us that the likely intention or effect of the business model is to mislead consumers and/or to deny them their legitimate rights.

- 4.5 If the OFT requires them to do so, it will be incumbent on licensees and applicants to be able to demonstrate to the OFT's satisfaction that their policies, practices and procedures:
- have been implemented in practice and are effective
 - are proactively monitored to assess their ongoing effectiveness

¹¹⁶ We expect the policies and procedures of such businesses to make specific provision for the fair and appropriate treatment of particularly vulnerable consumers. See paragraph 2.4.

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- have been appropriately amended on the basis of the results of such monitoring as and when appropriate to do so.
- 4.6 Licensees should keep a record of the checks they undertake to assess adherence to this guidance.
- 4.7 Similar assessments may be made of applicants for licences.

Monitoring

- 4.8 As an example of how effective monitoring of adherence to the standards as set out in this guidance could be demonstrated, the OFT would consider it good business practice for licensees to commission independent third party verification of their adherence when setting up their business and at regular intervals thereafter, and at least annually.

Consumer credit licensing requirements for licensees

- 4.9 The OFT has an ongoing duty to monitor the fitness of licensees so it is essential that licensees provide accurate and up-to-date information to the OFT. This facilitates the effective operation of the licensing regime by the OFT.
- 4.10 Licensees should be aware of their obligations, including:¹¹⁷
- not using trading names, including domain names, which are misleading or otherwise undesirable.¹¹⁸ Under sections 25(1AD) and 31 respectively of the Act, the OFT may refuse to allow a name to be used on a licence or compulsorily vary a licence to remove a name, if it is considered to be misleading or otherwise undesirable.¹¹⁹
 - not engaging in unlicensed trading by carrying on business without an appropriate licence or under a trading name (including a domain name) not specified in the licence¹²⁰

¹¹⁷ See Consumer credit licensing - General guidance for licensees and applicants on fitness and requirements [OFT969].

¹¹⁸ Where a business applies for a licence, in accordance with section 25 (1AD) of the Act, the OFT must be satisfied that the name(s) under which it would be licensed are not misleading or otherwise undesirable.

¹¹⁹ Examples include terms such as 'government', 'citizens advice' and 'helpline'. See OFT press notice of 7 March 2009. www.of.gov.uk/news/press/2009/26-09.

¹²⁰ A criminal offence under section 39(2) of the Act.

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- c. failing to notify the OFT in accordance with section 36 of the Act within specified time periods of certain changes in their details and/or information provided in their application.¹²¹

Competence and training

- 4.11 Applicants for standard licences wishing to provide debt advice, debt management and/or credit repair services will only be able to do so if they are able to demonstrate sufficient competence at the application stage by having relevant and demonstrable skills and knowledge. Licensees should have adequate training¹²² in place for staff, agents (such as self-employed debt advisers) and franchisees acting on their behalf, to ensure they are sufficiently skilled and knowledgeable to carry out their role, and are kept up to date with changes in relevant legislation and guidance. The OFT would expect appropriate training to be provided as and when necessary.

Enforcement principles

- 4.12 The OFT is committed to fair, effective and proportionate enforcement. In practice this means that where we identify non-compliance with the law and/or non-adherence to relevant OFT guidance, we will decide on the appropriate regulatory response in the light of the facts and circumstances of the individual case.
- 4.13 The type of OFT action taken will be guided by the level of actual or potential harm to individuals and by the scale or frequency of identified misconduct. In considering whether conduct is non-compliant, we will take account of the statutory requirements at the time the conduct occurred.
- 4.14 Where we wish to change conduct, we will use one of the appropriate 'tools' available to us. For example, we can impose 'requirements' on a licensee where we are dissatisfied with any matter in connection with the operation of the licensed business.¹²³ Failure to adhere to such a requirement can lead to the imposition of a financial penalty of up to £50,000 per instance of non-adherence. We may also compulsorily vary a licence, for instance

¹²¹ Failing to adhere to the requirements of section 36 of the Act is a criminal offence under section 39(3) of the Act.

¹²² Examples of accredited training courses are those run by the Institute of Credit Management, the Institute of Money Advisers, the Money Advice Trust, Money Advice Scotland, DEMSA and the Debt Resolution Forum.

¹²³ See footnote 13

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to limit the activities for which a trader is licensed, remove trading names we consider misleading or otherwise undesirable, or limit the life of the licence.¹²⁴

- 4.15 In serious cases, where there is evidence tending to show that a person is unfit to hold a consumer credit licence, the OFT can take action with a view to refusing or revoking the credit licence of the person concerned. Similarly, if we consider a person is unfit to operate under cover of a group licence, we can take steps with a view to that person being excluded from the cover of the group licence.¹²⁵ Engaging in unfair or improper business practices would constitute grounds for the OFT to consider fitness to hold a licence.
- 4.16 Any action taken by the OFT with a view to refusing or revoking a licence, or excluding a person from the cover of a group licence, is subject to an independent decision making process. The licensee, applicant, or person operating under the cover of a group licence, has a right to make representations to an independent adjudicator that the proposed action would be disproportionate or otherwise objectionable, prior to the adjudicator making a final decision.¹²⁶ Following the final decision by the adjudicator, there is a right to appeal the decision (if there is an adverse determination) to the First Tier Tribunal (Consumer Credit)¹²⁷ provided that there are appropriate grounds to do so.

¹²⁴ The OFT can also take action under Part 8 of the Enterprise Act 2002 in respect of domestic or Community infringements falling within sections 211 or 212 of that Act. Our approach to the use of these powers is set out in Enforcement of consumer protection legislation – Guidance on Part 8 of the Enterprise Act (OFT512). The OFT also co-ordinates such actions undertaken by other enforcers.

¹²⁵ The OFT has the power under section 28 of the Act to exclude any person from the cover of a group licence. However, we expect group licence holders themselves to take the lead in excluding unfit members from the group and notifying the OFT that they intend to do so and, where applicable, have done so. If a group licence holder fails to exclude unfit members of the group from operating under cover of its group licence, it would seriously call into consideration whether it remains in the public interest to continue to grant the group licence in question.

¹²⁶ Further information about the adjudication process can be found in our guidance document Licensing – your right to make representations (OFT661).

¹²⁷ The First Tier Tribunal (Consumer Credit) is independently administered by the Tribunals Service, an agency of the Ministry of Justice. See 'First Tier Tribunal (Consumer Credit) – General Regulatory Chamber – Explanatory Leaflet'.

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ANNEXES**A SCOPE OF THE GUIDANCE**

- A.1 This guidance is relevant to all those involved in the provision of advice to consumers and/or who may negotiate with creditors in relation to restructuring consumer credit debts and personal insolvency on behalf of consumers, whether on a commercial or non-commercial basis.
- A.2 In this Annexe we have set out further information regarding some of the types of businesses and organisations that we have referred to in this guidance. This Annexe should be read in conjunction with paragraphs 1.10 - 1.12 inclusive.

Lead generators and introducers

- A.3 Businesses that provide debt advice to consumers in the course of generating client leads need to be appropriately licensed by the OFT (if engaged in any licensable activity) and should adhere to all relevant OFT guidance. The licence category most likely to be applicable would be the debt counselling category (Category E) – but businesses need to ensure that all of their licensable activities are covered by the holding of a licence that covers all of the categories of licensable activity that they are engaged in.

Insolvency practitioners

- A.4 This guidance is relevant to insolvency practitioners (IP), and their staff, who provide debt management services to consumers, including offering advice and assistance to consumers prior to them entering into an insolvency arrangement, whether they are holders of a standard consumer credit licence or operating under the cover of an appropriate group licence.
- A.5 The regulatory framework and authorisation regime for insolvency practitioners (IPs) in Great Britain was introduced by the Insolvency Act 1986 and by The Insolvency (Northern Ireland) Order 1989 in Northern Ireland.
- A.6 IPs must be authorised by, and are regulated by, the Insolvency Service (which undertakes these functions on behalf of the Secretary of State

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for Business, Innovation and Skills (BIS)), the Department of Enterprise, Trade and Investment (in Northern Ireland), or one of the seven bodies recognised under the Insolvency Act 1986 for the purposes of authorising and regulating IPs ('recognised professional body'). The Accountant in Bankruptcy (AiB) is responsible for administering the process of personal bankruptcy in Scotland

While we recognise that IPs are subject to a formal regulatory regime and that once a consumer enters into a formal insolvency arrangement, specific conditions applicable to that regime will apply, we still expect IPs and their staff or agents to have appropriate regard to the principles and standards set out in this guidance.

Claims management companies

A.7 The Ministry of Justice is the claims management regulator in England and Wales and authorised businesses have to follow its conduct rules and guidance.¹²⁸ Businesses which provide claims management services, including those authorised by the Ministry of Justice, may also need to be licensed by the OFT if they engage in licensable activities such as debt counselling. Those advising on the enforceability of consumer credit agreements and negotiating with creditors on consumers' behalf are also likely to require the debt adjusting and/or credit information services categories of licence. Licensed claims management companies should adhere to this guidance to the extent that it is relevant to do so.

Not-for-profit advice organisations

A.8 Not-for-profit debt advice and some not-for-profit debt management services are provided by a number of organisations, some of which operate under individual standard licences and others under the cover of group consumer credit licences. These include government funded, charitable, or free and independent advice agencies. This guidance is relevant to the activities of such providers.

¹²⁸ See www.justice.gov.uk/claims-regulation/information-for-businesses/conduct-of-business

¹²⁹ An example of a not-for-profit debt management service provider to consumers (such as debt management plans and IVAs) is the Consumer Credit Counselling Service (CCCS).

¹³⁰ Examples of not-for-profit advice organisations, which provide free, confidential, and impartial advice, include Citizens Advice, National Debtline and Advice4DebtNI. Details of where to access such advice in the consumer's local area are also available from Advice UK, Money Advice Scotland and the Money Advice Service.

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A.9 The sections in this guidance document on 'pre-contract information' and 'contracts' are specifically written with fee-charging and not-for-profit debt management businesses in mind.¹²⁹ There is no expectation on the OFT's part that not-for-profit advice agencies¹³⁰ will enter into formal arrangements with consumers, when simply offering advice.

B OTHER RELEVANT LEGISLATION AND GUIDANCE

B.1 Licensees should have regard to all relevant legislation and guidance. Evidence of non-compliance with any relevant legislation and/or not having regard to relevant guidance¹³¹ is taken into account by the OFT when considering 'fitness' to hold a consumer credit licence. Some specific legislation and guidance that the OFT would expect licensees to have appropriate regard to includes:

The Consumer Protection from Unfair Trading Regulations 2008

B.2 The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) prohibit unfair commercial practices which distort consumers' decisions. They introduce a general duty on businesses dealing with consumers not to trade unfairly and to act in a way that enables the average consumer to make free and informed purchase decisions. The CPRs contain a general prohibition of unfair commercial practices, and in particular contain prohibitions of aggressive and misleading commercial (or business) practices. They also prohibit thirty-one specific unfair commercial practices. The CPRs apply to any act, omission, and any other conduct by businesses directly connected to the promotion, sale, or supply of a product or service to or from consumers whether before, during, or after a commercial transaction.

B.3 Broadly speaking, if a business treats consumers fairly, then it is likely to be complying with the CPRs. However, if it misleads, behaves aggressively, or otherwise acts unfairly towards consumers, then it may be in breach of the CPRs and risks facing criminal or civil action by enforcement authorities, which includes the OFT.¹³²

¹³¹ See Annexe C for a non-exhaustive list of other relevant guidance and legislation, including links to guidance on the legislation and issues raised in this Annexe.

