

JOINT NOMINEE AGREEMENTS

1 With the increasing prevalence of joint nominee agreements in the volume IVA market, this document sets out the Recognised Professional Bodies' (RPBs') expectations on insolvency practitioners who enter into joint nominee agreements.

2 The terms of such agreements can, and do vary, with insolvency practitioners undertaking various tasks in the lead up to the creditors' decision procedure to approve the proposed voluntary arrangement and the appointment of a supervisor, depending on the nature of the agreement. What is common is that one insolvency practitioner will identify an individual who may be suitable for an IVA and at a later stage will be appointed nominee together with another insolvency practitioner who will subsequently become the sole supervisor. For ease, in this document, these roles are described as *the referring insolvency practitioner* and *the receiving insolvency practitioner*.

3 All insolvency practitioners are required to comply with the law, the statements of insolvency practice and their RPB's code of ethics irrespective of the nature of their role in relation to a particular insolvency appointment. The existence of a joint nominee agreement does not negate or dilute these requirements.

4 An insolvency practitioner could be an employee and have limited control over the arrangements entered into by their employer. Insolvency practitioners in this situation should take note of the requirements in their RPB's code of ethics relating to employed IPs. It is not acceptable for an insolvency practitioner to rely on their status as an employee as justification for carrying out functions under any joint nominee agreement which are contrary to the fundamental principles or to fail to implement necessary changes to the way the agreement operates.

5 SIP 1 imposes a reporting obligation on insolvency practitioners should they become aware of any insolvency practitioner who they consider is not complying or who has not complied with the relevant laws and regulations and whose actions discredit the profession. The insolvency practitioner's RPB may impose additional reporting requirements including requirements to report their own conduct. If failings in the operation of any joint nominee agreement are identified this could trigger a reporting requirement.

6 As a general principle the RPBs do not consider the fact that something has been prepared by another insolvency practitioner to be a reasonable explanation for the use of inaccurate documentation.

Role of the referring insolvency practitioner

7 The referring insolvency practitioner should explain to the debtor/(s) the roles of everyone involved in the process and who they work for and take steps to limit any confusion on the part of the debtor.

8 If the agreement requires the referring insolvency practitioner to use scripts or documentation produced by the receiving insolvency practitioner, the referring insolvency practitioner needs to satisfy themselves that they are appropriate and accurate.

9 If the referring insolvency practitioner identifies any errors in standard documents or scripts, they should be notified to the receiving insolvency practitioner as soon as possible (and vice versa) and steps taken to get these corrected promptly. The joint nominee agreement should include a mechanism to address any such errors promptly. The referring

insolvency practitioner should not continue to use incorrect documentation, and if errors are not corrected promptly, consideration should be given to terminating the joint nominee agreement.

10 Where the proposal and/or nominee's report is prepared by the receiving insolvency practitioner, the referring insolvency practitioner should have procedures in place to review the proposal and report to ensure that the documents accurately reflect the information they provided. Where there are differences, explanations should be sought from the receiving insolvency practitioner as it could be indicative of shortcomings or failings in the referring insolvency practitioner's own processes if information needs to be updated or errors corrected.

11 There should be procedures in place for the referring insolvency practitioner to be informed of their appointment as nominee promptly. It is not acceptable for the referring insolvency practitioner to become aware of their appointment on receipt of a monthly cover schedule.

12 The referring insolvency practitioner should also make themselves aware of the RPBs' expectations regarding the receiving insolvency practitioner's role, and should provide any information reasonably requested by the receiving insolvency practitioner within an appropriate time period.

Role of the receiving insolvency practitioner

13 Where the initial calls are made by the referring insolvency practitioner, the receiving insolvency practitioner will need to satisfy themselves that the referring insolvency practitioner has complied with the requirements of SIP 3.1.

14 The receiving insolvency practitioner should also be alert to the possibility of unethical behaviours such as the individual being coached in favour of an IVA in order for the referring insolvency practitioner to receive a proportion of the nominee fee, or that income and expenditure is being manipulated to meet criteria set by the receiving insolvency practitioner, again in order for the referring insolvency practitioner to receive a proportion of the nominee fee. Where the receiving insolvency practitioner cannot be confident that there are adequate safeguards in place to reduce any such threats to the fundamental principles to an acceptable level, they should not continue to accept joint nominee appointments and should terminate the agreement.

15 In addition to adequate due diligence being undertaken before entering into a joint nominee agreement, quality control should be applied during the lifetime of the agreement. This should include, for example:

- Unfettered access to call recordings
- Listening to a sample of calls
- Reviewing the referring insolvency practitioner's website and social media presence
- Reviewing scripts used by call handlers
- Checking I & E calculations against the available evidence such as bank statements or wage slips
- Reviewing documentation sent to debtors

16 The RPBs will expect the receiving insolvency practitioner to be able to demonstrate that they have effective mechanisms in place to monitor the quality of the referring insolvency practitioner's activities.

17 Mechanisms should also exist to alert the referring insolvency practitioner to any proposals which are not accepted by creditors or where an IVA fails in its early stages as these could be indicative of shortcomings in the initial stages of the process.

18 The agreement should include routes to address any shortcomings in the activities carried out by the referring insolvency practitioner. If these are not addressed promptly, consideration should be given to terminating the joint nominee agreement. Where such failings are found to be systemic, the RPB may require the receiving insolvency practitioner to review all cases received from the referring insolvency practitioner.

