

THE JOINT INSOLVENCY COMMITTEE

**Annual Report for the
Year ended 31 December 2008**

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ABBREVIATIONS USED IN THIS REPORT

IP	Insolvency practitioner.
IPC	Insolvency Practices Council
IS	Insolvency Service (An Executive Agency of the Department for Business, Innovation and Skills which deals with insolvency matters)
IVA	Individual voluntary arrangement
JIC	Joint Insolvency Committee
JIEB	Joint Insolvency Examination Board
R3	The Association of Business Recovery Professionals
SIPs	Statements of Insolvency Practice (Statements issued by all of the insolvency authorising bodies which outline basic principles and essential procedures which an insolvency practitioner must follow)

Overview of the Joint Insolvency Committee's work and structure

Insolvency regulation in Great Britain is overseen by the IS, an executive agency of the Department for Business, Innovation and Skills. The IS is also an authorising body and, with the Recognised Professional Bodies, can authorise or recognise those individuals considered fit and proper to conduct insolvency appointments.

The JIC was formed in 1999 and provides a forum for discussion and promotes consistency of approach across the authorising bodies. Its mission statement is to:

- *Consider, maintain, improve, develop and promote insolvency standards and guidance of a regulatory, ethical, or best practice nature by means of debate and agreement within the Committee.*
- *Discuss any such matters with any other appropriate bodies.*
- *Facilitate discussion between authorising bodies in order to ensure that, as far as possible, insolvency practitioners are dealt with uniformly by such authorising bodies.*

The JIC meets four times a year but also works through a sub-group between meetings. Each authorising body has one representative on the JIC, supported, where appropriate, by staff from the authorising body they represent. The JIC also welcomes a number of observers who play a valuable role in updating JIC on issues from within their remit. Details of the authorising bodies, JIC members and observers are shown in the **appendices**. Andrew Tate, the representative of the ACCA was appointed as chairman of the JIC with effect from 1 January 2008. Secretarial support to the JIC is provided by the ICAEW.

SIPs are issued under procedures agreed between the insolvency regulatory authorities acting through the JIC. They are commissioned by the JIC, produced by R3, approved by the JIC and adopted by each of the regulatory authorities.

SIP 16 – pre-packaged sales in administrations was published by the authorising bodies in October 2008 and came into effect on 1 January 2009.

During 2008 work continued to finalise the Insolvency Code of Ethics. The revised Code was published by the authorising bodies in October 2008 and came into effect on 1 January 2009. The new SIP and the Code of Ethics are available on the websites of the authorising bodies.

The JIC works closely with the IPC and considers and takes appropriate action upon recommendations put forward by the IPC.

The JIC takes a close interest in insolvency issues which have the potential to affect the regulatory framework. In 2008 the JIC has discussed, amongst other subjects, the IVA protocol, implementation of the Services Directive, the role of the Financial Ombudsman, and the submission of s120 notices in insolvencies. At its meetings the JIC has been kept updated on the progress of the IS's project to consolidate, modernise and simplify the secondary insolvency legislation and the implementation of the Bankruptcy and Diligence etc. (Scotland) Act 2007 including LILA (low income/low asset cases).

Working with the Insolvency Practices Council

The IPC is a public interest body established to influence the professional and ethical standards of insolvency practitioners. The JIC, through its chairman and secretary, continued to meet and correspond with the IPC during 2008, and the minutes of JIC are shared with the IPC. The chairman of the IPC Geoffrey Fitchew and its secretary Mike Stancombe attended a JIC meeting in June 2008. The chair and secretary of the JIC also attended a meeting of the IPC in 2008.

The IPC produces an annual report (available on its website www.insolvencypractices.co.uk) in which it makes recommendations to the insolvency profession and its regulators. Its report for 2007 contained a number of recommendations, which are reproduced below, with the JIC's response.

Statistics on individual voluntary arrangements and debt management plans

The Insolvency Service (IS) should start publishing annual statistics showing aggregate completion /failure rates of IVAs set up in each of the previous five years.

The JIC takes the view that such statistics would provide a helpful insight into the state of the market.

The IS and the regulators should agree to publish annually IVA completion/failure rates for each individual IP and, if possible, their firms for all the IVAs set up in each of the previous five years.

The JIC remains concerned that such statistics could be used as a league table, which may in turn present smaller firms or bespoke practices in a detrimental light. We are also conscious of the insolvency practitioner's duties as supervisor. The terms of arrangement will specify what constitutes failure, and it would be of concern if those terms were not adhered to because of the impact of failure on the statistics collected. We would also question whether such statistics will really help those in financial difficulty choose an IVA provider. IPs in the IVA sector tend to move firm fairly frequently and there has also been some contraction in the market as providers have exited the sector, so the data itself may have little relevance for someone thinking about an IVA today. If the IPC is considering commissioning further research perhaps it could consider some qualitative research into the drivers for choosing an IVA provider, or a literature review into research on the use of comparative information in other areas such as financial services, education and health.

