IPANEWS

WINTER 1999 / 2000

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THE NEWSLETTER OF THE INSOLVENCY PRACTITIONERS ASSOCIATION

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President's Report

Our evolving profession

By Colin Bird, President

The scale of change within our profession right now is breathtaking, just some of the issues are summarised in the accompanying table and discussed below.

Government initiatives

Considering the (hopefully remote?!) possibility that the new Company Voluntary Arrangements (CVAs) will be done by professionals other than insolvency practitioners, it would be ironic if you needed to be an insolvency practitioner to do a CVA without a stay against creditors, but not if there is to be a stay... Something is the wrong way round here!

Within the Government's rescue culture agenda, the move from a creditor to debtor focus will be the greatest cultural shift in the rescue business we have seen in our country, requiring us to change insolvency practitioners' skill sets dramatically. The need to develop consensus amongst stakeholders is far from the absolute power many insolvency practitioners have previously had.

This has also been the background to SPI's proposals to change its name and introduce turnaround professionals.

All this is having a significant impact on the insolvency profession and its institutions. SPI is changing, but so is IPA.

Development of the IPC and RICS

The appointment of Graham Kentfield (previously Director and Chief Cashier of the Bank of England) as chairman of the IPC should leave us in no doubt that we need to be articulate and flexible in future debates. The insolvency practitioner members of the IPC will have the most important job representing the profession. The rest of us will have to implement policy, which will be dictated by outsiders for the first time in our history.

The industry appointees to the IPC will be settled soon. IPA has put forward recommendations based on who is best for the job, not solely including IPA members. This job needs good communicators with a mix of professional experience, regardless of background and licence origin.

The IPC's policy agenda for the profession will be implemented by the new body formed by the RPBs – the Joint Insolvency Committee (JIC). IPA has appointed David Sapte to the JIC. Given his experience as an insolvency practitioner and former president of IPA, he is well suited to that role.

In addition, David is in charge of redoing IPA's constitution and has served on our membership, authorisation and investigation committees. He will, therefore, bring

IPA issues

- Need to upgrade public involvement in overseeing the profession
- Paramount importance of the public interest arena
- Creation of the Insolvency Practice Council (IPC)
- Formation of a joint RPB insolvency committee to take on ethics, standards and best practice agendas
- The impact of human rights legislation on our disciplinary processes
- Extension of regulation by voluntary code (fixed charge receivers and turnaround professionals)
- Extension of our Certificate of Proficiency in Insolvency (CPI) exam into the world of property professionals
- The Government's agenda moving our rescue culture from a creditor to debtor focus
- Future of CVAs, where these may be done by professionals other than insolvency practitioners.

unique knowledge to the new joint committee. David also liaised with the Royal Institution of Chartered Surveyors (RICS) to bring property receivers into the regulatory net, albeit voluntarily. When history comes to be writ, I hope David is deservedly credited as one of the principal architects of IPA's future.

I am very pleased our CPI exam has been chosen as the basis for the property receivers' entry requirements, from next year. Jonathan Birch is now deeply embroiled in making that happen.

IPA support

All this is being achieved without any increase in support at the centre, and this simply can't continue. Vivien Bairstow is working with Tony Benedict and Nick Milner to increase staff to cope.

Whilst we are applying for Farringdon grants to defray most of the extra one-off costs of the IPA / RICS scheme, constitutional review and development of the desktop monitoring system, we are facing an overall increase in IPA running expenses. Subs and license fees have increased for 2000 as a result, although these increases only partially reverse previous years' reductions in fees, managed through making the monitoring regime more efficient. We have to pay for a top rate regulatory regime, which is the price of our continuing to retain insolvency practitioners' statutory monopoly over licensed work.

Past and future initiatives

The regulation working party praised the profession's part in creating its own internal regulation, by setting best practice standards. IPA started this before the Insolvency Act came into being and introduced examinations for insolvency practitioners. In addition, IPA sought a level playing field for insolvency practitioners and the public in the regulatory system. IPA has also spearheaded regulation developments and brought RPBs together to create that level playing field, notably with RICS and ICAEW.

Certificate of Proficiency in Insolvency prizewinner Brian Fagan's award, being collected by a colleague

Despite all this, we have much to do, especially in the complaints field, where we need to create the same level playing field for the public and link this effectively into the IPC as the public interest interface. I've asked David Sapte to prioritise this in the new JIC.

What does all this mean for the future of IPA? It means that we should not have competition (real or perceived!) on standards amongst RPBs. RPBs must compete through service levels to their members, hence IPA's conference sessions on the net/online services to members, the recent conference itself and the ethical helpline.

I think we have a good team ready to follow me and continue to meet these challenges in Tony Benedict, president from 28 April 2000, and in Keith Goodman, appointed vice president elect earlier this month. The past presidents were very encouraged by the strength of names appearing for the future, when they formulated recommendations to council on the next vice president. We have a good set of committee chairs who are all working very hard on your behalf and from whose ranks we feel confident we will be choosing future presidents.

CPI Prizewinners

The annual President's Reception took place on 23rd September, where the CPI Prizewinners were presented with their awards. Brian Fagan took first place with Lynne Robertson coming second.

