



## IPA Schedule of Qualitative Issues 2020

updated for Insolvency (England and Wales) Rules 2016

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1. Maintenance of records, including notes of strategies identified, advice given and key decisions taken
  - 1.1. Focus on the extent to which IPs evidence their compliance with the SIPs, their strategies and decision making processes as a matter of good / standard professional practice and as a means of:-
    - demonstrating consideration of conflict, ethics and money laundering issues
    - demonstrating the strategy and risks identified, the priorities applied, the efficiency and the actual direction of the management of individual cases
    - commercial reality of accepting appointments
    - recording departures from normal practice (e.g. decision not to advertise assets for sale)
    - providing evidence of the estimate made at the commencement of a case of the likely realisations, the strategy developed and the time taken to close it
    - reasons for trading at a loss in administration
    - demonstrating the considerations in electing to use a specific decision procedure
  - 1.2. Review notes and records (including those retained electronically) of significant meetings and telephone conversations.
  - 1.3. Ensure notes are sufficiently detailed and made contemporaneously. Are they sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of any actions taken?
2. The quality of communications with creditors and other stakeholders
  - 2.1. Communications are clear, concise and in plain English. Membership of RPB clearly shown on correspondence with confirmation to creditors at earliest opportunity that the member is bound by the Insolvency Code of Ethics.
  - 2.2. Clear explanations of creditors' rights to opt out, the use of websites and continuing proxies.
  - 2.3. Websites directly associated with the IP, and those from which they may receive any work referrals, should be:
    - fair and not misleading
    - avoid unsubstantiated or disparaging statements
    - be legal, decent, honest and truthful

- comply with relevant codes of practice and guidance in relation to advertising (as revised by the Insolvency Practitioner Codes of Ethics, effective from 1 May 2020)
- 2.4. Procedure for handling complaints – check the quality of the procedure and speed of response and recording of outcomes and redress. How is the complaints procedure brought to the attention of creditors and stakeholders? Are complaints given prompt attention at a senior level? Is an internal log held and how many complaints have been received in the last twelve months? Have procedures been effectively changed to minimise the chance of reoccurrence.
  - 2.5. Quality (and existence) of letters of advice following engagement meetings.
  - 2.6. Quality and timeliness of reporting to creditors.
  - 2.7. Quality of communications with creditors, in terms of clarity/lack of jargon and promptness of response to enquiries.
  - 2.8. The extent of consultation with creditors, for example before taking action to realise additional assets where the cost/ benefit is not clear cut or an explanation for no consultation.
  - 2.9. Explanations given to creditors of the reasons for proposing to close a case.
  - 2.10. Explanations to creditors of action taken to investigate directors’ conduct, particularly in cases where concern has been expressed in this respect.
  - 2.11.

### 3. Estate Funds – management of funds/ dividends paid

- 3.1. Evidence of IP review and the accuracy and frequency of bank reconciliations.
- 3.2. The investment of estate funds (i.e. return achieved).
- 3.3. Dividends paid vs. assets realised.
- 3.4. The calculation and timeliness of dividends (i.e. the method of calculation, correctness of admission of claims &/or of rejection).
- 3.5. The validity of claims admitted or rejected.
- 3.6. Commissions and inducements paid from a firm’s internal accounts, which we have the power to inspect under our Constitution.
- 3.7. ‘Flexibility’ in the valuation of goodwill on sales, documented consideration of apportionment to goodwill.
- 3.8. Documented consideration of apportionment of sales proceeds to favour particular creditors or groups.
- 3.9. The proportion of cases where no dividends are paid (also a desktop monitoring issue).
- 3.10. The extent of internal controls over e.g. the signing of cheques, bank transfers and posting of entries. Walk through of cashiering systems.
- 3.11. Evidence that financial controls and safeguards, including levels of insurance cover have been fully documented and reviewed by the office holder for their adequacy as an when appropriate(SIP 11 at a minimum annually)

#### 4. Case progression / unclosed cases, age analysis

##### 4.1. Explanations may be sought:-

- where cases are open longer than 'normal' (e.g. generally agreed 18 months max required for MVL, 24 months for a CVL)
- where large balances are held or a nil/debit balance over a number of years
- where there are a large number of older cases – why have they not been closed?

##### 4.2. Consider:-

- speed of recovery/disposal of chattels
- extent of asset recovery in relation to time spent (taking into account complexity of individual cases), is there benefit for creditors?
- proactive action taken (e.g. telephoning, visits made to obtain information, locate assets)
- timeliness of distributing funds

#### 5. Staff & systems support and control

- 5.1. The quality of staff within the firm, relevant experience and qualifications.
- 5.2. The extent of staff training arranged with particular reference to CPE and the introduction of revised/new legislation.
- 5.3. The overall caseload & resource available to deal with it.
- 5.4. The quality of systems in operation (i.e. that systems are in place and used, so as to enable the IP to operate on a fit & proper basis).
- 5.5. Control of funds.
- 5.6. Check IP has systems to monitor ethical standards including conflicts of interest, independence, money laundering, terms of engagement, quality of team working on each case.
- 5.7. The level of control exercised over in-house and outsourced work.
- 5.8. The level of compliance awareness among staff.
- 5.9. The systems and controls in place to inform the IP of the extent of any losses incurred in trading under administration.
- 5.10. The extent to which there is a formalised protocol within the firm on matters to be delegated to staff and the extent of the authority of those to whom the licence holder has delegated work.
- 5.11. Conversely, confirmation that the licence holder sees and signs off case progress reports, file reviews and deals with significant/ 'serious' matters personally.
- 5.12. The extent to which systems are in place to ensure that incoming and outgoing post and follow up of outstanding issues is monitored by a responsible person.