We believe that until a definite need for such information has been established, the disadvantages, both the practical collection of the data and the risk of unmerited reputational damage to IVA providers, mean that we are unwilling to accept this recommendation.

In the longer term the IS should take the necessary steps to provide regular electronic information to the regulators on the financial performance of IVAs and consider whether these can also be supplied to creditors.

We think that most creditors via their agents already receive information about the financial performance of IVAs, so probably wouldn't need access to these statistics. Although the statistics may be of interest to the regulators, they already receive information from the licence holders from annual returns and at monitoring visits. The JIC believes that the burden that would be placed on the Insolvency Service in the production of such statistics would be excessive when balanced against the usefulness of the information.

The IS and the regulators should work together with IPs, creditors and their agents to collect and publish annual statistics on the numbers of proposed IVAs rejected by the creditors both in aggregate and for each IP acting as a nominee. The numbers of IVAs rejected annually by each of the main creditors should also be published.

The IS and the regulators should also work together with creditors, their agents and the debt resolution forum (DRF) to reach agreement on the annual collection and publication of statistics both in aggregate and by firm on the numbers of the DMPs proposed and agreed each year and the outcomes of those plans.

Again such statistics would be interesting, but could be open to misinterpretation. Those firms specialising in the riskier end of the IVA market, such as complex trading cases or cases with lower dividends could show a higher number of rejections, which bear no relation to the competence or efficiency of the firm. This is perhaps another area (as noted above) where some qualitative research would be beneficial, rather than committing to collecting data without first establishing a need.

The JIC struggles to see what would be gained by publishing the numbers of IVAs rejected by the main creditor groups. The fact that a creditor votes against an IVA proposal does not necessarily mean that the IVA will be rejected overall. There is also the possibility that someone in financial difficulty could assume that as they owe money to a particular creditor, they would not be a suitable case for an IVA before even approaching an insolvency practitioner.

Statistics about DMPs would be interesting, more so as there is no across the market information currently available. However, as there is no regulatory relationship between the RPBs and the debt management providers, the JIC can do little more than offer its support for the collection of such data.

Complaints handling by IPs and their regulators

The Insolvency Service and the regulators should require all their IPs to ensure that their firms complaints handling systems include an option for making redress (whether financial or otherwise) when a complaint by a personal debtor is upheld as justified;

The JIC sees no benefit in imposing such a requirement on IPs. In order to require such a process for all the authorising bodies, we would have to create a statement of insolvency practice, as it would be impractical for each of the bodies to change their regulatory arrangements. A SIP would be the only way to impose such a requirement on insolvency practitioners authorised by the Secretary of State other than by way of legislative change. We feel a SIP would be excessive, as we are unaware of any instances of real consumer detriment arising from the current system. The JIC is close to finalising an insolvency guidance paper (IGP):dealing with complaints. Although the IGP does not recommend offering redress, it does offer guidance on dealing with complaints generally.

Another aspect which we have to consider is the link between complaints and the disciplinary processes of the authorising bodies – an issue raised in the research the IPC commissioned. The recognised professional bodies “need” to receive complaints about the conduct of the insolvency practitioners they licence as the matter which is the subject of the complaint could be relevant to whether the insolvency practitioner should continue to be licensed as such. Complaints form an important part of the bodies’ regulatory intelligence, and we would not wish to see a system in place which encourages complainants to settle for some sort of recompense rather than to pursue the complaint with the insolvency practitioners’ authorising bodies.

The JIC will however consider this recommendation further in the light of the conclusions reached in the IPC's further research in this area.

In addition the Insolvency Service and the regulators should take steps to ensure that any personal debtor can take a complaint against any IP relating to poor debt advice or unsatisfactory management of debt problems to an independent arbitrator, whether inside or outside the regulatory bodies, who will be able to award redress (financial or otherwise) to a complainant whose complaint is upheld;

It is the strongly held view of the JIC that the arguments raised against the concept of an ombudsman in the report of the Insolvency Regulation Working Party (which amongst other things recommended the creation of the IPC) are as valid today as when that report was published in 1999. Routes already exist within statutory insolvency procedures which enable challenges to be made to decisions or actions in any particular case.

There is also the issue of the status of any financial compensation in relation to an insolvent's estate, and the identification of who has actually lost by the *unsatisfactory management of debt problems*. Is it the debtor who has suffered or is it the creditors? Would a financial award be compensation for the loss to the estate or for distress, inconvenience or other non-financial loss? For bankruptcy the status of any award should not be problematic – case law has held that claims for financial loss form part of a bankrupt's estate, whilst those relating to distress or inconvenience do not. The status of such claims in an IVA is somewhat more complicated as it would depend on the terms of the proposal and the terms and conditions attached to it. It is probable that if the IVA is still in existence when an award is made it would be treated as a windfall so benefiting creditors. This is something that was touched upon in the original research the IPC commissioned.