Registered Property Receivers

By David Sapte, Partner at Begbies-Traynor

18 months ago I met David Lowe, then chairman of the Non-Administrative Receivers Association (NARA). We discussed the voluntary regulation of those professionals who took appointments as receivers under the Law of Property Act (LPA), in anticipation of the '10 Years On' Working Party report to the Minister.

This concept has since been well received by the professions and appointors. The Royal Institution of Chartered Surveyors (RICS) and IPA have designed a scheme which will improve education, produce an even playing field, and above all protect the public interest.

The scheme was launched this June, and the take up of applications to join has been excellent, with about 150 applications having been approved. As part of the joint scheme, RICS and IPA have appointed a Joint Registration Committee (JRC), which has met twice, with more meetings due shortly. It is interesting that there have been as many applications to IPA (mainly but not exclusively from insolvency practitioners wanting to join) as there have been from chartered surveyors applying to RICS.

All those who have already applied and been accepted into the scheme by IPA have been issued with their certificates. Their names have also appeared in the directory of property receivers, appearing on IPA's website.

The 'grandfathering' period runs out at the end of the year 2000. After this, it will be necessary to take an additional exam paper (as an add-on to IPA's CPI exam, to include an interview based upon property matters) in order to qualify for the scheme. The number of applications should therefore greatly increase, leading up to the end of next year.

IPA is offering voluntary regulation to all insolvency practitioners (whether they are licensed by IPA or not) and to any non-chartered surveyors who can show the necessary experience in dealing with LPA Receiverships.

Application forms for this scheme are available from Nick Milner at IPA and David Field at RICS. It is important to apply now to make sure that your name is included in the directory's first joint edition, which will be published in Spring 2000 based upon applications accepted up to that date.

Please ensure the application is properly completed, as many received so far have not been, some have not even been signed by the applicant. This causes the secretariat much more work, with the obvious delays involved. Timing may mean resubmission of the form may not be possible before the next JRC meeting.

The cost of the scheme is currently £300 per year including JIMU monitoring, although hopefully this will be reduced in time. It is important to keep the costs of IPA and RICS authorisations the same. We will keep this under constant review when both bodies gather experience of running the scheme.

The British Bankers Association has welcomed the scheme and it is hoped that this is a demonstration of how voluntary regulation in a profession can be introduced. We are pleased that SPI hopes to imitate this scheme (if change is voted for at its EGM in January) for the voluntary regulation of turnaround specialists.

The IPA Conference, 30 November 1999

By Carl D. Faulds
Partner at London and Southampton branches of Radfords

IPA has grown up. Its initial roots were as a forum for accountants dealing with insolvency to discuss common issues. This provided it with a good upbringing to ensure it was in a position to make a responsible contribution to society and the development of the profession's regulation.

This first IPA conference for many years highlighted the changes that have taken place in the profession. At the core of the day's agenda was the regulation of the profession. In particular it covered IPA's contribution to the way regulation of the profession has evolved and will continue to evolve.

The speakers, all of outstanding quality, referred to the common theme of the public's interest in us as a profession. Whether the level of interest in us is justified is a mute argument, the simple fact is we make good copy. Like estate agents in the eighties, insolvency practitioners are seen as the social pariahs of the nineties.

The opening session of the conference was provided by a triumvirate of Steve Hill (IPA Council Member), Robert Bertram (Secretary to '10 years on' committee) and John Moore (Insolvency Service, DTI, representative on '10 years on' committee). They provided the conference with a brief history of the profession from 'pre war dentists' through to a profession whose regulation takes account of the Human Rights Convention. The consequences of the '10 years on' report, a self-review of delegated regulation, can be summarised by looking at the role the Insolvency Practices Council (IPC) will take in directing future regulation.

The IPC will consist of six lay persons and three insolvency professionals. Its remit is currently being determined, but it is intended to consider and raise issues relevant to and representing the public interest. This could include the long running argument about investigating accountants being appointed receivers. Whilst the IPC will have no specific powers, the issues it raises and the recommendations it makes to protect the public interest will be taken very seriously, by both the DTI and regulatory bodies. The formation of the IPC represents both a challenge and an opportunity for the profession.

Richard Baron from the Institute of Directors provided a user's perspective of the profession. In referring to the IPC, he highlighted that an insolvency procedure amounted to the implementation of a process and the difficulties of not having a client. This left the regulators having to decide where to draw the line in defining the public interest. In essence 'who was close enough to the process to become a victim', a creditor, the directors, or the underbidder?

As if the challenges of the regulation of the profession were not enough to cause apoplexy for older practitioners, Alan Bloom (President of SPI) finished the morning session by explaining the reasons for change at SPI. IPA contributed to the discussions leading to the current proposals and accordingly supports them. The position that SPI finds itself in can be described using one of my favourite proverbs; 'a bend in the road is not the end of the road unless you fail to change direction'. It is only the very shortsighted that will fail to see the need for change.

The afternoon session began with Maurice Moses, fortunately resisting the opportunity to don a wet suit, providing a technically hitch-free surf around the new IPA website (reported in detail later in this issue). This relaxed delegates sufficiently to allow three JIMU inspectors to give us their interpretation of 'A Christmas Carol' without being heckled.