¹³² The OFT has produced guidance for businesses on the CPRs - Consumer protection from unfair trading (OFT1008), August 2008. www.of.gov.uk/shared_of/business_leaflets/cpregs/of1008.pdf

¹³³ See the ICO's guidance at Annexe C.

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Data Protection Act 1998

- B.4 Any organisation which handles personal information is subject to a number of legal obligations under the Data Protection Act 1998.¹³³ All licensees must observe and adhere to the eight data protection principles.
- B.5 For direct marketers, such as lead generation businesses, the first data protection principle is particularly important. It comprises two elements - fair processing of information and conditions for processing.

The Privacy and Electronic Communications (EC Directive) Regulations 2003

- B.6 The Privacy and Electronic Communications (EC Directive) Regulations 2003¹³⁴ (PECRs) apply to the sending of direct marketing messages by electronic means such as by telephone, fax, email, text message and picture (including video) message and by using an automated calling system. The PECRs set out how cold calling should be carried out.
- B.7 The Information Commissioner's Office has produced guidance on the PECRs.¹³⁵

The Financial Services (Distance Marketing) Regulations 2004

- B.8 Where a licensee provides a financial service under an organised scheme by means of any distance communication, such as the telephone or the internet, it must comply with The Financial Services (Distance Marketing) Regulations 2004. 'Financial service' includes any service of a credit or payment nature. In the OFT's view, a licensee who provides debt management services or credit information services will be providing financial services and those that do so at a distance should comply with the Financial Services (Distance Marketing) Regulations 2004.
- B.9 Schedule I to the Regulations provides for a 14-day cooling off period¹³⁶ and also requires that certain information is provided to the consumer before the contract is concluded.

¹³⁴ See the ICO's guidance at Annexe C.

¹³⁵ Guide to the Privacy and Electronic Communications Regulations.
www.ico.gov.uk/for_organisations/privacy_and_electronic_communications/the_guide.aspx

¹³⁶ Under The Financial Services (Distance Marketing) Regulations 2004 there are certain limited exceptions to the right to cancel.

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For example, the existence of the right to cancel the contract within 14 days and certain information on the operation of that right, the identity and geographical address of the licensee, a description of the main characteristics of the service, the total price to be paid including all related fees and charges, or, where an exact price cannot be given, the basis for the estimation.

The Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008

B.10 The regulations apply¹³⁷ to contracts with a total payment of more than £35, which are concluded in the consumer's home or place of work. The regulations also cover contracts made at another individual's home or on an excursion organised by the trader away from its business premises.

B.11 The trader must give the consumer a right to cancel a contract to which the Regulations apply. The cooling off period is a minimum of seven calendar days. The trader must inform the consumer of this right at the time the contract is made and also give the consumer written notice of his right. Where the contract is wholly or partly in writing, notice of the right to cancel must be included in it, in a prominent manner, and include specific information as set out in the Regulations.¹³⁸

Mental capacity and mental health issues

B.12 Licensees will, from time to time, deal with individuals who may be particularly vulnerable. This may include those experiencing mental health problems and/or who have some form of mental capacity limitation. We expect the policies and procedures of licensees to make specific provision for, amongst other matters, the fair and appropriate treatment of vulnerable consumers such as these. Failure to make reasonable adjustments to any practice or procedure where it may be necessary to do so, in order to place consumers who may have limited capacity on an equal footing with other consumers, may amount to discrimination under the Equality Act 2010.

¹³⁷ The Regulations do not apply to the list of 'Excepted Contracts' included in Schedule 3 of the Regulations.

¹³⁸ See www.oft.gov.uk/business-advice/treating-customers-fairly/doorstep-selling

¹³⁹ See Mental capacity – OFT guidance for creditors [OFT1293].

¹⁴⁰ www.moneyadvicetrust.org/images/Mental_Health_Guidelines_2009.pdf

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B.13 To assist businesses, the OFT has provided guidance for creditors on mental capacity issues.¹³⁹

B.14 The OFT also expects licensees to have regard to The Money Advice Liaison Group's (MALG) voluntary guidelines for best practice in the management of debt: Good Practice Awareness Guidelines For Consumers with Mental Health Problems and Debt (Autumn 2009).¹⁴⁰

The Advertising Standards Authority

B.15 The Advertising Standards Authority (ASA) is a self regulatory body and an 'established means'¹⁴¹ for resolving complaints about, amongst other matters, adverts' non-compliance with the CPRs. The ASA also seeks to secure voluntary compliance of advertisers, including in respect of advertisements in broadcast media, under the 'Advertising Codes'.¹⁴²

B.16 Compliance with the advertising codes is primarily enforced by the Advertising Standards Authority, and the laws on advertising are co-enforced by local authority Trading Standards Services and the OFT.

B.17 For more information see the Advertising Standards Authority's website www.asa.org.uk.

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¹⁴¹ 'Established means' or 'Compliance Partners' are bodies able to act in place of the OFT in encouraging compliance with the Consumer Protection from Unfair Trading Regulations. The OFT has developed principles to apply when working with its partners to enforce the CPRs. For further details see www.of.gov.uk/of_at_work/partnership_working/compliance

¹⁴² Two voluntary codes of practice – the BCAP Code and the CAP Code drawn up by the committees of advertising practice – cover broadcast and non-broadcast advertising respectively. www.cap.org.uk/The-Codes.aspx



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C LIST OF OTHER RELEVANT GUIDANCE AND LEGISLATION**OFT Guidance**

Do you need a credit licence? (OFT147), July 2008

www.oft.gov.uk/shared_oft/business_leaflets/credit_licences/oft147.pdf

Consumer Credit Licensing – General guidance for licensees and applicants on fitness and requirements (OFT 969), January 2008

www.oft.gov.uk/shared_oft/business_leaflets/credit_licences/oft969.pdf

Licensing – your right to make representations (OFT661), July 2008

www.oft.gov.uk/shared_oft/business_leaflets/credit_licences/oft661.pdf

Guidance for consumer credit licence holders and applicants on the Group Licensing regime (OFT990rev), August 2011

www.oft.gov.uk/shared_oft/business_leaflets/credit_licences/OFT990rev.pdf

Consumer credit licensing Statement of policy on civil penalties (OFT971), January 2008

www.oft.gov.uk/shared_oft/business_leaflets/credit_licences/oft971.pdf

Enforcement of consumer protection legislation – Guidance on Part 8 of the Enterprise Act (OFT512), June 2003

www.oft.gov.uk/shared_oft/business_leaflets/enterprise_act/oft512.pdf

Consumer protection from unfair trading (OFT1008), August 2008 (Guidance on the Consumer Protection from Unfair Trading Regulations 2008)

www.oft.gov.uk/shared_oft/business_leaflets/cpregs/oft1008.pdf

OFT Guidance for the Unfair Terms in Consumer Contracts Regulations 1999 (OFT311), September 2008

www.oft.gov.uk/shared_oft/reports/unfair_contract_terms/oft311.pdf

www.oft.gov.uk/shared_oft/reports/unfair_contract_terms/oft311annexes.pdf

Debt collection – OFT guidance for all businesses engaged in the recovery of consumer credit debts (OFT664Rev), October 2011

www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/debt-collection

Irresponsible lending – OFT guidance for creditors (OFT 1107), March 2010 (updated February 2011)

www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/irresponsible

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Guidance on sections 77, 78 and 79 of the Consumer Credit Act 1974 (OFT 1272), October 2010
www.offt.gov.uk/shared_offt/business_leaflets/consumer_credit/OFT1272.pdf

Mental capacity – OFT guidance for creditors (OFT 1373), September 2011
www.offt.gov.uk/about-the-offt/legal-powers/legal/cca/mental-capacity-guidance/

Consumer Credit Act 1974 Post-contract information requirements (OFT 1002), July 2008
www.offt.gov.uk/shared_offt/business_leaflets/consumer_credit/oft1002.pdf

Legislation

Consumer Protection from Unfair Trading Regulations 2008

Financial Services (Distance Marketing) Regulations 2004

Unfair Terms in Consumer Contracts Regulations 1999

Data Protection Act 1998

The Privacy and Electronic Communications (EC Directive) Regulations 2003

The Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008

The Electronic Commerce (EC Directive) Regulations 2002

Companies Act 2006

Compensation Act 2006

Enterprise Act 2002 (Part 8)

Equality Act 2010

Mental Capacity Act 2005 (England & Wales) OFT366rev | 94

The Adults with Incapacity Scotland Act 2000

Insolvency Act 1986

The Insolvency (Northern Ireland) Order 1989

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Home Owner and Debtor Protection (Scotland) Act 2010

The Debt Arrangement Scheme (Scotland) Regulations 2004

The Protected Trust Deeds (Scotland) Regulations 2008

The Supply of Goods and Services Act 1982

Other Guidance

Guide to data protection – The Information Commissioner’s Office’s (ICO)
www.ico.gov.uk/for_organisations/data_protection/the_guide.aspx

Guide to the Privacy and Electronic Communications Regulations – The ICO
www.ico.gov.uk/for_organisations/privacy_and_electronic_communications/the_guide.aspx

Credit explained – The ICO
www.ico.gov.uk/upload/documents/library/data_protection/practical_application/credit_explained_leaflet_2005.pdf

Conduct of Authorised Persons Rules 2007 – Ministry of Justice
[www.claimsregulation.gov.uk/userfiles/file/MoJ%20Conduct%20of%20Authorised%20Persons%20Rules%202006\(1\).pdf](http://www.claimsregulation.gov.uk/userfiles/file/MoJ%20Conduct%20of%20Authorised%20Persons%20Rules%202006(1).pdf)

Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt – Money Advice Liaison Group (MALG)
www.malg.org.uk/dmhdclist.html
www.moneyadvicetrust.org/images/Mental_Health_Guidelines_2009.pdf

Companies Act 2006 Guidance – Companies House
www.companieshouse.gov.uk/about/guidance.shtml

CAP Code and the BCAP Code – Committees of advertising practice
www.cap.org.uk/The-Codes.aspx

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6.3 IN DEBT - DEALING WITH YOUR CREDITORS

This guide has been produced by the Insolvency Service with the help and support of the IVA Standing Committee. The Insolvency service would like to thank the members of the IVA Standing committee for their valuable input.

Contents highlights

Before you read this guide in detail, you may find it helpful to look at the table here: www.bis.gov.uk/insolvency/creditorspdf (PDF Format) that gives a summary of the main features of each option. A JPG version can also be found here: www.bis.gov.uk/insolvency/creditorsjpg

The following explanations may help you to decide which parts of the guide deal with the option that you want :

- If you want to contact your creditors and negotiate an agreement to repay all or some of your debts, please turn to page [437](#).
- If you are thinking of applying for a loan to reorganise or clear your debts, please turn to page [439](#).
- If you want an organisation to negotiate with your creditors on your behalf, and you can make payments to clear your debts, please turn to page [441](#).
- If you want to pay back your creditors in full by making a monthly payment to court, please turn to page [443](#).
- If you want an insolvency practitioner to negotiate with your creditors and you have assets or income that you can use to reduce your debts, please turn to page [445](#).
- If you are on a low income and don't have many assets and want to have debt relief without going to court, please turn to page [447](#).
- If none of the above options are suitable for you, and you are considering bankruptcy, please turn to page [449](#).

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Introduction

If you have debt problems there are various options for helping you make arrangements involving your creditors. This guide explains these options, how they work and some of the pros and cons of each. The guide can help you with personal or business debts, or both.

Do not use the guide as a substitute for getting independent expert advice on which option is best for you.

Always seek independent advice early. The worst thing when you have money troubles is to do nothing and to hope the problem will go away.