We also think that we should look at this issue in the context of the wider insolvency environment. In 2007 the authorising bodies received 550 insolvency complaints of which 93 related to IVAs. In percentage terms, IVA complaints made up 17% of total insolvency complaints, whereas they form 30% of all insolvency proceedings. In the light of these figures and our own experience of insolvency complaints, notwithstanding our fundamental objections noted above, we cannot see that there is any real need for creating a redress based system. We see no evidence that consumers are being disadvantaged, nor are there sufficient complaints to make us believe that this is a significant problem. We are of course most interested in the results of the further comparative research the IPC commissioned and will consider this recommendation further in 2009 once we have considered in detail the conclusions of this research.

The Insolvency Service and the regulators should seek clarification from the Financial Ombudsman Service on the limits to its jurisdiction in relation to complaints against IPs holding individual licences, and give appropriate guidance to IPs and their firms about this, so that they can advise their clients appropriately;

There is a debate to be had about the boundaries between the role of the Financial Ombudsman and the court and the authorising bodies once a statutory process has commenced, and initial discussions have taken place. We think though that the Ombudsman should first have the opportunity to get used to its new jurisdiction and have greater experience of complaints in this sector. We would add that this appears to be an academic problem as the Financial Ombudsman Service has not received many (or perhaps even any) complaints about insolvency practitioners.

All IPs and their firms should be required to have internal complaints procedures, which provide for complaints to be examined at the appropriate

stage by someone independent of the IP who has conducted business with a complainant. Sole practitioners could be required to nominate an independent complaints investigator in their annual returns as they are now required to do in nominating a successor IP. The regulators should consider how they can help sole practitioners and small partnerships to find a suitable independent person to examine complaints against them.

The authorising bodies have differing rules and guidance which apply to the insolvency practitioners they license. The IGP we referred to previously suggests that complaints should be reviewed by another principal in the firm (where possible) or by an independent practitioner, and we believe this guidance is sufficient. We would also add that the authorising bodies themselves will conduct an independent review of complaints made to them about a practitioner.

All the regulators should require their IPs and the firms they work in to maintain a centralised record of the numbers and main types of complaint dealt with and of the outcomes. These should be reported annually in aggregate terms to the RPBs as information likely to be useful to the monitors.

The Principles of Monitoring agreed between the Secretary of State and the recognised professional bodies, sets out the principles in accordance with which monitoring will take place. This enables the recognised professional bodies to be flexible in their monitoring and to adopt a risk based approach. The monitors use information from a variety of different sources, both as the basis for visit selection and for the examination of the insolvency practitioner's processes during a visit and the JIC sees no need for additional information to be routinely collected.

Statements of Insolvency Practice

Statements of Insolvency Practice (SIPs) are a series of guidance notes issued to licensed insolvency practitioners with a view to maintaining standards by setting out required practice and harmonising practitioners' approach to particular aspects of insolvency. All insolvency practitioners are therefore working to common standards.

SIPs are issued under procedures agreed between the insolvency regulatory authorities acting through the JIC. They are commissioned by the JIC, produced by the Association of Business Recovery Professionals, approved by the JIC and adopted by each of the regulatory bodies. Where appropriate, when changes are made to SIPs affecting England and Wales, equivalent changes are made to those affecting Scotland and Northern Ireland.

The purpose of SIPs is to set out basic principles and essential procedures with which insolvency practitioners are required to comply. Departure from the standards set out in the SIPs is a matter that may be considered by a practitioner's regulatory authority for the purposes of possible disciplinary or regulatory action.

SIP 16 – Pre-packaged sales in administrations.

SIP 16 – pre-packaged sales in administrations was published by the authorising bodies in October 2008 and came into effect on 1 January 2009. The content of SIP 16 was the subject of extensive discussion within the JIC and the authorising bodies outside of JIC. Feedback on the SIP was also sought via a mini consultation with IPs with practical experience of pre packs. The final version of the SIP as issued stresses the need for transparency in a pre-pack.

Proposed amendments to SIP 4 *Disqualification of directors* (England and Wales and Scotland) continued to be the subject of discussions between the JIC, R3 and the IS. There was also discussion on the need to amend SIP 11 – *The handling of funds in formal insolvency appointments* continued to be the subject of discussion on the level of practical guidance that should be included on the operation of estate accounts. Neither SIP was amended during 2008.

All SIPs are available on the websites of the authorising bodies and R3 (see appendices 1 and 3).

In 2008 the JIC decided to undertake a review of the SIPs.