IPA Conference 30/11/99 from left to right: Maurice Moses and Graham Robertson

The key areas currently causing JIMU concern were said to be the following:

- Payments into the Insolvency Services' account
- Local bank accounts in compulsory liquidations and bankruptcies
- Payment of petitioning creditors' costs in the correct order of priority
- Ethical issues, particularly referrals from debt councillors
- Reporting to creditors when administration orders and CVAs overlap
- File fatigue in compulsory liquidations and in bankruptcies.

The disciplinary reports in IPA News are always of interest. Over the years the level of some of the reported fines and costs has generated a wave of concern through the profession. Tony Benedict did his best to reassure practitioners that IPA tries to make the 'punishment fit the crime'.

IPA and ICAEW were committing resources to create a level playing field for practitioners, which included closer links between the disciplinary committees of IPA and ICAEW. Tony emphasised that a great deal of costs and time could be saved if practitioners were willing to acknowledge their mistakes rather than immediately adopting a defensive and litigious stance.

David Sapte explained the current amendments being made to IPA's constitution. The previous constitution had evolved over the years and lacked clarity and consistency in certain areas, which is now being addressed.

The President of the Association brought the formal business of the conference to an end with an inspiring and awesome resume of the key points of the day. He paid tribute to all of the speakers and made a special mention of David Sapte's work, carried out over many years behind the scenes on behalf of members.

A lively panel session followed and unlike at many conferences, few delegates left early. This underlined the quality and calibre of the presentations and the conference's success. The event was ably managed and organised by Maurice Moses, as Chairman of both the conference and IPA's newly formed PR and Publications committee.

IPA Conference 30/11/99 from left to right: Maurice Moses, Steve Hill, John Moore, Robert Bertram

IPA Internet and Email Services

By Maurice Moses, Chairman of PR & Publications Committee, assisted by Tim Grundon of Smith Grundon & Partners

The age of electronic communication is most definitely upon us. IPA has launched a new range of services for its members to ensure that communications between the secretariat, members and committees, as well as the outside world, are as swift, efficient and cost-effective as current technology allows.

November's IPA conference, reported elsewhere in this journal, saw the launch of both the new IPA internet site (www.ipa.uk.com) and a completely new email based communications system.

Why bother?

Three reasons. First, our profession is, once again, at the focus of a great deal of attention from government and the media. With an Insolvency Bill undergoing consultation, proposals for revised CVA procedures and the prospect of changes for personal insolvencies too, the Government's spoken desire to encourage entrepreneurs and to pursue the rescue culture is taking form.

Anyone seeking information on these issues or general insolvency information is increasingly likely to use the internet to do so - whether they be potential members, journalists, struggling individuals or company directors, parliamentary researchers, academics or the man on the Clapham omnibus.

Second, whilst there are numerous sources of insolvency information on the internet, the IPA site hasn't been one of them. This does nothing to further IPA's stated aim to be the regulator of choice, nor does it assist its members in showing that they are part of an efficient regulatory organisation of which they should feel proud.

Third, communicating by email with members could save IPA a small fortune.

What's new?

Everything. Those of you familiar with the old site (www.theipa.co.uk) will, however, recognise some of the text you will see on the new site, for a while.

There is not space here to describe the entire site - you'll have to visit it yourselves - but I will describe the services intended for use by members.

If you don't have either the knowledge or the software to enable you to visit the site, call Vishvanath Naick, Internet Services Manager at Smith Grundon & Partners (0171 251 1500) who will be happy to help.

Member Services

The member services area provides three types of service; technical information, communications (with other members, committees and the secretariat) and assistance.

Technical information

Comprises information from three sources; SPI for Technical Bulletins, SIPs and so on, The Insolvency Service/DTI for Dear IPs and JIMU for Monitoring Guidelines. Other information will be provided as it becomes available. Comprehensive directories of the information available are provided and, where appropriate, links to websites hosting the information.

Bulletin Board System (BBS) and INSOL UK Forum

Alike in intention, these services differ in their reach. The BBS is there to be used by you, the members. It is a notice board for news, a place to seek opinion and where the secretariat and committees will post notices and information. We hope, depending on demand, that it will also be used as a recruitment, small ads and secure dialogue area, as well as a chat site. The secure dialogue service already exists for committees (see below - IPA Communications), but there is every

reason why, for example, two or more members working together on a case should be able to set up a dialogue that only they can access - at cheap call rates, anytime and without needing to send emails. The INSOL UK Forum is a service provided by INSOL across the globe and is used by its members to hold dialogue, appeal for technical assistance or debate INSOL issues. Responses can come from anywhere. Naturally, there is an emphasis on international insolvency issues, but there is not currently a secure dialogue facility.

IPA Contacts

A comprehensive directory of all IPA's officers, secretariat and committee members, complete with instant email service.

IPA Communications

The core of the communications system, this facility enables committees to conduct all their business, bar face to face meetings, online. Non-committee members will be able to peruse such information as they are entitled to, whilst committee members only will be able to access the secure area where they will be able to view internal documents relevant to them and make appropriate comment and feedback. Minutes and agenda will be circulated or made available for comment online, debates may be pursued at leisure, dates of meetings arranged and amended. Anything you could achieve using mail, telephone and email should be achievable here.