This guide:

- summarises the key features of each of the main ways of dealing with debt;
- sets out how each of them works; and explains the pros and cons of each.

What to consider when deciding which option is best for you

- Does it free you (when completed) from all or part of your debts so that your creditors will have no further claim against you?
- Is it binding on all your creditors? In other words, does it protect you from further recovery action or extra charges (or both) by your creditors during the procedure?
- How long will it last?
- Will it affect your employment?
- Will it affect your credit rating?
- Will your home be at risk?
- If you have to pay a fee, it may come out of payments you make to your creditors, or you may have to pay it separately, before or after the option you choose is put in place.
- Some of the options will involve you putting certain types of debt (called 'priority debts') before others. It may be difficult or impossible

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to negotiate reduced payments or write-offs for the other debts. Priority debts are, for example, utilities, rent, court fines, council tax, maintenance payments and income tax.

- Are you confident you can keep up the repayments to your creditors, for the time required, under the option you are considering?

Whatever option you choose, the following points apply

- None of the options can affect the rights of secured creditors, for example a bank or building society that has a mortgage or legal charge* over your home. They continue to have the right to take possession of your home if you don't keep up your payments.
- Most debts involving credit and loans are unsecured, for example, credit and store cards and bank overdrafts. This means that if you don't pay the debt, the creditor is not automatically entitled to take something of yours, such as your home. However, in some circumstances they may go to court if you fall behind with your payments. If they then get a court judgment, they may be able to ask the court to secure the debt on your home through a charging order.
- All these options may affect your credit rating and will show up on your credit record.
- Using any of the options to help with your debt may occasionally affect your employment. Under the terms of your employment, you may have to inform your employer about it.

In some circumstances, you may be able to get help from a charity or trust fund to pay off some types of urgent debt. However, this is unlikely to be the answer to the whole problem – charities are unlikely to help with large credit-card and similar debts. To get this kind of help, you will normally have to fill in a detailed application form or find an advice agency to apply for you.

*Having a charge on your home means that if you don't repay the debt, the creditor has a claim on the proceeds if the property is sold.

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What is your best option?

The best option for you will depend on your own and your family's circumstances and future prospects, and on your own preferences. What you decide to do will also depend on how much you owe and how much you can repay from your income or your assets, after paying your own and your family's basic expenses.

Be prepared to give all the details of your debts and your finances to whoever you seek advice from, and to your creditors. It is essential you give them the complete picture. When making any offer to your creditors, be realistic about your income and spending. If you need help with making an assessment of your basic household and personal spending when putting your case to your creditors, many debt-advice and other organisations can give free advice and guidance.

The following pages set out the pros and cons of each option for dealing with your debts.

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Options explained - Negotiated agreement with creditors

How it works

You contact your creditors and negotiate an agreement to repay all or some of the debts.

Negotiated agreements may involve either or both of these:

- (1) payments from your income
- (2) payments from lump sums you receive, for example from an inheritance or from relatives.

Your creditors may be prepared, at the start or later, to agree to write off part of what you owe them. If they do so, they should confirm this agreement in writing.

- (1) Payments from income: you need to work out how much you can afford to repay, after allowing for your essential household and personal spending such as mortgage or rent, heating, utilities, and housekeeping. You should offer to share any extra income among all your creditors, based on the amounts you owe them. This means that all your creditors are offered their share of what you can afford. You should also ask your creditors to freeze any interest or charges. Your creditors will expect you to give them regular updates of your income and expenditure so that they can see whether you can increase your payments.
- (2) Payments from lump sums: you may make payments towards your debts from a lump sum you receive and which your creditors may agree to accept in settlement of what you owe – that is, they agree to write off the balance they are owed. However, if you do have extra income after paying your everyday expenses, they may expect you to make at least some payments from that as well.

If you can't make payments temporarily, for example because of a short-term illness, creditors may agree to accept no payments or token payments of say £1 a month, but only for a limited period.

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Pros

- Fair and open way of sharing payments, widely understood by creditors.
- You can ask if you can reduce your payments if your situation gets worse or you face unexpected essential spending.
- You do not need an advice agency to negotiate these payments for you. You can do it yourself or ask an advice agency for help with drawing up your personal budget sheet and make offers to your creditors based on this.
- Creditors may be prepared to write off the balance of what you owe after a period of time if:
 - you have shown that you have made every effort to pay them back as much as you can, and
 - you have maintained regular payments to them.

Cons

- Creditors may refuse to agree with what you propose (but it's always worth asking them to reconsider) although they can't refuse any payments you make to them.
- Creditors may refuse to freeze interest or charges (but it's worth asking them to reconsider).
- If you can only afford small payments, they may not be enough even to cover interest or charges, and your debts will increase.
- Creditors may refuse your proposal unless it's made through an advice agency, which will have independently reviewed your circumstances. You can complain to the Office of Fair Trading if this happens.
- You remain liable to pay the full amount of your debts, although you may be able to persuade your creditors to agree to write off part, or even all of it, depending on your circumstances.
- Creditors could still take action against you, for example by getting a court judgment and then an order that creates a charge on your home, unless they have specifically agreed not to do so in return for the payments made under the informal arrangement.
- You are responsible for administering all the payments yourself and keeping creditors informed of your circumstances.

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Options explained - Debt reorganisation or consolidation loan

How it works

You apply to a lender for a loan to reorganise, or clear your debts. These loans are often advertised as 'consolidation loans'. This means you swap some or all of your creditors for just one creditor. If you own your home, the lender will probably want to take a charge* on it. You should seek independent advice about whether this would be in your best interests. You should shop around for the best deal from high street and internet lenders. If you have a poor credit rating, you may not be able to get loans on the best terms.

A consolidation loan will only help if:

- it is used to pay some or all of your existing debts
- the repayments on the new loan are no more than those you are already making towards your existing debts, and you can afford to make them.

Otherwise, the new loan will simply add to your debt burden and make your problems worse. You will also need to look very carefully at how long the loan will take to repay; what interest you are going to have to pay compared with what you are currently charged; and what charges or penalties there are, for example for late payments.

*Having a charge on your home means that if you don't repay the debt, the creditor has a claim on the proceeds if the property is sold.

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- You will be making one monthly payment on one loan rather than many payments to different creditors.
- Your monthly payments may be lower, or at least should not be any higher.

Cons

- You may have to pay fees for arranging the loan. Always ask for full written details of all fees.
- If you have a poor credit rating, you may not be able to get a loan or you may be offered poor terms and conditions, for example a high interest rate.
- If the loan is secured on your house or other asset, then it could be taken from you (repossessed) if you do not keep up the payments.
- Interest rates often change over the loan period, making it difficult to work out what the total cost of the loan will be – check if the interest rate is fixed or variable.
- Consolidation loans are often offered over a longer period of time than your original debts. This means that even if the interest seems reasonable, the length of time you have to repay it can increase the overall cost of the loan significantly, so you end up paying more.
- If you don't clear all your existing borrowing, the new loan is likely to make your debt problems worse and make it more difficult for you to make all your payments.

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Options explained - Debt management plan (DMP)

How it works

You go to a debt management company who will negotiate with your creditors and manage your payments to them. The arrangement the company negotiates for you with your creditors is called a debt management plan (DMP).

Your creditors will want details of your assets, including your home, if you own it. This helps them decide whether the offer you make through the debt management company is reasonable or whether they expect any of your assets to be sold so that they get a larger payment.

The individual or company you choose to manage your plan must be licensed and regulated under consumer Credit law. Some will not charge you a direct fee for their services, but will get it from the creditors, for example out of the payments you to make to them. Others may make an initial charge for preparing, negotiating and administering your plan and then take the rest from your monthly payments.

In either case, before it asks you to sign up for a DMP, the company should give you details of the fees it wants to charge you, and how you must pay them. A plan can last for 5 years or more, depending on how much you owe and what you can pay each month or quarter. Your debt management company should give you an estimate of how long the plan will last. They should also review the plan every year, and creditors will expect to be given regular updates of your income and spending so they can see whether you can increase your payments.

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Pros

- Fair and open way of sharing payments, widely understood by creditors.
- The debt management company will help you prepare your plan, including agreeing the level of your household and personal spending based on guidelines, which can then be used to put your case to the creditors.
- The debt management company will negotiate with creditors on your behalf, so offers are more likely to be accepted and interest frozen than if you try to do this yourself.
- You may be able to vary your payments if your circumstances change.
- You make single payments each month or quarter to the debt management company, which is responsible for administering all payments to your creditors.
- Any monthly payment you make should be passed on to creditors within 5 working days.
- Some debt management companies do not charge you a fee.
- Creditors may be prepared to write off the balance of what you owe after a period of time if:
 - you have shown that you have made every effort to repay them as much as you can; and
 - you have maintained regular payments to the debt management company.

Cons

- The debt management company can't force creditors to accept your proposal or freeze interest. A plan is not binding on creditors who refuse to take part in it, but they can't refuse to accept any payments made to them.
- You remain liable to pay your debts until they are paid in full.
- Creditors could still take enforcement action against you, for example by getting a county court judgment and then an order, which creates a charge on your home*, even if you are keeping up your payments under the plan, unless they agree not to do so.
- You may not be able to make reduced offers if your circumstances worsen and you can no longer afford your agreed monthly payments.
- A plan can last for several years. However, some creditors may be prepared to freeze interest for only a shorter time. If interest and charges cannot be frozen for the full length of the plan, then the total amount you end up paying under the plan could be more than the original amount of your debts, and could extend the lifetime of the plan.
- Having a charge on your home means that if you don't repay the debt, the creditor has a claim on the proceeds if the property is sold.

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Options explained – County Court Administration order (CCA0)

How it works

You can ask the court to make an administration order if:

- you owe no more than £5,000 to at least 2 creditors; and
- you have a court judgment entered against you by one of your creditors that you can't pay in full.

Under the order, you must make weekly, monthly or quarterly payments from your income to the court, which shares them among your creditors, in proportion to the amounts you owe them.

If you don't keep up the payments, the court may make an attachment of earnings order. This is sent to your employer, directing them to deduct amounts from your wages and pay them to the court for sharing among your creditors.

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Pros

- None of the creditors listed on the administration order application can take further action against you without the court's permission.
- The court deals with the creditors and shares out the payments for you.
- Interest and other charges are stopped.
- There is no upfront fee – the court takes 10p of every £1 you repay.
- You can apply to make payments for a limited time, such as 3 years, using a 'composition order'.
- If your circumstances worsen, you can apply to the court to make reduced payments.
- You may be able to continue running any business you have.

Cons

- Creditors can put objections to the court and ask to be left out of the order. The court need not agree to this.
- If you don't keep up your payments, the order can be revoked (withdrawn) and the creditors can pursue you again.
- If the court makes an attachment of earnings order, your employer will find out about your money troubles.

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Options explained - Individual Voluntary Arrangement (IVA)

How it works

You go to an insolvency practitioner who will prepare, negotiate and administer an arrangement for you to voluntarily repay your creditors. This may be done by using your spare income, a lump sum or other assets that you own.

If you have surplus income after meeting your essential household and personal expenses or have assets that can be used to pay your creditors or have access to a lump sum, for example from a relative, you may then consider entering into an Individual Voluntary Arrangement (IVA). Doing this will protect you from recovery action that your unsecured creditors may take, and will usually involve your creditors writing off part of what you owe them. A proposal for an IVA will only be approved where enough creditors vote in favour.

The person you choose to supervise your IVA must be licensed and regulated under insolvency law as an insolvency practitioner.

The insolvency practitioner will charge fees for preparing, negotiating and administering your IVA. Before the practitioner asks you to sign up to an IVA, they should give you details of the fees they want to charge you and how these must be paid – whether as a lump sum or from the payments you make into the IVA.