The first stage of this process was a conference to discuss the review. This was held on 5 March 2009. The conference discussed certain aspects of the review, such as:

- The basis on which SIPs should be drafted i.e. prescriptive / principles based or a combination of the two.
- The process for approving and issuing SIPs, within both the authorising bodies and the JIC
- The role of consultation in the development of SIPs.

The review is progressing and wider consultation has taken place regarding the areas discussed at the conference. A working party also commenced a detailed review of one of the SIPs which has assisted in establishing a model framework on which to based other review groups.

The JIC is dependent on volunteers with experience of various aspects of insolvency to assist with the review of SIPs and hopes that those within the profession will support the review by sitting on review panels.

Code of Ethics

Extensive work has been undertaken by the JIC and its sub group to develop a new Code of Ethics for insolvency practitioners. A draft of the Code was issued for public consultation during 2007 and where appropriate, amendments made as a result of the consultation responses. The Code was also reviewed by counsel (funded by a Barbican Settlement Trust grant) to ensure it was consistent and legally sound. Counsel also produced an overview document to be used, if they so wished, by those bodies who would not be including the Code within a wider code which applied to all of the body's membership.

The Code is based in part on the ethical framework applied by accounting bodies (IFAC) but also draws extensively on the previous ethical guide for insolvency practitioners. The Code applies to all IPs irrespective of their authorising body.

The Code was published by the authorising bodies in the autumn of 2008 and came into force on 1 January 2009. The Code is available on the websites of the authorising bodies.

The JIC is grateful to the Barbican Settlement Trust for providing grants to fund the costs of the legal advice referred to above.

THE BODIES WHICH REGULATE INSOLVENCY LICENCE HOLDERS IN GREAT BRITAIN AND/OR IN NORTHERN IRELAND

Recognised professional bodies

<u>Name and address</u>	<u>Number of licence holders</u>	<u>Website</u>
The Association of Chartered Certified Accountants (ACCA) 29 Lincoln's Inn Fields, London WC2A 3EE	185	www.accaglobal.com
Insolvency Practitioners Association (IPA) Valiant House 4-10 Heneage Lane London EC3A 5DQ	431	www.insolvency-practitioners.org.uk
The Institute of Chartered Accountants in England & Wales (ICAEW) Metropolitan House 321 Avebury Boulevard Milton Keynes MK9 2FZ	679	www.icaew.com
The Institute of Chartered Accountants in Ireland (ICAI) ¹ 83 Pembroke Road Ballsbridge Dublin 4	45	www.icaei.ie
The Institute of Chartered Accountants of Scotland (ICAS) CA House 21 Haymarket Yards Edinburgh EH12 5BH	113	www.icas.org.uk
The Law Society of Scotland 26 Drumsheugh Gardens Edinburgh EH3 7YR	15	www.lawscot.org.uk
Solicitors Regulation Authority For the Law Society (SRA) Ipsley Court Berrington Close Redditch Worcestershire B98 0TD	150	www.lawsociety.org.uk www.sra.org.uk

Other regulators

The IS ² PO Box 203 21 Bloomsbury Street London WC1B 3QW	92	www.insolvency.gov.uk
The IS Northern Ireland ³ Fermanagh House Ormeau Avenue Belfast BT2 8NS	4	www.insolvency.detini.gov.uk
The Law Society of Northern Ireland ³ 40 Linenhall Street Belfast BT2 8BA	8	www.lawsoc-ni.org

¹The Institute of Chartered Accountants in Ireland, under the provisions of its Bye-Laws, established the Chartered Accountants Regulatory Board (www.carb.ie) in April 2007 and has delegated regulatory functions to this Board.

²The IS authorises insolvency practitioners to take appointments in Great Britain only.

³These bodies have observer status on JIC and only license insolvency practitioners to take appointments in Northern Ireland.

MEMBERS OF THE JIC at 31 December 2008*

Andrew Tate Chairman	The Association of Chartered Certified Accountants
Roger Smith	Insolvency Practitioners Association
Phillip Sykes	The Institute of Chartered Accountants in England & Wales
Joan Houston	Chartered Accountants Regulatory Board (Institute of Chartered Accountants in Ireland)
Brian Milne	The Institute of Chartered Accountants of Scotland
Rachel Grant	The Law Society of Scotland
Mike Chapman	The Insolvency Service

*The SRA member of the JIC, retired from the committee at the end of 2007. During 2008 the SRA was been represented at the JIC by its secretariat member.

OBSERVERS OF JIC

Catherine Collinson	Representing the monitors of the authorising bodies.
Gillian Thompson	Accountant in Bankruptcy
Graham Rumney	R3 – Chief Operating Officer
John Francis	Secretary, R3 General Technical Committee
Richard Heis	Chairman, R3 General Technical Committee
Sandra McMahon	Law Society, Northern Ireland
Tom Roulston	IS, Northern Ireland