IPA Ethical Helpline

This service, provided free to members wishing to address ethical and professional dilemmas, has been run for some time by the secretariat. In addition to providing an alternative (secure) communications route to address the secretariat, this area lists previous enquiries (with all names removed) for the general benefit of members.

In addition to those services provided specifically for members, the new site also provides indexed versions of IPA News and a news service. This highlights recent insolvency news and events whether originated by IPA or any other body.

This new site represents a major step forward for IPA in providing communications to, and between, its members. The more it is used, the more efficient our communications should become and the less money we will need to spend on postage, stationery and printed documents.

Please forward your comments and suggestions to pr&p@ipa.co.uk.


Insolvency Practitioners Association

Contacting the IPA
Access members' area
Property Receivers' Scheme
Insolvency news
Making a complaint
Find an IPA member or firm
Register to receive news
Links to related websites

our aims

to promote and effect the training and education of persons who wish to attain skill and experience in insolvency administration

Founded in 1981, the Insolvency Practitioners Association (IPA) is a Recognised Professional Body (RPB) and over the years has grown in stature and numbers.

First page of IPA's website

Musings from the middle

By Peter Newman, Complaints Officer

Since my previous article, the number of complaints continues much as before, but their complexity is increasing as are complainants' expectations. Additionally, I have further evidence that complainants seek to pressurise practitioners by threatening to complain to the Association unless … In one instance the 'complainant' in writing to the practitioner shows at the foot of his letter that a copy had been sent to me. But it never was!

I encourage all of you who may be threatened, or aware of a possible complaint, to write to put me in the picture. I am pleased that certain of you do this already, and by these means I discovered the false claim outlined above.

I followed a process when receiving indications from a complainant, disgruntled with the Association's handling of his complaint, that he is taking the matter to his MP or higher. I offered the Insolvency Service a copy of my complaint file to inform them of the potential approach. However, they have just informed me that such action is unnecessary. I take some comfort from their stance.

In addition to the written complaints received, I handle many 'sharp end' telephone calls. Probably half of them do not relate to our licence holders, enabling me to direct the caller elsewhere. My aim with the remainder, after listening to their usually pent up concern, is to try to explain to defuse the problem and place the complainant's feet back on the ground. One of the most common complaints is absence of information; this is where I expound the 'virtues' of liquidation or creditor committees. If in an 'elderly' insolvency you have a call to establish such a committee, it quite possibly results from the creditor having contacted me.

I do continue to wonder how many of you give the necessary dedication in achieving the resolution required under Insolvency Rule 4.52(1)(b), for example in liquidations. This is because none of you fail in achieving an appropriate resolution under Insolvency Rule 4.52(1)(a), presumably after necessary discussions and explanation. I believe proper attention would help protect the profession's image and avoid the inevitable cost of establishing subsequent creditor committees.

My final subject is trading in administrations. As a former banker, I understood such trading might not be profitable and that difficulties giving rise to insolvency could well rumble on. However, I now receive an increasing number of complaints from post administration creditors that they are not being paid.

This culminated last week with a phone call from such a creditor's managing director. He had sent me the administrator's letter circulated to all creditors on his appointment, stating 'Goods or services delivered against such orders will be paid for on normal trade terms, unless otherwise agreed.' He required action against the administrator because his August account had been paid 17 days late! His understanding was that supplying goods on order from the administrator gave him a guarantee of payment by the due date. I politely explained that his understanding was incorrect! However, perhaps the wording of the administrator's letter could be changed for future clarity.

Regulatory Report

INVESTIGATION COMMITTEE REPORT - CONSENT ORDER

Following a random inspection by the Joint Insolvency Monitoring Unit (JIMU), a member, DG Richardson, agreed to the Investigation Committee making the following order against him:

"That in relation to the affairs of a Bankrupt, he received a sum of money and failed at any time to pay the amount into the Insolvency Services account contrary to Regulation 20 of the 1994 Insolvency Regulations and thereby avoided payment of the Ad Valorem duty thereon."

Order: Reprimand, Fine £3000 and costs £1733

Ethical Helpline

The Ethical Helpline continues to help members with problematic cases. An interesting example is given below.

A member (X) wished to employ a retired insolvency practitioner (Y) to take appointments on a part time basis. Y still held an ICAEW insolvency licence. However, a potential conflict existed as Y also acted as chairman to a solicitors' firm instructed by a directors of a group of companies, X was the liquidator for eight of these companies. These proceedings were likely to be contentious, and X was likely to be requested by the Official Receiver's office to accept further connected appointments.

Y did not wish to resign chairmanship of the above solicitors firm upon joining X's firm. His role with this solicitors' firm was to consider and develop overall strategy, financial management, training and practice development; with no involvement in client related work.

The subject matter was quite material due to the possible scope of the directors' enquiries and the amount of money involved. Litigation proceedings were initiated and were likely to become acrimonious, potentially leading to considerable problems.

The core to the problem was that Y would inevitably 'have a foot in each camp'. However, such problems are not unique and do happen sometimes when partners or senior staff transfer from one firm to another, or practices merge.

These issues are addressed in the Ethical Guidelines as giving rise to potential 'self-interest threats'.