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Pros

- Creditors who vote against your proposal are still bound by it.
- Creditors whose lending is unsecured can't take any further action.
- Interest is usually frozen as long as you keep up your payments.
- Your insolvency practitioner will help you prepare your proposal, including agreeing the level of your household and personal spending based on guidelines acceptable to creditors.
- Many insolvency practitioners will allow you to pay their fees for preparing your proposal monthly, as part of the IVA.
- You make only a single payment each month or quarter. Your insolvency practitioner is responsible for administering and distributing your payments.
- The terms of an IVA will usually enable you or your spouse or partner or a relative to make arrangements to buy your share of the net worth of your home or to make extra payments, rather than the home having to be sold. This may be done through a remortgage or a loan. (Net worth means its value after any debts secured on it have been paid.)
- On completion of the IVA, the balance of what you owe your creditors is written off.
- You may be able to continue running any business you have.

Cons

- Your IVA is entered on a public register.
- The insolvency practitioner may require payment in advance for preparing your proposal and getting your creditors' agreement.
- If there is some equity (value) in your home after taking account of the mortgage(s) on it, you will probably have to pay for your share, usually in the fifth year of your IVA, by remortgaging the property. If you can't get a remortgage, you may have to continue making monthly or quarterly payments from your income, for up to another year.
- If your circumstances change, and your practitioner can't get creditors to accept amended terms, the IVA is likely to fail. You will then still owe your creditors the full amount of what you owed them at the start, less whatever has been paid to them under your IVA.
- If your IVA fails, you may be made bankrupt.

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Options explained - Debt Relief Order (DRO)

How it works

You should first seek debt advice, and if a DRO is considered suitable, you will be referred to an approved intermediary*. They will check that your situation fulfils the criteria and will help you complete the online form, and submit it for you to a government official called the official receiver. The official receiver then makes the order, if appropriate.

To get a DRO:

- your debts must not exceed £15,000;
- your assets must not exceed £300 (certain assets do not count, for example clothing, furniture and a vehicle worth less than £1,000); and
- your surplus income must not exceed £50 a month after paying your essential personal and household spending.

A DRO will last for 1 year, and once your DRO has ended you are released from your debts (with certain exceptions).

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*An approved intermediary is someone who has been approved by a competent authority chosen by the government.

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Pros

- Your debts will be written off at the end of the DRO. There are a few exceptions, as explained opposite.
- None of the creditors listed in the DRO application can take further action against you without the court's permission.
- It allows you to make a fresh start after 1 year.
- The fee (£90) is affordable and can be paid in instalments but the fee must be paid before the application can be made.
- You will keep your assets and a vehicle as detailed above.
- The approved intermediary ensures that you are given appropriate advice and that you fit the criteria for a DRO.

Cons

- Your DRO is entered on a public register.
- You can't have a DRO if you have an existing bankruptcy order, an IVA, are subject to bankruptcy restrictions, or you have had a DRO in the last 6 years.
- You won't be able to have a DRO if you own a house, even if it has no equity (value).
- You will remain liable to pay certain debts – in particular:
 - student loans
 - fines
 - debts arising from family proceedings
 - budgeting loans and crisis loans owed to the Social Fund.
- Your employment may be affected.
- Your DRO could be revoked (withdrawn) if you don't co-operate with the official receiver during the year your DRO is in force.
- You can't act as a director of a company or be involved in its management unless the court agrees.
- You will be committing an offence if you get credit of £500 or more without disclosing that you are subject to a DRO.
- You may have a debt relief restrictions order* made against you for 2 to 15 years if you acted irresponsibly, recklessly or dishonestly.

* An order that will place restrictions similar to those in force while subject to a DRO, which the official receiver may apply for.

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Options explained - Bankruptcy

How it works

Bankruptcy is a formal court procedure which you can start or which one or more of your creditors owed £750 or more can start. Your assets (with certain exceptions) are sold to help pay your creditors. However, you can usually keep your personal belongings, the contents of your home and your tools of trade (which may include your car) unless they have a high value.

If you have surplus income after meeting your essential household and personal expenses, you will have to make payments out of your income for up to 3 years.

Your assets and income are dealt with by a licensed and regulated insolvency practitioner or by a government official called the official receiver.

Bankruptcy usually lasts for 1 year, and once you have been freed (discharged) from your bankruptcy, you are released from your debts (with certain exceptions).

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Pros

- Debts are written off, with certain exceptions explained below.
- Creditors can't take further action unless the debts are secured on your home or other property.
- It allows you to make a fresh start after only a year.
- You may be able to avoid having to sell your home if your spouse, partner or a relative can buy your share of its value after any debts secured on it have been paid.

Cons

- Your bankruptcy is entered on a public register and is advertised.
- If you apply to the court for your own bankruptcy, you will have to pay a court fee and deposit totalling £700.
- You will remain liable to pay certain debts – in particular:
 - student loans
 - fines
 - debts arising from family proceedings; and
 - budgeting loans and crisis loans owed to the Social Fund.
- Any business you have will almost certainly be closed down.
- Your employment may be affected.
- Certain professionals are barred from practising if they are made bankrupt.
- You can't act as a director of a company or be involved in its management unless the court agrees.
- You will be committing an offence if you get credit of £500 or more without disclosing that you are bankrupt.
- You may have a bankruptcy restrictions order* made against you for 2 to 15 years if you acted irresponsibly, recklessly or dishonestly.

* An order that will place restrictions similar to those in force while subject to a DRO, which the official receiver may apply for.

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Further Information

Other guides can tell help you in dealing with your finances generally, for example the Money Advice website which you can access by following this link: www.moneyadviceservice.org.uk/

Government funded advice agencies:

Advice UK

Telephone: 020 7469 5700

Website: www.adviceuk.org.uk

Citizens Advice

Helpline: 0207 833 2181 to find your local CAB

Website: www.citizensadvice.org.uk

Community Legal Services (CLS)

Helpline: 0845 345 4345

Website: www.legalservices.gov.uk

Your local library has a CLS Directory to help you find a CLS-approved legal advisor.

Consumer Credit Counselling Service (CCCS)

Helpline: 0800 138 1111

Website: www.cccs.co.uk

National Debtline

Helpline: 0808 808 4000

Website: www.nationaldebtline.co.uk

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Insolvency Service

The Insolvency Service is the government agency responsible for administering the insolvency system in England and Wales, including bankruptcy. The Insolvency Service cannot provide legal or financial advice on individual cases but can give more information about the options listed here. Its website gives access to a range of publications.

You can also search on the Insolvency Service website for an Insolvency Practitioner to deal with your situation www.bis.gov.uk/insolvency

Insolvency enquiry line: 0845 602 9848

Opening hours: Monday–Friday 8am–5pm
(except bank holidays)

Email: enquiryline@insolvency.gsi.gov.uk

Other organisations also offer insolvency advice and debt counselling but beware of uninvited approaches by post or telephone.

Scotland

This guide is aimed at you if you live in England and Wales. Options differ slightly in Scotland. If you live in Scotland, you can contact:

Citizens Advice Scotland

Helpline: 0131 550 1000

Website: www.cas.org.uk

This publication provides general information only. Every effort has been made to ensure that the information is accurate, but it is not a full and authoritative statement of the law and you should not rely on it as such. The Insolvency Service cannot accept any responsibility for any errors or omissions as a result of negligence or otherwise.

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Insurance Brokers committed to providing tailor-made solutions for Insolvency Practitioners

Professional indemnity insurance, also known as **PI insurance** or **indemnity insurance**, can help protect you if claims are brought against you by a client due to a problem with work you have done for them. It is a must for any individual or firm working within the Insolvency sector and for some organisations there is a mandatory or regulatory requirement to carry Professional Indemnity Insurance at a certain level.

At Aston Scott we understand the unique requirements of insolvency professionals and have established expertise in this area. Being independent we take an objective view of the insurance market and offer unbiased advice.

We don't just sell you a policy, we negotiate with influence on your behalf and provide a professional, tailored solution that you can rely on. Combining our expert broking skills and strong buying power with a truly personal service we take the strain out of the process of arranging your insurance.

An excellent reputation

Having provided expert commercial insurance and risk management services to clients in diverse sectors for over 35 years, Aston Scott Group has established a strong reputation for professionalism and integrity.

We are a truly independent insurance broker and remain privately owned with no insurer shareholding. We can therefore offer impartial advice and service that is tailored to suit the needs of your business. Our exceptional market access enables us to provide competitive policies and an excellent claims service through partnerships with our selected panel of insurers.

Act today to get the best advice for your business – call Claire Russell on 0845 6860260, or send an e-mail to claire.russell@astonscott.com



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Unrivalled service

At Aston Scott Ltd we take pride in building long-term partnerships with our clients, based upon mutual trust. We invest the time required to fully understand each practice, identifying all areas of risk in order to deliver a bespoke insurance solution.

We are committed to providing a rapid, professional and personal service through our high-calibre, dedicated staff. There are no call centres and no answer phones – we aim to answer all calls within 4 rings!

A strong network – national coverage

Aston Scott Group employs over **220 staff** and offers a personal service from **11 locations** around the UK.

Covering all your exposures**

We will work with you to identify all of your businesses exposures and will aim to provide a program of insurance that protects your business to the fullest.

As well as Professional Indemnity Insurance we can also help with the following:

- Office Insurance
- Property Insurance
- Motor Fleet Insurance
- Business Continuity Planning
- Disaster Recovery
- Health & Safety Consultancy
- Environmental Risk Management
- Liability Insurance
- Commercial Combined Insurance
- Risk Management Consultancy
- Risk Profiling
- Property Risk Assessments
- Occupational Road Risks
- Fleet Risk Management

For more information about Aston Scott Group plc or any of the services we offer, – call Claire Russell on **0845 6860260**, or send an e-mail to clairerussell@astonscott.com

** Terms and conditions will apply



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7.1 IPA PROFESSIONAL INDEMNITY INSURANCE REGULATIONS

1. DEFINITIONS

- 1.1 In these definitions the following expressions shall have the following respective meanings:-

Gross Fee Income

The aggregate of all fees and income for professional services rendered, (net of VAT and disbursements and excluding for the avoidance of doubt interest dividends and rents received by the Professional Practice, income and capital profits from investments made by the Professional Practice and bad debts written off), attributable to the Member and his staff agents or locums (whether working under a contract of service or for services) from insolvency or insolvency related work, including both formal and informal appointments and advisory work where insolvency considerations apply including for the avoidance of doubt, fees received in respect of work subcontracted to others unless it is clearly demonstrated to the Individual Member's satisfaction that the subcontractor is taking professional responsibility for his work and has appropriate PII cover

PII

Professional Indemnity Insurance which is underwritten in accordance with the minimum requirements of these Regulations

Principal

A sole practitioner, partner, director or other person held out as a principal of a Professional Practice who is engaged in Insolvency Administration

Professional Practice

A Firm including one whose business or practice is not confined to Insolvency Administration

- 1.2 The following words shall have the same meaning as defined in the Articles of Association of the Association:-

Association, Firm, Individual Members, Insolvency Act, Insolvency Administration, Insolvency Appointment, Insolvency Authorisation, Insolvency Practitioner.

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2. INTRODUCTION

- 2.1 PII is compulsory for each Individual Member who holds one or more Insolvency Appointments.
- 2.2 These Regulations set out the requirements for the minimum level of cover which must be obtained.
- 2.3 Individual Members are required to provide a certificate from their insurer setting out the principal terms of their PII cover to be submitted to the Association with each Insolvency Authorisation application or renewal form.