19 If calls are divided up between the referring insolvency practitioner and the receiving insolvency practitioner, all parties will need to be mindful of the potential confusion this could cause for the debtor, and take steps to limit any potential confusion.

20 The receiving insolvency practitioner should in all cases obtain a full understanding of the route by which the individual came to be proposing an IVA, whether direct from the referring insolvency practitioner or whether other parties were involved at an earlier stage, and if so, the identity of all those parties and their regulated status.

21 Where the receiving insolvency practitioner re-performs any of the activities carried out by the referring insolvency practitioner, the receiving insolvency practitioner will be expected to identify why this was necessary. If such steps were necessary because of shortcomings on the part of the referring insolvency practitioner, the RPBs will expect the receiving insolvency practitioner to address these failings with the referring insolvency practitioner.

22 Additionally, the RPBs do not consider it to be acceptable for the receiving insolvency practitioner to have no involvement in the case as nominee except for convening the decision procedure. The receiving insolvency practitioner will not be able fulfil their obligations as nominee and report objectively if they have limited knowledge of the case and maybe unlikely to be able to properly explain the impact of any modifications to the debtor.

23 The receiving insolvency practitioner should also be mindful that a joint nominee agreement could be a means of avoiding the ban on debt packagers receiving remuneration from debt solution providers (see below).

Provisions applying to both the referring and the receiving insolvency practitioners

24 Both insolvency practitioners need to be satisfied that they are able to fulfil their obligations as nominee and report objectively. This will involve being confident in the accuracy of the proposal and report. It should not be carried out as a "rubber stamping" exercise.

25 The RPBs expect both IPs to have documented processes which set out the work required by each of them to ensure the accuracy of proposals and nominee reports and compliance with SIP 3.1. IPs should have sufficient controls and review procedures in place to ensure that those processes are working effectively.

26 Both insolvency practitioners should sign the nominee's report.

27 Where there are inaccuracies or errors in the proposal or nominees' report, the joint nominee agreement should include a mechanism to get these corrected promptly. If errors in these formal documents are not corrected promptly, consideration should be given to terminating the joint nominee agreement.

Nature of the joint nominee agreement

28 The RPBs and the FCA have concerns that joint nominee agreements could be used as means of subverting the ban on debt packagers receiving remuneration from debt solution providers introduced by the FCA in October 2023. The ban was introduced as the FCA identified that consumers were at risk of harm as the best interests of consumers were often secondary to the maximisation of revenue for the debt packager firm.

29 There is a risk that joint nominee agreements could replicate these consumer harms. With this in mind, the RPBs will closely scrutinise any joint nominee agreements entered into by insolvency practitioners.

30 Typically, joint nominee agreements rely on the referring insolvency practitioner being in reasonable contemplation of an insolvency appointment and therefore being able to use the IP exclusion.¹

31 The RPBs will take a particular interest in the division of activities and the split of the nominee's fee between the referring and receiving insolvency practitioners as this could be an indicator that the agreement is being used to disguise paying for leads. Similar considerations will arise where the referring insolvency practitioner is FCA authorised.

32 The RPBs consider that some characteristics of an agreement or of a practice's business model could be indicative of arrangements that are a means of avoiding the ban on receiving remuneration. These include but are not limited to the following:

For the referring IP

- Fee income received from joint nominee agreements exceeding that received from cases where no joint nominee agreement is in place.
- A practice structure where resource is concentrated at the nominee and pre-nominee stage rather than in supervision.
- Marketing that generates more enquiries than a practice is resourced to accept in-house
- The use of multiple trading styles or identities to generate enquiries from individuals
- Receiving a proportion of the nominee fee from the receiving insolvency practitioner which does not reflect/exceeds the value of the work undertaken by the referring insolvency practitioner.

For the receiving IP

- Re-performing or placing limited reliance on the actions undertaken by the referring insolvency practitioner to ensure compliance with SIP 3.1
- Paying a proportion of the nominee fee to the referring insolvency practitioner which does not reflect/exceeds the value of the work undertaken

33 Insolvency practitioners who have entered into joint nominee agreements should expect to be challenged on the nature of the arrangement either during a monitoring visit or

otherwise, irrespective of whether or not the arrangement displays any of the characteristics listed above.

34 Joint nominee agreements entered into since the introduction of the debt packager ban will automatically be of interest to the RPBs.

***¹ PERG 2.9.26G01/04/2014RP** - These exclusions apply to a person acting as an insolvency practitioner. The term "insolvency practitioner" is to be read with section 388 of the Insolvency Act 1986 or, as the case may be, article 3 of the Insolvency (Northern Ireland) Order 1989. The exclusions relating to debt adjusting, debt counselling and providing credit information services also apply to any activity carried on by a person acting in reasonable contemplation of that person's appointment as an insolvency practitioner.*

***PERG 2.9.27G01/04/2014RP** - A person acting as an insolvency practitioner or in reasonable contemplation of that person's appointment as an insolvency practitioner include anything done by the person's firm in connection with that person so acting. For these purposes, the reference to "the person's firm" means the person's employer, the partnership in which he is a partner or the limited liability partnership of which he is a member, as the case may be.*

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