On the facts, it wouldn't be necessary to halt negotiations for Y to become a part time consultant with X's practice. However, he must be clearly 'ring-fenced' from both practices' involvement in this matter. The best solution would be to create a tripartite written agreement between X, Y and the law firm, recognising the problem and agreeing a protocol to erect a Chinese wall around Y's activities in both practices. The law firm concerned could provide a solicitors' undertaking to take all necessary steps to ensure Y did not have access to confidential information. They might require X to give some equivalent undertaking. This document could then be made available to interested parties, evidencing resolution of the potential conflict.

Additionally, as a pre-requisite, X's creditors' committee and solicitors should be given the full facts, and requested to approve the position, as should (probably), from the law firm's point of view, their client.

If the committee refused to accept the situation, X could be forced to think again. The law firm could also have a problem if their client does not accept the above resolution. This would however be the law firm's problem. In these circumstances, and given the materiality of the litigation, Y could have to reassess his ability to be a consultant for both firms whilst litigation continues.

Resolution of Council

Resolution of Council pursuant to Article 63(c) of IPA's Articles of Association

'That the Guide to Professional Conduct and Ethics dated March 1999 be amended with immediate effect so that the first sentence of paragraph 3 (xvi) shall read as follows:

'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 improper.'
[Note: the word 'improper' is the word used by the Institute in its Guide.]

Firm Licensing – the Canadian experience

By Bob Chapman, Vice President of PricewaterhouseCoopers Inc., Toronto.

Having practised in Canada for 13 years, I have followed the current debate on firm licensing with interest. Here we don't have a problem. Firms have been licensed in Canada for as long as most practitioners can remember, and appointments are almost always taken in the name of the firm rather than the individual.

This is very convenient for practitioners as there is no need for multiple officeholders, or for officeholders to appoint powers of attorney. Contracts can be executed and documents signed by any authorised person within the firm.

In larger files, this creates a real benefit for creditors. Canada is huge and laws on numerous issues including property rights, priorities and landlord and employee rights vary widely between provinces; in particular between common law English speaking provinces and the civil law province of Quebec. The only way to deal expeditiously with resulting issues is by delegating authority to colleagues on the spot.

Briefly the system works like this:
Receivership, liquidation, bankruptcy and turnaround work in Canada is normally performed by the insolvency arms of multi-service accounting firms, or by specialist 'boutiques'. In either case, a separate limited company is incorporated for this purpose (the 'insolvency firm'). Individuals become licensed as trustees in bankruptcy by successfully completing written and oral examinations and satisfying the regulator as to practical experience, character and reputation. Individuals with licences will normally be attached to an insolvency firm. and Canada's Bankruptcy and Insolvency Act expressly allows insolvency firms to obtain licences and accept insolvency appointments.

In order to obtain a licence, the insolvency firm:

- must restrict its objects to insolvency appointments and related work;
- must be privately owned;
- officers and directors must mostly consist of individual licence holders;
- must satisfy the government regulator (Superintendent of Bankruptcy) that appropriate arrangements exist to protect estate creditors' interests. These can take the form of performance sureties or insurance and/or suitable indemnities from the shareholders/beneficial owners (e.g the related public accounting firm);
- must delegate an individual licensee for each appointment, who must acknowledge acceptance of this delegation in writing to the regulator;
- must satisfy the regulator that it has adequate financial and physical resources to perform all its duties and responsibilities;
- should have an individual licensee resident in each office in which the insolvency firm intends to practice;
- must be identical in name to the related public accounting practice, with the sole addition of Inc, Ltd. etc; or must include only names of individual licensees working for the firm. For example, a sole practitioner might call his firm 'John Smith and Associates Ltd'.

Insolvency firms set out their own internal rules for handling appointments according to the regulations. These will include the levels of authority within the firm for signing contracts, cheques and statutory filings. Corporate titles are common.

The system works well and there is certainly no movement afoot to follow the U.K model! Controls appear sufficient to ensure individual licensees are accountable for appointments they have been delegated to handle. When it comes to a regulatory audit, the licence and livelihood of both firm and individual are on the line.

Bernard Phillips Memorial Lecture – 23 September 1999

Desmond Flynn, Deputy Inspector General of HQ Operations,
the Insolvency Service

Insolvency – A liberal profession for the 21st Century?

The formal process of insolvency, being the apportionment of loss, is inevitably founded in the misery of others. Certainly, the practice of insolvency as we know it had some pretty miserable origins in the scandals surrounding bankruptcy trustees in the early and middle years of the 19th Century - an era brilliantly evoked in Dickens' novels. There was never any doubt that he had caught the essentially bleak spirit of the time, bleak that is for those involved in any form of legal process. Whilst Mr Micawber's prescription is now entirely clichéd, there is no mistaking the author's almost phobic fear of debt

In such an invented world the effortless parasitism of the legal establishment is portrayed as the root of all evil. In reality the indolent and uncaring legal class of the time was the least of anybody's difficulty - particularly if they had an interest either as debtor or creditor in an insolvent estate. Such estates were routinely prey to the actions of fraudulent trustees whose activities became a byword for casual corruption.

It was perhaps curious that it was the accountancy profession which might be seen as being the principal beneficiaries of society's resolve to end such a state of affairs. Indeed although that profession was the immediate beneficiary, no sooner had it become established than those affairs which had acted as midwife to their birth - insolvency administrations - were despatched into the professional nether regions.