3. MINIMUM TERMS OF COVER

- 3.1 Each Individual Member is required to have a minimum PII cover for any one claim of whichever is the greater of:-
 - 3.1.1 £250,000 (or such other figure as may from time to time be determined by Council); or
 - 3.1.2 2.5 times his Gross Fee Income.
- 3.2 Where an Individual Member is in partnership or association with other Insolvency Practitioners and they are covered by a single PII policy, the minimum PII cover required shall be calculated by aggregating each Individual Member's Gross Fee Income.
- 3.3 In the case of a PII policy covering a number of Individual Members practising in partnership or by association, the required minimum cover under the policy need not exceed £1,500,000 (or such other figure as may from time to time be determined by Council).
- 3.4 PII policies must be entered into only with insurers authorised by the Department for Business, Enterprise and Regulatory Reform and must comply with the approved minimum wording for PII policies in accordance with such protocols as may from time to time be agreed between the Institute of Chartered Accountants in England and Wales and certain insurers known as participating insurers.
- 3.5 In addition to the approved minimum wording, the PII policy shall include fidelity insurance covering the dishonest acts or omissions of principals and employees of the Individual Member to the same level of cover as applies to the PII itself.

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4. EXCESS

- 4.1 The minimum PII cover for each Individual Member can include an excess of not more than £20,000 (or such other figure as may from time to time be determined by Council).
- 4.2 Where an Individual Member is in partnership or association with other Insolvency Practitioners and they are covered by a single PII policy, the excess may not exceed £20,000 (or such other figure as aforesaid) multiplied by the number of Principals.
- 4.3 In the case of a Firm being a corporate practice, the number of Principals shall only include those who have entered into a legally binding personal obligation in respect of the excess.

5. RUN-OFF INSURANCE

- 5.1 An Individual Member who retires or ceases to act as an Insolvency Practitioner, is required to satisfy the Association that adequate run-off cover is in place for a minimum of six years after ceasing to act at an indemnity level not less than that applying immediately prior to retirement or cessation.

6. TRANSFERS BETWEEN PRACTICES

- 6.1 An Individual Member who transfers from one professional practice to another is required to satisfy the Association that adequate PII arrangements are in place to cover any claims made in respect of work done by him whilst at his previous practice in respect of the preceding period of not less than six years.

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7.2 IPA PROFESSIONAL INDEMNITY INSURANCE GUIDANCE

GUIDANCE

1. The Professional Indemnity Insurance [“PII”] Regulations make PII compulsory for Individual Members and set out the minimum requirements acceptable to the Insolvency Practitioners Association. However, you are strongly advised to obtain a greater level of cover and to take advice from your insurance broker. You should also review the extent of the cover available, since some policies will, for example, include legal costs within rather than in addition to the limit of the indemnity cover.
2. Most PII policies provide for a minimum level of risk, known as “excess”, to be borne by the insured. You should consider both your firm’s and your own personal resources when deciding what level of excess is appropriate for you. The maximum excess provided under these Regulations is £20,000 per individual.
3. From discussions with underwriters, it is considered that there is currently sufficient competition in the PII market for all Members to obtain an adequate level of PII cover on relatively competitive terms. However, should you, for any reason, find it impossible to obtain minimum cover, or if insurers decline insurance or attempt to avoid your policy, you must bring this matter to the attention of the Secretary of the Association without delay. You will be obliged to give full information to the Membership and Authorisation Committee, who will then consider the consequences.
4. Failure to obtain and maintain PII cover may also invalidate your Insolvency Bond and thus your ability to act as an Insolvency Practitioner.
5. Almost invariably, PII policies are written on a claims made basis, which means that the insurance will provide cover for claims first made or circumstances arising and notified to the insurers during the term of the current policy, irrespective of when the activity giving rise to the claim occurred. It is therefore important that, assuming (which is usually the case) that the policy provides such cover, the policy remains in force to provide protection against any claims which may arise in the future for work done in the past.

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6. If you are an Individual Member in partnership with others, or you have an arrangement where you are covered by another Professional Practice's PII policy, you must ensure that the PII cover provided by such policy or policies is adequate to cover the requirements of these Regulations as they apply to you.
7. Gross Fee Income, as defined in the Regulations, should be based on the most recently completed accounting year immediately preceding the start of the policy. If you are commencing practice, you should give your broker your best estimate of your anticipated Gross Fee Income or ensure that he is provided with such information by the person responsible for such matters within your firm.
8. The approved minimum policy wording is that adopted under a protocol agreed between the Institute of Chartered Accountant in England and Wales and certain "participating insurers" (details of which are available on request). You should also ensure that your PII policy includes fidelity insurance to cover any dishonest acts or omissions of principals employees and subcontractors in a manner and in terms not more limited than those contained in the approved minimum wording. The minimum policy wording must also be written on the basis that former-partners, and employees and subcontractors are covered.
9. Run-off cover for retiring Insolvency Practitioners may be provided under the PII of a continuing practice or you may need to take out an individual policy. Either way, you should personally check with your broker that you would be covered if any claim were made after you have retired from practice in respect of work done while you were in practice. If your former or successor practice has agreed to include run-off cover for you in its current cover, you must provide full details to the Association, who will need to be advised of any changes during the minimum six-year period. You will be responsible for taking out a new policy in the event of any run-off cover lapsing during the six-year period.
10. If you transfer from one practice to another, you must satisfy the Association that the PII cover remains in place for the work you carried out at your former firm. This should either be by having the old practice confirm that their PII policy will cover any claims made for a period of not less than six years or that your new PII cover will accept responsibility for

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a similar period. It is important to ensure that, on changing firms, there is no gap in the PII cover and you may be asked to confirm to the Association the terms of any leaving agreement.

11. If your existing practice merges or breaks-up into small firms, you are required to ensure that there is no break in the existence and level of PII cover and to provide appropriate confirmations to the Association. You must ensure that, on a merger or split or any other alteration to the practice, there continues to be an adequacy of cover in accordance with the Regulations.
12. Confirmation of your PII arrangements will be requested by the Association as an item of your renewal of your Insolvency Authorisation. You should obtain from your insurer a certificate setting out the basic details of your cover including the sum insured per claim and in aggregate, the period of insurance, the names of the principals in the practice, the commencement of the insurance period, the amount of the excess and any specific instructions or conditions attaching to the cover. The Association may check with your brokers or insurers that the information is correct.
13. If you become aware of a claim or circumstances which might give rise to a claim falling under your PII policy, you are required to notify your insurers promptly since failure to do so could seriously prejudice your or your firm's rights and entitlement to indemnity under the policy. You should not wait until there have been developments or delay pending the completion of a detailed report of the matter.
14. The existence of claims or circumstances should be regarded objectively and insurers notified immediately even if the allegations are vague or unspecified and regardless of the fact that you think liability is unlikely. It is considered good practice to have a review of potential PII claims as an agenda item for partners' meetings and prior to the renewal of PII cover, a circular sent to all partners and senior staff requiring confirmation that they are not aware of any claim or circumstance which might give rise to a claim. Your broker may well be able to provide you with a claims handling / risk prevention booklet to assist in this respect, in which case it should be obtained and its advice adhered to.

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15. In consultation with your broker, you may wish to think about the following issues when deciding whether a PII policy is suitable for your purposes:-
 - 15.1 The sum insured per claim and in the aggregate?
 - 15.2 The excess?
 - 15.3 What does the policy cover?
 - 15.4 Does the policy cover dishonest acts of principals and employees and former principals and employees?
 - 15.5 What triggers coverage - claims, notice of intention to claim, or circumstances arising?
 - 15.6 Is there a provision in the policy covering a claim "series" i.e. claims arising from the same or a series of acts or omissions?
 - 15.7 Are there any exclusions or conditions breach of which might entitle the insurer to avoid the whole policy?
 - 15.8 What are the notice requirements, and consequences of late notification?
 - 15.9 What are the complaint handling requirements?
16. You should avoid having double insurance.
17. It is suggested that you provide your brokers with a copy of both these Regulations and Guidance Notes and ask them to confirm that your PII policy meets the minimum requirements laid down by the Regulations.

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7.3 R3 MONEY LAUNDERING GUIDANCE FOR INSOLVENCY PRACTITIONERS

INTRODUCTION

UK anti-money laundering law is based on the EU Third Directive on Money Laundering.

There are three key pieces of legislation:

- The Money Laundering Regulations 2007 ('the Regulations')
- The Proceeds of Crime Act 2002 (as amended by the Serious Organised Crime and Police Act 2005)
- The Terrorism Act 2000 (as amended by the Anti-Terrorism Crime and Security Act 2001 and the Terrorism Act 2006)

The Regulations set out the systems and procedures that relevant persons (see Appendix), must have and follow. One of these is to have a system for recording and reporting knowledge or suspicion of money laundering. The reporting obligations are further elaborated in the Proceeds of Crime Act (see below). Failure to comply with the requirements of either the Regulations or the Proceeds of Crime Act can carry criminal sanctions.

Regulators, such as the Financial Services Authority (FSA), may impose additional systems and controls requirements on persons and businesses regulated by them. A person or business regulated by the FSA needs to have regard to its Money Laundering Sourcebook as well as the Regulations.

The Proceeds of Crime Act sets out in Part 7 for the regulated sector (see Appendix) details of what constitutes money laundering and money laundering offences, the offences of tipping off and the offence of failing to disclose knowledge or suspicion of money laundering. It also lays down detailed responsibilities as regards disclosing (reporting) knowledge or suspicion to the criminal authorities and gaining consent to certain acts where needed. Section 342 in Part 8 describes a further offence of prejudicing an investigation.

The anti-terrorism legislation provides that financing terrorism or handling terrorist proceeds is laundering money and applies responsibilities similar to those in the Proceeds of Crime Act.

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In addition to this legislation, supervisory bodies (e.g. the Consultative Committee of Accountancy Bodies (CCAB) and The Law Society) issue guidance for their members to follow. The Joint Money Laundering Steering Group (JMLSG) also issues guidance to the financial community.

The CCAB and Law Society guidance gives detailed information about the Money Laundering legislation and associated offences, and provides comprehensive guidance on compliance with the various requirements imposed by the legislation. R3 recommends that insolvency practitioners have regard, in addition to the guidance attached, to the CCAB or Law Society guidance in accordance with their professional status. They should also refer to the JMLSG guidance with particular reference to matters of identification.

The guidance which follows is concerned principally with matters particularly affecting those acting as insolvency office holders within the meaning of section 388 Insolvency Act 1986 or Article 3 of the Insolvency (Northern Ireland) Order 1989. These relate to identification, reporting suspicions, and obtaining consent to transactions involving potentially criminal property. It should be borne in mind that because of the complexities and ambiguities of the legislation the legal position in many areas may not be clear and may need to be clarified by the courts.

IDENTIFICATION

The provisions relating to identification procedures set out in the Regulations apply in situations where the person subject to the regulations and his counterparty form, or agree to form, a 'business relationship'. A 'business relationship' is defined in the Regulations as

"a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person, at the time when contact is established, to have an element of duration"

The Regulations require that identification takes place as soon as is reasonably practicable after contact is first made in connection with the proposed business relationship. In the context of insolvency, there is taken to be a 'business relationship' between the insolvency practitioner and the entity or individual over which he is appointed. Practitioners should commence identification procedures at their initial contact with the debtor or company. This would include, for example, accepting instructions from directors to take steps to

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place a company into liquidation, to act as nominee in a company voluntary arrangement not preceded by another insolvency procedure, to accept an appointment as administrator under paragraph 22 of Schedule B1 to the Insolvency Act 1986, or to agree to act as nominee in an individual voluntary arrangement. Although in certain circumstances it is not strictly necessary to have completed the identification procedure before taking office (Regulation 9(3)), it would be advisable to do so in order to avoid possible later complications.