6. Remuneration and expenses– fees charged vs. work done / dividends paid etc.
  - 6.1. Authority obtained for remuneration drawn and that such authority was properly approved having provided information on the key issues (anticipated work, cost, financial benefit to creditors) to enable creditors to understand those issues and assess whether the fee is fair and reasonable.
  - 6.2. Clarity of reporting to creditors on anticipated work and work undertaken, including reports against estimates provided.
  - 6.3. Fee rates & nature of costs charged and their justification in individual cases and in different types of insolvency work.
  - 6.4. The quality of time spent on cases and the nature of costs passed on (as opposed to quantum, for example).
  - 6.5. The amount of work actually done vs. what appears on the time sheet/ has been charged to the case. Complete a spot check for an individual piece of work.
  - 6.6. The level of fees drawn pre & post appointment, do they appear just and reasonable?
  - 6.7. The level of professional fees in relation to original estimate / total costs / outcome.
  - 6.8. Appropriate categorisation of expenses between category 1 and category 2. Clear reporting on expenses drawn and evidence of compliance with SIP 9 principles and key compliance standards of SIP 9.
  - 6.9. Clear disclosure of any proposed payment to associates and appropriate evidence of consideration of best value and evidence of appropriate approval prior to drawing.
  - 6.10. Appropriate disclosure and authorisation obtained for category 2 expenses.
  - 6.11. Is there any perceived profit from the reclaiming of expenses? Are they fair and reasonable and at market value?

## 7. Sources of work, phoenix operations, investigation of directors

- 7.1. The extent & nature of involvement pre appointment.
- 7.2. Appointment following advice given to directors. Any introductory fees paid? Disclosure of fees.
- 7.3. Objectivity of advice given to debtor (e.g. re IVA route). Clarity of roles and expectations.
- 7.4. Awareness of exclusion for IPs to provide debt counselling services to individuals if doing so in reasonable contemplation of an appointment under the Insolvency Act 1986.
- 7.5. Sale of assets to directors - independent valuation agent used, efforts at marketing.
- 7.6. Submission of D returns – failure to submit or % of adverse reports submitted.
- 7.7. Evidence of statutory investigations undertaken, initial assessment and conclusion, review of books, records and bank statements, directors questionnaires requested and reviewed, review of accounts etc.
- 7.8. Correct & adequate proxies obtained for appointment. Any misuse of proxies?
- 7.9. Apportionment of sale proceeds, does it favour particular creditors?

- 7.10. 'Flexibility' in the valuation of goodwill in a sale, evidence of considerations in apportionment.
- 7.11. Large numbers of cases with no assets/ no dividends.
- 7.12. Regular sources of work – any introductory fee paid, any formal arrangements, disclosure, consideration of potential and perceived ethical issues.

## 8. Asset recovery – asset identification, realisation, value obtained

- 8.1. Check that all assets have been realised (or interests noted), including potential tax losses.
- 8.2. Was the best price obtained for the assets? Was appropriate marketing undertaken? Was realisation timely?
- 8.3. Compare the estimate made at the commencement of the case as to likely realisations, strategy and the time to closure with the outcome.
- 8.4. Is there regular use of one agent or solicitor?
- 8.5. The extent of investigation of directors' conduct in relation to asset recovery.
- 8.6. Willingness of IP to litigate against directors in order to recover assets. Consideration of creditors views when doing so.
- 8.7. Finding hidden assets (e.g. assets not disclosed in statement of affairs) for the benefit of creditors; identifying inventive/ bespoke solutions in individual cases.
- 8.8. Examine the process followed in the sale of assets/ businesses.
- 8.9. Consider the extent to which creditors benefit from the proceeds of asset sales in administrations.

## 9. Particular issues re: IVAs & CVAs

- 9.1. The quality of advice given to the debtor pre appointment (particularly re options available) and by whom. Appropriate authority to provide advice?
- 9.2. Is there clear documentation showing the debtor's understanding of the process and commitment to it and that all options have been discussed. Where modifications are accepted evidence that client understands the impact on implementation and viability. Where cases are dealt with in volume, evidence supported by call recording and evidence of quality assurance reviews.
- 9.3.
- 9.4. The clarity and quality of information provided to debtors. There should be a clear differentiation between the various stages and roles associated with a VA.
- 9.5. Evidence of assessment of debtor and the success of the process at all stages.
- 9.6. Extent of monitoring by supervisor.
- 9.7. Adherence to the terms of the agreement by both debtor and supervisor. Prompt action and reporting of any breach or default.
- 9.8. Reporting of fees against the original estimates.
- 9.9. Volume of VAs supervised, number rejected, number failed within 6-12 months and numbers continuing whilst in arrears.
- 9.10. Solutions for early completion, are they fair to debtors?

- 9.11. Is the VA closed promptly on completion?
- 9.12. Review of expenses and disbursements. Have they been reviewed to ensure they meet the principles of SIP 9? Are they correctly authorised and drawn?

#### 10. Compliance with Anti-Money laundering regulations.

- 10.1. Review risk assessment and appropriateness of risk factors.
- 10.2. Verification of identity as part of customer due diligence and appropriate record keeping.
- 10.3. Suitable staff training and effectiveness of internal suspicion reporting.
- 10.4. Review disclosures to the authorities and the appropriate suspicious activity reports and defence against money laundering requests.
- 10.5. Evidence of regular monitoring of procedures and compliance management.