In my view the professionalisation of insolvency practice did not really begin until the 1960s. The formation of the Insolvency Practitioners Association (IPA) was the establishment of a group 'of itself and for itself'. It marked the emergence of the phenomenon still much remarked upon by many insolvency practitioners, that they often feel they have more in common which each other than they do with their own non-insolvency practitioner partners.

The post-Barber boom recession of the 1970s and the high profile involvement of insolvency practitioners in the Bank of England's 'lifeboat' operations raised insolvency's profile sufficiently high to persuade the then Labour government to set up the Cork Committee to undertake a fundamental review of insolvency law and practice. The Committee's deliberations went on for some years but, in all the submissions made, there was very little said about the need to put the practice of insolvency on a statutory and professional basis. It was almost as though that was a 'given' outcome of the process with serious contention and debate being reserved for other areas.

Two other events added considerable impetus to the process of professionalisation that culminated in the Insolvency Act.

The first of these was the 1981 recession which is now widely seen as the anvil on which large but out-dated parts of the economy were to be broken. Just as war brings in its train famine, pestilence and death so the early 1980s recession saw the last hurrah of truly awful insolvency practice, at least on a systematic and major scale. I refer of course to that spiritual inheritor of all that Dickens described and damned more than a hundred years before, "Hissing Sid" and his chums in Chancery Lane registrars. If ever there was an object lesson in the desirability of regulated insolvency practice they provided it and in a very timely fashion.

However the middle years of the Thatcher government did not necessarily provide the best environment for the creation of this or indeed any other profession. I think it fair to say that Mrs Thatcher was suspicious of all professions, having a natural tendency to agree with Shaw that they represent conspiracies against the layman. The creation of a profession of insolvency invested with a statutory monopoly of insolvency practice was, in retrospect, a rather curious outcome given the political context.

The insolvency profession that emerged was not constructed entirely along traditional lines. Whilst regulation was substantially to be in the hands of private, professional bodies, those bodies would require to be recognised by the Secretary of State. The requirement for recognition (with the implication that continued recognition required continued satisfaction on the part of the Secretary of State) lead to a very different regulatory regime from that applying to accountants or solicitors. An additional curiosity was the role to be played by the Secretary of State both as the regulator of regulators and as a direct authoriser of insolvency practitioners. This power ensured that those who were not members of recognised professional bodies could continue to carry on the practice of insolvency and also contained the implicit threat that, should the recognised professional bodies overly restrict entry, the Secretary of State would be able to force a re-balance of supply and demand.

The new profession was immediately conscripted to the cause of commercial regulation through the Company Director Disqualification Act. For a government committed so wholeheartedly to the free operation of the market, the conspicuous failure of corporate governance evident in the early 1980s recession needed to be addressed urgently. When the least cost option, automatic disqualification, was rejected by their lordships' house, the profession was drafted in to fill the gap. The profession's acceptance of this burden was seen in Whitehall very much as a quid pro quo for its newly bestowed status and statutory monopoly.

The profession in 1986 had yet to reach anything like the degree of maturity that we see today. Having been involved in the regulation of the profession for nearly ten years, I am firmly of the opinion that it has made and continues to make great strides towards reaching a state of true professionalism. I would define that state as being achieved when the group or class moves beyond being 'of itself and for itself' to recognising that its obligations to and the interests of wider society may on occasion prove pre-eminent. Put another way, it can't all be about money.

I would therefore like to touch briefly on some of the major milestones of the development of the profession since 1986 and to consider the possibilities for further development in the future.

The formation of JIEB was a large step in raising the professions' standards. I admit to some worry in the early years when the pass rates were sufficiently low to give credence to the proposition that the exam was designed to keep people out of the profession, rather than ensure a flow of properly trained recruits into it. I am pleased to say that things have improved considerably. The development of monitoring was another major milestone for the profession. Latterly we have seen the review of regulation, which operated under the title of 'Insolvency Regulation - 10 Years On'. This indicated (to me at least) that the profession had started to become fully mature in its consideration of the public interest in its affairs and operations. The identification of the public interest deficit in the process of ethical consideration and standard setting showed that the profession could be genuinely outward looking. The proposed Insolvency Practices Council (IPC) has the potential to enable the insolvency profession to be a market leader in transparency and accountability. Much will depend on the quality of the individuals persuaded to serve on the Council and on the willingness of every insolvency practitioner to invest it with authority and to respect its deliberations. I hope it will be given a very fair wind.

The report of the Regulation Review Working Party defined the Insolvency Service's role as central to the process of regulation. Whilst we feel we have played an encouraging role in the development of the profession, it may be that its continuing development, which will involve the RPBs in far more collective action (for example in relation to the IPC), offers the prospect of a reducing role for the Secretary of State and the Insolvency Service. We are not seeking to abdicate our responsibilities, rather, other regulatory developments will introduce something new into the equation which may alter the established balance. Increasingly, we

Bernard Phillips Memorial Lecture. Colin Bird presenting flowers to Betty Harknett, of the Secretariat

see our role as facilitating the RPBs' collective activities.