Where a practitioner is appointed by court order or by a creditors' meeting convened by the official receiver without any prior involvement with the insolvent, reliance on the order of appointment or the initial bankruptcy or winding-up order is considered to be sufficient evidence of identity. This would apply to the following cases:

- Appointment as provisional liquidator by order of the court
- Appointment as liquidator in a winding up by the court (whether by court order following an administration, at a creditors' meeting convened by the official receiver or directly by the Secretary of State)
- Appointment as administrator by order of the court
- Appointment as trustee in bankruptcy (whether at a creditors' meeting convened by the official receiver or directly by the Secretary of State)

In cases such as appointments made at a creditors' meeting in a voluntary liquidation, the practitioner should commence his identification procedures on appointment and complete them as soon as is reasonably practicable (within 5 working days is considered a reasonable period). Much of the necessary information may be obtainable from the practitioner who assisted with convening the meeting, for example, by providing certified copies of the necessary documentation.

Where a practitioner is appointed receiver or administrator by a bank or other institution which is itself subject to the money laundering regulations, the practitioner may well be able to obtain certified copies of the bank's own evidence of identity. Again, this process should be completed as soon as is reasonably practicable. Practitioners must note that it is for them to be satisfied that they have sufficient evidence of identity and so must conduct such further enquiries as they see fit if convening accountants or appointing lenders are unable to provide sufficient information.

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The appointment of an insolvency practitioner to a company which is not itself subject to the Money Laundering legislation (e.g. a restaurant, manufacturing business or a shop) will not bring the company within the ambit of the legislation so as to require identification of trading partners in respect of transactions conducted by the company during the course of the insolvency. The same would apply in the case of appointment as supervisor of a voluntary arrangement of an individual or partnership which is not subject to the legislation.

Where practitioners are providing services outside of formal insolvency proceedings, they should identify those parties entering into a contractual relationship with them. For example, where work is to be carried out for one party (e.g. a creditor or investor) in respect of a debtor, or investee entity, and both parties sign the letter of instruction, both parties should be identified. Where instructions letters are received from groups of creditors or investors, it will normally be sufficient to identify those parties who act on behalf of the group and enter into a contract with the practitioner (i.e. sign the letter of instruction), such as the agent or trustee.

Particular care needs to be taken where the client is a politically exposed person ('PEP'). A PEP is defined by the Regulations as a person who is, or has at any time in the preceding year, been entrusted with a prominent public function by a state other than the UK, a Community institution or an international body (regulation 14(5)). The definition extends to the family and the known close associates of such an individual.

In such cases the Regulations require approval from senior management before a business relationship is established, identification of the source of wealth and funds involved and ongoing monitoring (regulation 14(4)).

Where practitioners are unable to complete satisfactory identification procedures the Regulations require that the practitioner:

- must not carry out a transaction with or for the client through a bank account;
- must not establish a business relationship and must terminate any business relationship that already exists; and
- must consider whether he should make a money laundering report.

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REPORTING SUSPICIONS OF MONEY LAUNDERING

There is guidance on suspicion and reporting in the CCAB Guidance. Note that the requirement to report relates to suspicion of any criminal activity resulting in proceeds regardless of who may have committed the offence, and where it was committed if the conduct would have been criminal if undertaken in the UK. In addition, the relevant date is when the practitioner becomes suspicious, not when the conduct occurred.

Consent may be obtained from SOCA to enter into a transaction which involves suspected criminal property and which would otherwise constitute a Money Laundering offence. SOCA has seven working days (starting the day after submission of a report) in which to grant or refuse consent. If nothing is heard from SOCA during that time consent is deemed to have been given. Consent is also deemed to have been given if within seven days SOCA gives notice of refusal but then a further 31 days ('the moratorium period') passes without any restraint order being granted.

Practitioners should bear in mind that, where they suspect the assets of a company or individual to which they have been appointed may be tainted by criminality, selling those assets without consent may itself constitute an offence under section 327 of the Proceeds of Crime Act.

If a practitioner has reported suspicion to SOCA, he should obtain a consent to the act of selling the business and assets. If a practitioner is suspicious that the funds offered to purchase a business or assets are of criminal origin, again he should obtain a consent from SOCA.

Where an insolvency practitioner contemplates entering into, or causing a company to enter into, a transaction which may involve criminal property, whether the property is that of the company or a counterparty, he will need to submit a report to SOCA and seek approval of the transaction. SOCA has indicated that most requests for consent should be dealt with in 24 hours, but if the matter is particularly urgent this fact will need to be highlighted on the disclosure form. To facilitate a rapid response from SOCA, it is important to:

- make a report and seek consent as soon as it is apparent that the consent may be needed;
- make the report and consent request in writing;

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- fax it to the SOCA duty desk and mark it 'urgent'; and
- follow up the fax with a call to the SOCA duty desk to explain any special urgency or potential deadlines.

There is clearly scope for conflict between a practitioner's duty to achieve the best results for creditors and his duty under the Money Laundering legislation. However, in view of the criminal sanctions attached to committing a Money Laundering offence or failing to report it is probable that the latter will prevail. Practitioners may, in some circumstances, wish to seek legal advice and possibly, the directions of the court.

In addition to the offences under the Proceeds of Crime Act, insolvency practitioners must report suspicions of proceeds from, or finance intended for, terrorism, regardless of how and when the suspicion arises. This is required by the Terrorism Act 2000. Suspicions of terrorism are to be reported using the same methods as for suspicions of Money Laundering.

TIPPING OFF

Tipping off is an offence under the Proceeds of Crime Act and care must be taken not to tip off a suspected money launderer. The offence arises when there is knowledge or suspicion that a report has been made, or, for terrorism related offences, that a report will be made. This includes internal reports. The practitioner also needs to know or suspect that his actions will prejudice an investigation in order to commit an offence.

Practitioners should be careful to ensure that reports to creditors do not contain anything that might constitute tipping off. Note that there is no provision for obtaining consent to tipping off.

WHERE THE INSOLVENT IS SUBJECT TO THE MONEY LAUNDERING LEGISLATION

Where an insolvency practitioner is appointed to a company, partnership or individual which is itself subject to the Money Laundering legislation (e.g. an accountancy partnership, he will need to ensure that the insolvent's own internal systems comply with the legislation and continue to function during the course of the insolvency. However, the practitioner himself will also have to report suspicions coming to him in the course of his duties through his own money laundering reporting officer.

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REPORTING REQUIREMENTS UNDER OTHER LEGISLATION

Insolvency practitioners are subject to a number of reporting duties. For example they are required to submit reports on directors under the disqualification legislation, and under section 218 of the Insolvency Act 1986 a liquidator must report to the prosecuting authority if it appears to him that any past or present officer or member of a company has been guilty of an offence for which he is criminally liable. Under these various duties the matters to be reported and the nature and extent of the supporting evidence may differ from that required under the Money Laundering legislation. For example section 218 covers a wider range of criminal activity than the Money Laundering legislation, and requires more than just suspicion on the part of the practitioner. When submitting reports practitioners should confine themselves to the matters required under the relevant legislation and any associated guidance. In cases where a report has been made to NCIS under the Money Laundering legislation this fact should not be mentioned in reports made under any other provisions.

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APPENDIX**Persons covered by the legislation**

The legislation applies to persons who carry on business in 'the regulated sector' (in the language of the Proceeds of Crime Act and the Terrorism Act) or who carry on 'relevant business' (in the language of the Regulations). The definition of 'the regulated sector' is set out in Schedule 9 to the Act, and the definition of 'relevant person' is set out in regulation 3 of the Regulations. Those persons who are excluded are set out in regulation 4 of the Regulations.

Despite the different terminology the activities in both cases are the same and, broadly, are:

- Regulated activity under the Financial Services and Markets Act 2000
- The activities of the National Savings Bank
- Any activity carried on for raising money under the National Loans Act 1986
- Operating a bureau de change, transmitting money or cashing cheques payable to customers
- The activities in points 1 to 12 of Annex 1 to the Banking Consolidation Directive
- Estate agency work
- Operating a casino by way of business
- The activities of a person appointed to act as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 or article 3 of the Insolvency(Northern Ireland) Order 1989
- The provision of tax advice
- The provision of accountancy services
- The provision of audit services
- The provision of legal services which involve participation in a financial or real property transaction
- The provision by way of business services in relation to the formation, operation or management of a company or trust
- Dealing in high value goods of any description (involving cash payments of 15,000 euros or more)

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7.4 IPA CLIENT MONEY REGULATIONS

1. These Regulations are made by the Council on 28th April 2000 pursuant to Article 62 of the Association's Articles of Association (adopted by Special Resolution passed 28th April 2000).

2. **COMMENCEMENT**

These Regulations shall come into force on 1st August 2000.

3. **DEFINITIONS**

- 3.1 In these Regulations the following expressions shall have the following respective meanings:-

Articles

the Articles of Association of the Association adopted by Special Resolution passed on 28th April 2000;

Bank

- (a) a branch in the United Kingdom of:
 - the Bank of England;
 - the Central Bank of another member State of the European Union;
 - an authorised institution within the meaning of the Banking Act 1987; or
 - a building society within the meaning of the Building Societies Act 1986 which has adopted the power to provide money transmission services and has not assumed any restriction on the extent of that power; and
- (b) a branch outside the United Kingdom of:
 - a bank within the meaning of paragraph (a) above;
 - a bank which is a subsidiary or parent company of such bank; or
 - a credit institution (as defined in EEC Directive number 77/780)

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established in a member state of the European Union other than the United Kingdom, and duly authorised by the relevant supervisory authority in that member state; or

a bank on the Island of Guernsey that is registered as a Deposit Taker under the Protection of Depositors (Bailiwick of Guernsey) Ordinance 1971; or

a bank on the Island of Jersey (including a registered person under the Depositors and Investors (Prevention of Fraud) (Jersey) law 1967); or

a bank on the Isle of Man (including a bank which is licensed under section 3 of the Banking Act 1975, as amended);

Client

a person in respect of whom there is no Insolvency Appointment at the relevant time;

Client Bank Account

an account with a Bank in the name of the Firm separate from other accounts of the Firm which may be either a general account or an account designated by the name of a specific Client or by a number or letters allocated to that account and which, in all cases, includes the word 'client' in its title;

Client Money

money of any currency held or received by a Firm from or on behalf of a Client;

Estate Account

an account with a Bank in respect of a person over which the Individual Member holds an Insolvency Appointment and shall include the Insolvency Services Account;

European Union

includes the European Economic Area where any provision relates to a matter to which the European Economic Area Agreement relates;

Principal

an Individual Member who is either a sole practitioner or a partner in a Firm which is a partnership or a director of a Firm which is a body corporate;

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- 3.2 The following words and expressions shall have the same meaning as defined in the Articles:-

Association, Firm, Individual Member, Insolvency Appointment

- 3.3 References in these Regulations to any statutory provision shall include any statutory modification or re-enactment thereof

4. OPENING A CLIENT BANK ACCOUNT

On opening a Client Bank Account a Firm shall give written notice to the Bank concerned:

- 4.1 that all money standing to the credit of that account is held by the Firm as Client Money and that the Bank is not entitled to combine the account with any other account or to exercise any right to set-off or counterclaim against money in that account in respect of any sum owed to it on any other account of the Firm; and
- 4.2 that any interest payable in respect of sums credited to the account shall be credited to the account; and
- 4.3 requiring the Bank to acknowledge in writing that it accepts the terms of the notice.