If the IPC proves effective, will this represent the full flowering of the profession, a golden age in which the material awards of insolvency practice are matched by the respect and admiration of society generally? I doubt it. Those who apportion pain and misery are never likely to be loved. Respect is the best that can be hoped for. That and a decent level of remuneration - a topic without which no discussion of insolvency matters would be complete.

I write as one who has had the considerable privilege of sitting with Mr Justice Ferris and colleagues as we struggled with the age-old question: 'how long is a piece of string?'. The great difficulty with this issue is a psychological one. The insolvency office-holder is a person who applies the rules for the apportionment of loss. His reward increases the extent of that loss. I think the language used can create false expectations. The position of a trustee whether with a capital 'T' in a personal insolvency or with a small 't' in corporate proceedings tends to sound a false note. People tend to think of trustees as people who run charities, local hospices, independent schools or refuges for battered wives. That sort of trusteeship tends to be characterised by being entirely voluntary and unremunerated.

I am not sure that there is likely to be any single answer to the conundrum of office-holders' remuneration. I do believe that Mr Justice Ferris' examination of the issue has been extremely valuable in concentrating the profession's and others' minds on this difficult subject. It has provided a boost to the drive for transparency which must be an absolute pre-requisite to any informed view as to what remuneration is justified in any particular case.

What are the challenges ahead to the continued development of the insolvency profession? I think they may lie in the access to the skills which insolvency practioners have and which are needed by many who lack the ability to pay market rates for them - or even to pay for them at all. Clearly this is more likely to apply to individuals, but businesses in their early years (whether incorporated or not) are often vulnerable to short-term difficulties which, with the right advice, need not prove fatal. I think it may well be worth the profession thinking about ways in which it might be able to help fill this gap.

Editor's note: the article above is an abridged form of the original lecture of the 23 September 1999.

‘The times they are a changing’

By Brendan Guilfoyle, partner at Begbies Traynor

The winds of change are blowing around the insolvency profession. How should IPA react?

SPI is proposing to open its membership to persons other than insolvency practitioners and to change its name to Association of Business Rescue Professionals. Members of SPI will vote on this proposal in January. If approved it is anticipated that a number of turnaround practitioners will, subject to satisfying the entry requirements, become members of SPI. If these new members are not already subject to an ethical code through their existing professional body, they will accept a voluntary ethical code. Some monitoring will also be needed, principally through a Continuing Professional Education (CPE) requirement. The ambition is, in time, to create an examination entry route for turnaround practitioners.

SPI’s proposed changes are in response to changes in the market place and in government policy towards insolvency. The Government believes that more businesses can be saved than is currently the case and they share the determination of their predecessors to create a rescue culture.

The Insolvency Bill is due to become an Act during the current session of Parliament. The Secretary of State will take, amongst others, powers to enable individuals who are not otherwise authorised to act as insolvency practitioners, to act as nominee or supervisor. This marks the end of our statutory monopoly of insolvency appointments.

A DTI/Treasury working party has recently published a consultative document reviewing company rescue and business reconstruction mechanisms. The review looks across the pond to the USA and considers the appropriateness of US style procedures to the rescue of UK companies and businesses. Amongst many suggestions is the solvent administration (a company would not need to be insolvent or about to become insolvent to obtain protection). This once again raises the prospect of a person other than an insolvency practitioner acting as administrator.

A further report on bankruptcy is due next year, with the prospect of debtors retaining assets to assist them in acquiring a home or re-establishing themselves in business.

So, how should IPA be reacting to all this proposed change? IPA has been closely involved in the proposed changes at SPI. Naturally, as a co-founder of SPI nine years ago, IPA has been eager to ensure that services for its members should not in any way be diluted and that the effectiveness of SPI as a lobbyist on behalf of the insolvency profession should not be compromised. The effectiveness of SPI has recently been demonstrated by the speed with which it has mustered the necessary resources to respond, within very tight deadlines, to the Insolvency Bill and the consultative paper.

The indications from SPI are that the proposed changes will bring about an improvement in services to IPA members, as greater resources become available. The resources available through SPI and the resultant co-operation between the RPBs will be in great demand as the profession gets to grips with what promises to be a busy period in terms of new legislation and initiatives.

However, I think the greatest challenge for IPA will be the soon to be established Insolvency Practices Council (IPC). This principally lay body will be 'up & running' early next year. The IPC was one of the principal recommendations of '10 years on - A Review of Insolvency Practitioner Regulation' and will be an interface between the public and the insolvency regulators. It will probably report annually to the Insolvency Service in its role as the regulator of regulators, and whilst having no formal powers it will be highly persuasive and should not be underestimated. The IPC will have a high profile chairman and eight other members (of which only three will be insolvency practitioners). You can be sure that the minister's mailbag on insolvency will be placed firmly on IPC's mat.

Insolvency is already one of the most heavily regulated professions and the IPC is only likely to increase this burden. This prospect is particularly galling as other less regulated professionals may be given the opportunity to undertake insolvency appointments. Paradoxically, I believe that we have to make a virtue of the fact that we are highly regulated, bonded and bound to achieve the highest standards of practice.

Towards this end IPA should continue to seek to be the leading insolvency regulator, and foster greater co-operation between the other RPBs. As a profession, we can then readily demonstrate the effectiveness of our regulatory and best practice regimes. Perhaps more importantly we can also then demonstrate that we are an enlightened profession; willing to accept suggestions for improvement, and embrace and effect change should it be necessary.

You can not make a silk purse from a sow's ear: so a large number of companies and businesses will fail each year and there always will be a demand for traditional insolvency work. We should not see these changes as threatening but as an opportunity for many of us to increase and enhance the services we have to offer.

At the end of the day we want to work with government and creditors to achieve their objective of rescuing more companies and businesses. However, where appropriate, it is we who must sound the notes of caution and ensure that there are adequate safeguards for creditors.

You can not make a silk purse from a sow's ear: so a large number of companies and businesses will fail each year and there always will be a demand for traditional insolvency work. We should not see these changes as threatening but as an opportunity for many of us to increase and enhance the services we have to offer.

We must remain practical and realistic, the changes will not be seismic but we must be ready to react constructively.

JIMU recruitment drive

The following advertisement has been issued for the position of JIMU Monitoring Inspector:

Monitoring inspector required to work from a home base in the North of England. Candidates should have at least five years experience of all types of insolvency procedure. An insolvency licence holder is preferred but not essential and an ability to write concise and factual reports using the latest IT will be expected of all candidates.

The job will entail reviewing the work and office systems of insolvency practitioners and reporting to their regulatory bodies, for the purpose of ensuring compliance with statute and best practice in order to satisfy those bodies that practitioners remain fit and proper persons to continue to be authorised.

The remuneration package will involve
- A competitive salary
- Pension contributions
- A company car

If you wish to be considered for this interesting and varied position, please send an up to date Curriculum Vitae to:

The Joint Insolvency Monitoring Unit
Bow Bells House
11 Bread Street
London
EC4M 9BE

Mark for the attention of: Nellie Bacani

New Members

Since 1 July 1999, the following have been added to IPA's membership:

Members

Surname	*Forename(s)*	*Firm*	*Town/City*	*Member type*
Beighton	Conrad A	BDO Stoy Hayward	Walsall	Member
Bell	John Paul	Clarke Bell	Manchester	Member
Brittain	Louise Mary	Baker Tilly	London	Member
Brown	Timothy	Buchler Phillips Limited	London	Member
Bull	Ian Nicholas	HLB Kidsons	Ipswich	Member
Critchley	Stephen Philip	PricewaterhouseCoopers	Liverpool	Member
Hardy	Matthew Douglas	Poppleton & Appleby	Birmingham	Member
Heaselgrave	Timothy J	BDO Stoy Hayward	Birmingham	Member
Holmes	Karl Christopher	Begbies Traynor	London	Member
Hosking	Andrew Lawrence	HLB Kidsons	London	Member
Linton	Martin Henry	Leigh & Co	London	Member
Loizou	Michael	BDO Stoy Hayward	London	Member
Marshall	Steven John	BDO Stoy Hayward	Chelmsford	Member
McCourt	Peter J	The Institute of Chartered Accountants of Scotland	Edinburgh	Member
Moran	Lynne	ACCA	London	Member
Mummery	Glyn	Redhead French	Hornchurch	Member
Munro	Felicity Anne	Ernst & Young	London	Member
Murphy	Kevin Gerald	Downham Train Epstein	Bury	Member
Nutting	Nigel David	Moore Stephens Booth White	London	Member
Pagden	Laurence	BenedictMackenzie	London	Member
Plunkett	Delyse Ann	Royce Peeling Green	Manchester	Affiliate
Prescott	Colin Andrew	Moore Stephens Booth White	Bristol	Member
Samuels	Richard Michael	Bradshaws	Eastbourne	Member
Solomons	Michael Stephen	BDO Stoy Hayward	London	Member
Stanley	Paul	Begbies Traynor	Manchester	Member
Thompson	Tony James	Piper Thompson	Weybridge	Member
Twitchen	Alexander Stuart	Newman & Partners	Harrow	Member
Walker	Ian Edward	Pannell Kerr Forster	Exeter	Member
Wardell	Wendy Jane	KPMG	Southampton	Member
White	William	W White & Co	Kilmarnock	Member
Wilson	Joanne	McCabe Ford Williams	Sittingbourne	Affiliate
Winder	Claire Sophie	Ernst & Young	Leeds	Affiliate
Withyman	Thomas Antony	Lawrence Graham	London	Member

Firm Membership

Firm	*Town/City*
Clark Bell	Manchester
McCabe Ford Williams	Sittingbourne
Redhead French	Hornchurch
Richard J Smith	Ivybridge

Nunn Hayward, Aylesbury, was admitted to firm membership on 23 February 1999.

Insolvency Practitioners' Association

Mission statement

IPA aims to promote and maintain the highest standard of performance and professional conduct amongst those engaged in insolvency practice:

- exercising our authority as a regulator;
- encouraging students to sit the Joint Insolvency Examination;
- advancing the proficiency of junior members of the profession through the Certificate of Proficiency in Insolvency;
- ensuring that members' conduct results in favourable reports with minimal complaint;
- reviewing the guidelines and criteria for the issue of licences;
- working with the Joint Insolvency Monitoring Unit to monitor performance;
- investigating complaints and disciplining members and licence-holders;
- furthering a self-regulated, licensed profession.

IPANEWS

INSOLVENCY PRACTITIONERS ASSOCIATION

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