5. PAYMENT INTO A CLIENT BANK ACCOUNT

- 5.1 Client Money received by a Firm as cash shall unless otherwise expressly directed by the Client be paid forthwith into a Client Bank Account.
- 5.2 Every other remittance received by a Firm which is drawn in favour of the Firm or of any Principal and which comprises or includes Client Money shall be paid forthwith into a Client Bank Account.
- 5.3 A Firm shall not pay any money into a Client Bank Account, unless
- 5.3.1 the Firm is required or permitted to make such payment under these Regulations; or
- 5.3.2 the money is the Firm's own money and:

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5.3.2.1 it is required to be so paid for the purpose of opening or maintaining the account and the amount is the minimum required for that purpose; or

5.3.2.2 it is so paid in order to restore in whole or in part any money paid out of the account in contravention of these Regulations.

5.4 A Firm shall not be regarded as having breached Regulation 5.3 simply because it transpires that money which the Firm paid into a Client Bank Account in the belief that it was required so to do under these Regulations should not have been paid into such an account, provided that immediately upon discovering the error the Firm takes the necessary steps to withdraw the money which has been paid into such account in error.

5.5 Where Client Money of any one Client in excess of £10,000 is held or is expected to be held by the Firm for more than 30 days, the Client Money shall be paid into a Client Bank Account designated by the name of the client or by a number or letters allocated to that account, unless the Client directs otherwise.

5.6 Subject to Regulations 5.8 and 6.1 if the aggregate amount of Client Money held or received by a Firm in respect of any one Client at any one time is such as would, if deposited in an interest bearing account at a rate no less than that from time to time posted publicly by the relevant Bank for small deposits subject to the minimum period of notice of withdrawals, result in or be likely to result in material interest being received thereon such sum shall be placed in an interest bearing Client Bank Account.

5.7 Subject to Regulations 5.8 and 6.1 all interest accruing to the sums placed in an interest bearing account (in accordance with Regulation 5.6 or otherwise) shall be accounted for to the Client concerned.

5.8 Regulations 5.6 and 5.7 shall not apply to Client Money held by a Firm as stakeholder.

5.9 In addition to payments in permitted by Regulation 5.3, the special nature of insolvency practice requires that the following money may be paid into a general Client Bank Account of the Firm:

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- 5.9.1 cheques and drafts accountable to Estate Accounts but where the payee is incorrectly designated;
- 5.9.2 money received by a Firm the legal entitlement to which is uncertain;
- 5.9.3 money received in respect of an Insolvency Appointment but subject to conditions which prevent its being paid into an Estate Account;
- 5.9.4 money received in respect of an Insolvency Appointment but where the appropriate Estate Account has been closed or has not been opened.

5.10 All money paid into a general Client Bank Account pursuant to Regulation 5.9 shall be paid out or transferred to the appropriate Estate Account as soon as practicable.

6. PAYMENT OF INTEREST ON CLIENT MONEY

- 6.1 Regulations 5.6 and 5.7 shall not affect any agreement in writing, whenever made, between a Firm and a Client as to the payment of interest or money in lieu thereof on Client Money held or received by the Firm for that Client.
- 6.2 It shall be a breach of these Regulations if a Firm fails to comply with any of the terms of any such agreement as is referred to in Regulation 6.1.
- 6.3 For the purposes of Regulations 5.6 to 5.8, 6.1 and 6.2 Client Money held by a Firm for two or more clients acting together in one or more transactions shall be treated as though held for a single client.

7. WITHDRAWALS FROM A CLIENT BANK ACCOUNT

- 7.1 When a remittance is paid into a Client Bank Account which includes money which is not Client Money, the money which is not Client Money shall be withdrawn from the account as soon as practicable.
- 7.2 Money shall not be withdrawn from a Client Bank Account except the following:

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- 7.2.1 money, not being Client Money, paid into a Client Bank Account for the purpose of opening or maintaining the account;
- 7.2.2 money paid into a Client Bank Account in circumstances which amount to a contravention of these Regulations or which would have so amounted but for Regulation 5.4 or 5.9;
- 7.2.3 money required to be withdrawn under Regulation 7.1;
- 7.2.4 money which would remain in a Client Bank Account after all Clients whose money has been credited to that account received payment in full of sums due to them from that account whether under these Regulations or otherwise;
- 7.2.5 money which has become transferable to an Estate Account following the start of an Insolvency Appointment;
- 7.2.6 money properly required for a payment to or on behalf of a Client;
- 7.2.7 money properly required for or towards payment of a debt due to the Firm from a client otherwise than in respect of fees or commissions earned by the Firm;
- 7.2.8 subject to Regulation 7.4, money properly required for or towards payment of fees payable to the Firm by the Client and specified in a statement delivered to the Client showing the details of the work undertaken;
- 7.2.9 money withdrawn on a Client's prior authority or in conformity with any contract between the Firm and the Client;
- 7.2.10 money which may properly be transferred into another Client Bank Account.

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- 7.3 Money withdrawn under Regulation 7.2.5 to 7.2.10 shall not exceed the total of the money held for the time being on account of the Client concerned.
- 7.4 Money shall not be withdrawn from a Client Bank Account for or towards payment of fees payable by the Client to the Firm unless:
- 7.4.1 the precise amount thereof has been agreed by the Client or has been finally determined by a court or arbitrator; or
 - 7.4.2 the fees have been accurately calculated in accordance with a formula agreed in writing by the Client on the basis of which the amount thereof can be determined; or
 - 7.4.3 thirty days have elapsed since the date of delivery to the Client of the statement referred to in Regulation 7.2.8 and the Client has not questioned the amount therein specified.
- 7.5 Money which may be withdrawn from a Client Bank Account in accordance with Regulation 7.2.7 or 7.2.8 by way of payment from the Client to the Firm shall be withdrawn as soon as practicable after the Firm becomes entitled to withdraw it under that Regulation.

8. RECORDS AND RECONCILIATION

- 8.1 A Firm shall at all times maintain records so as to show clearly all Client Money it has received and the details of any other money dealt with by it through a Client Bank Account, clearly distinguishing the money of each Client from the money of other Clients and from Firm money.
- 8.2 Each Client Bank Account shall be reconciled against the balances shown in each Client's ledger not less frequently than monthly and records shall be kept of such reconciliations.
- 8.3 Records kept in accordance with Regulations 8.1 and 8.2 shall be preserved for at least six years from the date of the last transaction recorded therein.

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9. THE RESPONSIBILITY OF A PRINCIPAL

- 9.1 A Principal shall be responsible for any breach of these Regulations on the part of his Firm, and liable to disciplinary action accordingly, unless he proves that responsibility for the breach was entirely that of another Principal or other Principals.

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7.5 IPA CLIENT MONEY GUIDANCE

1. In order to harmonise regulation as much as possible, the Association has adopted Regulations based on those adopted by the Institute of Chartered Accountants in England and Wales. Those Regulations, however, cover many other areas of professional practice than insolvency practice; and the Regulations adopted by the Association have accordingly been adapted to reflect the particular needs of Insolvency Practitioners.
2. For convenience only, the Regulations have been drafted in terms of the duties imposed on Firms. Disciplinary proceedings can, however, be brought against Individual Members under Regulation 9.1. Attention is drawn to the defence in that Regulation.
3. Regulations controlling the use of Client Bank Accounts are necessary to preserve their integrity, so that third party funds are segregated from those of the Firm, readily identified and protected in the event of the Firm's financial failure.
4. Most money handled by Insolvency Practitioners will not fall into the definition of Client Money, since it will be in respect of an established Insolvency Appointment. The handling of such money is in many cases closely regulated by statute; and in addition Members are reminded of the terms of Statement of Insolvency Practice 11 "The Handling of Funds in Formal Insolvency Appointments". The Regulations deal rather with the handling of money prior to a formal Insolvency Appointment or where there is no such appointment.
5. Money held by a Firm as stakeholder is governed by the Regulations but the payment of interest provisions do not apply (Regulation 5.8).
6. Unless the Firm agrees otherwise in writing with a client (Regulation 6.1) a Client Bank Account must be an interest bearing account if 'material interest' would be likely to accrue within the meaning of Regulation 5.6. Any interest earned must in the absence of such agreement be accounted for to the Client in accordance with Regulation 5.7.
7. 'Material interest' shall be deemed to be likely to accrue if the sum of money is or is likely to be held for at least the number of weeks shown in the left hand column of the following table and the minimum balance in the Client

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Bank Account (or credited to the Client in the case of an account comprising the money of two or more Clients) equals or exceeds the corresponding sum in the right hand column of the Table:

Number of Weeks	Minimum Balance
8	£500
4	£1,000
2	£5,000
1	£10,000

The above is merely a guide to the interpretation of 'material interest'. The obligation of the Individual

Member is to take reasonable steps to ensure that the Client does not suffer material loss if money remains on bank accounts bearing low or no interest. There may be circumstances, for example, where money should be placed on overnight deposit.

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THE BRIBERY ACT 2010 – QUICK START GUIDE

The Bribery Act 2010 modernises the law on bribery. It comes into force on 1 July 2011. This document offers a quick guide to the things you need to know to prepare your business for implementation.

The Government has also produced detailed guidance about the Act and the procedures that organisations can put in place to prevent bribery, as well as a set of illustrative case studies which you may find of further assistance (available here: www.justice.gov.uk/guidance/bribery.htm).

Key points

- This Act deals only with bribery – not other forms of white collar crime
- Your organisation may be liable for failing to prevent a person from bribing on your behalf but only if that person performs services for you in business. It is very unlikely therefore that you will be liable for the actions of someone who simply supplies goods to you
- There is a full defence if you can show you had adequate procedures in place to prevent bribery. But you do not need to put bribery prevention procedures in place if there is no risk of bribery on your behalf
- Hospitality is not prohibited by the Act
- Facilitation payments are bribes under the Act just as they are under the old law

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What is covered by the Act?

The Act is concerned with bribery. Very generally, this is defined as giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. So this could cover seeking to influence a decision-maker by giving some kind of extra benefit to that decision maker rather than by what can legitimately be offered as part of a tender process.

The Act is not concerned with fraud, theft, books and record offences, Companies Act offences, money laundering offences or competition law. Further detail about what is covered by the Act can be found in 'The Bribery Act 2010 – Guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section 9 of the Bribery Act 2010)' – www.justice.gov.uk/guidance/bribery.htm

When could my organisation be liable?

Your organisation could be liable if a very senior person in the organisation (for example, a managing director) commits a bribery offence. This person's activities would then be attributed to the organisation.

Your organisation could also be liable where someone who performs services for it – like an employee or agent – pays a bribe specifically to get business, keep business, or gain a business advantage for your organisation. But you will have a full defence for this particular offence, and can avoid prosecution, if you can show you had adequate procedures in place to prevent bribery (see page 4, 'What do I need to do to rely on the defence?' for further information about this defence).

It is important to note that no one can be prosecuted in England and Wales unless one of the two most senior prosecutors (the Director of Public Prosecutions or the Director of the Serious Fraud Office) is personally satisfied that a conviction is more likely than not, and that prosecution is in the public interest.

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What do I need to do to rely on the defence?

You will not commit the offence of failing to prevent bribery if you can show that your organisation had 'adequate procedures' in place to prevent bribery. What counts as adequate will depend on the bribery risks you face ('How do I assess risk?', see page 5) and the nature, size and complexity of your business. So, a small or medium sized business which faces minimal bribery risks will require relatively minimal procedures to mitigate those risks. The following six principles will help you decide what, if anything, you need to do differently:

- 1 **Proportionality:** The action you take should be proportionate to the risks you face and to the size of your business. So you might need to do more to prevent bribery if your organisation is large, or if you are operating in an overseas market where bribery is known to be commonplace, compared to what you might do if your organisation is small, or is operating in markets where bribery is not prevalent.
- 2 **Top Level Commitment:** Those at the top of an organisation are in the best position to ensure their organisation conducts business without bribery. If you are running a business, you will want to show that you have been active in making sure that your staff (including any middle management) and the key people who do business with you and for you understand that you do not tolerate bribery. You may also want to get personally involved in taking the necessary proportionate action to address any bribery risks.
- 3 **Risk Assessment:** Think about the bribery risks you might face. For example, you might want to do some research into the markets you operate in and the people you deal with, especially if you are entering into new business arrangements and new markets overseas ('How do I assess risk', see page 5).
- 4 **Due Diligence:** Knowing exactly who you are dealing with can help to protect your organisation from taking on people who might be less than trustworthy. You may therefore want to ask a few questions and do a few checks before engaging others to represent you in business dealings.
- 5 **Communication:** Communicating your policies and procedures to staff and to others who will perform services for you enhances awareness and helps to deter bribery by making clear the basis on which your organisation does business. You may, therefore, want to think about whether additional training or awareness raising would be appropriate or proportionate to the size and type of your business.

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- 6 Monitoring and Review:** The risks you face and the effectiveness of your procedures may change over time. You may want, therefore, to keep an eye on the anti-bribery steps you have taken so that they keep pace with any changes in the bribery risks you face when, for example, you enter new markets.

How do I assess risk?

Many organisations will face little or no risk of bribery, especially if their business is undertaken primarily in the UK. If you operate overseas, the risks may be higher. Factors such as the particular country you want to do business in, the sector which you are dealing in, the value and duration of your project, the kind of business you want to do and the people you engage to do your business will all be relevant.

There are simple practical steps you can take to assess and mitigate risks. These are mostly obvious, and are similar to (or even the same as) those you probably take anyway (for example, to make sure you can trust the people you work with). For example, you might use simple internet searches to find out about the levels of corruption or bribery in the particular country you propose to do business in. You could consult UK diplomatic posts or UK Trade and Investment for advice. You could also consult business representative bodies here and in the relevant country for up to date local knowledge. We set out some contacts below including a Government-sponsored Business Anti-Corruption Portal aimed at small and medium sized businesses involved in overseas trade.

Do I need complex procedures in place even if there is no risk?

No. If there is very little risk of bribery being committed on behalf of your organisation then you may not feel the need for any procedures to prevent bribery. If, having assessed the position, there is a risk of bribery then, if you want to rely on the defence, the procedures you adopt should be proportionate to that risk. There is no need for extensive written documentation or policies. You may already have proportionate procedures through existing controls over company expenditure, accounting and commercial or agent contracts for example. In larger organisations it will be important to ensure that management in charge of the day to day business is fully aware and committed to the objective of preventing bribery. In micro-businesses it may be enough for simple oral

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reminders to key staff about the organisation's anti-bribery policies. In addition, although parties to a contract are of course free to agree whatever terms are appropriate, the Act does not require you to comply with the anti-bribery procedures of your business partners in order to be able to rely on the defence.

Do I need to do due diligence on all my suppliers?

You only have to think about doing due diligence on persons who will actually perform services for you, or on your behalf. Someone who simply supplies goods to you is unlikely to do that. It is very unlikely, therefore, that you will need to consider doing due diligence on persons further down a supply chain.

Where you decide to undertake due diligence, how much you need to do will depend on your risk assessment. If you assess the risk as low then all you may need to do is satisfy yourself that people performing services for you (for example, an agent) are genuine and someone you can trust to do your business without bribing. You could do this by making enquiries with business contacts, local chambers of commerce or business associations or via the internet for example.

Where you think the risks are higher, then you may need to do more. You might ask your agent for a CV, financial statements or accounts, and other references. You might then follow those up to ensure they are genuine. The aim is to satisfy yourself that the person that is to represent your organisation can be trusted not to use bribery on your behalf, but this does not necessarily require sophisticated and costly techniques. Personal contact, allowing you to assess the person for yourself, can be very helpful.

Do I need to employ consultants or lawyers to provide advice on the risks I face, the procedures I adopt, or the level of due diligence I should undertake?

No. There is no duty to engage lawyers or consultants in helping you assess what risks you face, what procedures you might adopt or what sort of due diligence you undertake - especially where you consider the risks to be low or non-existent. The Act does not require external verification of any bribery prevention measures you have put in place.

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Can I provide hospitality, promotional or other business expenditure under the Act?

Yes. The Government does not intend that genuine hospitality or similar business expenditure that is reasonable and proportionate be caught by the Act, so you can continue to provide bona fide hospitality, promotional or other business expenditure.

In any case where it was thought the hospitality was really a cover for bribing someone, the authorities would look at such things as the level of hospitality offered, the way in which it was provided and the level of influence the person receiving it had on the business decision in question. But, as a general proposition, hospitality or promotional expenditure which is proportionate and reasonable given the sort of business you do is very unlikely to engage the Act. So you can continue to provide tickets to sporting events, take clients to dinner, offer gifts to clients as a reflection of your good relations, or pay for reasonable travel expenses in order to demonstrate your goods or services to clients if that is reasonable and proportionate for your business.

What about facilitation payments?

Facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform, are bribes. There was no exemption for such payments under the previous law nor is there under the Bribery Act.

As was the case under the old law, prosecutors will carefully consider all the facts and surrounding circumstances of cases which come to their attention to assess whether a payment amounts to a bribe and, if so, whether a prosecution is in the public interest.

You can continue to pay for legally required administrative fees or fast-track services. These are not facilitation payments.

Further informationwww.justice.gov.ukwww.businesslink.gov.ukwww.bis.gov.ukwww.justice.gov.uk/guidance/bribery.htm

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7.7 IPA CONTINUING PROFESSIONAL EDUCATION GUIDANCE

Members are expected to take steps to ensure that they keep abreast of developments in statutory and case law, in professional practice and in the commercial environment relevant to the competent performance of insolvency administration.

CPE FOR AUTHORISATION APPLICANTS AND AUTHORISATION HOLDERS

Members applying for, or applying to renew, an authorisation to act as an insolvency practitioner (IP) are required to show that they have undertaken the minimum level of relevant structured continuing professional education (CPE) as a necessary part of becoming, and continuing to be, fit and proper to be an IP.

In addition, the Membership & Authorisation Committee may require an authorisation holder to undertake specific CPE, as part of or additional to the minimum CPE requirement.

MINIMUM LEVEL OF CPE

The minimum level of relevant structured CPE is 25 hours in the twelve months immediately preceding an application for, or to renew, an authorisation.

RELEVANCE OF CPE

CPE should be relevant to the work that the applicant undertakes or intends to undertake. Thus for example for an IP who acts or intends to act in relation to individual voluntary arrangements, the major part of CPE would be expected to cover personal insolvency including alternative non-statutory solutions in order that he/she should be able to advise debtors on all the options available to them or otherwise be able to satisfy him/herself that debtors have been so advised – that is, not limited to an IVA or bankruptcy. For an IP who specialises in liquidations and/or administrations, the major part of CPE would be expected to cover corporate insolvency; but a part would also be expected to cover personal insolvency to warrant an authorisation which enables him/her to undertake any of the insolvency procedures.

The IPA may require a member to provide further information about the relevance of particular parts of his/her CPE to the type and nature of the work which he/she undertakes or intends to undertake. For this purpose, members

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may find it useful to carry out their own analysis of their knowledge and skills for the work they undertake or intend to undertake, and what might be expected of them; and to identify CPE aimed at developing or filling gaps in that knowledge and those skills.

STRUCTURED CPE

Structured CPE will include:

- attending IPA Conferences and Members' Meetings.

Structured CPE may include:

- attending or speaking at courses, conferences, seminars and lectures
 - organised by the Association of Business Recovery Professionals (R3), other commercial course and conference providers, in-house or by other professionals or their firms
 - covering knowledge and application of technical and regulatory aspects of insolvency law and practice or
 - development of interpersonal, business and management skills and competences.

Structured CPE may also comprise where the subject matter is insolvency related:

- research and preparation of papers for courses, conferences or seminars, lectures or articles
- attendance at technical or regulatory committees
- reading material provided in advance of attendance at a structured CPE course, conference, seminar or lecture or technical or regulatory meeting.

Structured CPE may also comprise formal presentations, talks or discussions of insolvency related subjects at professional gatherings which may also be of a social nature.

Where members find it difficult, because of their geographical location, to attend sufficient courses, conferences, seminars and lectures without involving unreasonable time and cost, there may be scope to organise their own structured discussion group with fellow professionals in their locality which may count towards the minimum CPE requirement.

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Members may use distance learning as readily accessed CPE also counting towards the minimum requirement: it should nevertheless be structured (by them). But given the value attached to, and achieved by, interaction and networking with fellow professionals at courses, conferences, seminars and lectures, distance learning would be expected to account for no more than half the minimum CPE requirement; and it may be further restricted where the Membership & Authorisation Committee is of the view that the member should attend courses, conferences, lectures or seminars generally or in relation to specific aspects of insolvency.

The minimum level of relevant structured CPE is likely to need to be supplemented by for example reading professional journals, law reports and similar.

CALCULATION OF CPE HOURS

The actual time spent on CPE will usually be the appropriate amount. However, unless the circumstances are demonstrably different, the following would generally apply:

- full day course – 6 hours
- half-day course – 3 hours
- evening seminar/lecture – 1 hour

IPA One-Day Conferences are usually accredited for 6 hours CPE: IPA Members' Meetings are usually accredited for 2 hours CPE.

RECORDS OF CPE

Those applying for, or who have, an authorisation are required to maintain records of the CPE which they have undertaken; and should have available to produce to the IPA on request details and evidence of courses, conferences, seminars and lectures they have attended, including the topics covered, and of other CPE undertaken in relation to the last three years.

OTHER MEMBERS

Members who do not have or who do not intend applying for an authorisation are not required to undertake CPE. But if they are in any way involved in insolvency administration or insolvency related work, then it is very much in their own interests and those of their firm, creditors, insolvents and others who are affected by an insolvency that they should maintain a knowledge of current insolvency law and practice.

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2013

	Time	Title	Location
22 January	Evening	IPA Annual Lecture	London
17 April	Afternoon	Annual General Meeting	London
26 April	Morning	Insolvency Practitioner Introduction Meeting	London
16 May	All Day	Annual Conference	London
19 June	All Day	CPI+ Course	London
12 September	Evening	Annual Dinner	London
18 September	All Day	CPI+ Course	Manchester
30 September	Morning	Regional Roadshow	Bristol
30 September	Afternoon	Insolvency Practitioner Introduction Meeting	Bristol
01 October	Morning	Regional Roadshow	Birmingham
01 October	Afternoon	Insolvency Practitioner Introduction Meeting	Birmingham
14 October	Morning	Regional Roadshow	Leeds
14 October	Afternoon	Insolvency Practitioner Introduction Meeting	Leeds
15 October	Morning	Regional Roadshow	Manchester
15 October	Afternoon	Insolvency Practitioner Introduction Meeting	Manchester
22 October	Morning	Regional Roadshow	London
22 October	Afternoon	Insolvency Practitioner Introduction Meeting	London
28 October	Morning	Regional Roadshow	Glasgow
28 October	Afternoon	Insolvency Practitioner Introduction Meeting	Glasgow
29 October	All Day	CPI+ Course	Glasgow
28 November	All Day	Personal Insolvency Conference	Manchester

2014

28 January	Evening	IPA Annual Lecture	London

For further information about any of our events contact: events@ipa.uk.com

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