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We are pleased to present our annual report for 2017. As in previous years, this report aims to provide transparency over our work and includes:

- An overview of the activities of ICAS Insolvency Monitoring during 2017; and
- Key messages and detailed findings arising from monitoring visits.

We hope that you find it useful in considering how effectively you are complying with regulatory requirements. We encourage you to share the report with your colleagues, and also to utilise the key messages when conducting your own compliance reviews.

If you have any comments or questions, please contact us on insolvencymonitoring@icas.com.
A challenging regulatory landscape

We recognise, first and foremost, that it has been a tough year for firms mainly due to the challenges arising from the changes in the economic and regulatory landscape. There are significant regulatory changes which have affected Insolvency Practitioners (“IPs”), including the new money laundering regulations (or its formal title, “The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017”), which came into effect on 26 June 2017.

This period of change continues, with further regulatory developments coming soon, including:

- a new Anti-Money Laundering (“AML”) regulator (The Office for Professional Body Anti-Money Laundering Supervision (“OPBAS”), effective from 1 January 2018); and
- the General Data Protection Regulation (GDPR), which comes into force on 25 May 2018;

We recognise that this period of flux has put significant pressure on IPs and their firms.

These changes have inevitably had a knock-on impact on compliance, increasing the number of firms requiring follow-up checks after their Insolvency Monitoring visit. Unsurprisingly, the main focus in many of the reports this year was on AML compliance.

Looking to the future

2018 is set to be another challenging, but interesting, year as highlighted in our section “2018 News”. We all look forward to a period of some stability before the introduction of the new Scottish Rules results in significant change to our practices and procedures.

In the meantime, the key is to try and stay on top of changes. We hope you find this report useful in keeping up to date with some of the main issues we find.
Background: Developmental Regulation

We aim to deliver Developmental Regulation. This means that our Insolvency Monitoring regime is designed to both:

- support the work of ICAS licensed IPs; and
- uphold standards and provide re-assurance to the public.

Our primary aim is to work with IPs and their firms and to support IPs to make any improvements required.

As explained previously, the regulatory landscape has become increasingly challenging, meaning we require to act as a robust regulator, when required.

The regulatory framework

ICAS is a Recognised Professional Body (RPB), responsible for regulating ICAS licensed Insolvency Practitioners (“IPs”) in the UK. The RPBs are, in turn regulated by The Insolvency Service.

What we review

Insolvency Monitoring conducts the monitoring visits of all ICAS licensed IPs. Visits are selected on a risk basis and all IPs are, in the main, visited at least once every 3 years.

Risk indicators include: the type and size of the portfolio; changes within a practice; and previous visit history. This risk-based approach determines the timing and frequency of visits, in accordance with the requirements of the Principles for Monitoring.

In addition to conducting monitoring of our own authorised IPs, in 2017 we also conducted all of the insolvency monitoring on behalf of Chartered Accountants Ireland. These visits covered their UK licensed IPs and those operating in the Republic of Ireland. This report does not cover this work.
How we review

Our visit process is:

The nature and size of the work undertaken by IPs licensed by ICAS varies and the monitoring visit approach is tailored to reflect the nature and client base of each IP and firm.

For more information about Insolvency Monitoring, and the role of the Authorisation Committee, please search “insolvency monitoring” at icas.com.

Who we review

In 2017, ICAS authorised 93 IPs (2016: 100) who operate within a variety of business structures from sole practitioners to international firms.

The gender split is: 73 male to 20 female IPs (2016: 83 male, to 17 female).

A number of IPs have retired in the last few years, resulting in the overall reduction in IPs seeking to be licenced in 2017. This has been offset, in part, by a number of first-time insolvency licence applications being granted. In addition, a number of IPs previously regulated by other RPBs moved their insolvency authorisation to ICAS.

Licensed Affiliate IPs now constitute a significant, increasing, and important proportion of our IP community, allowing ICAS to continue to maintain its position as the predominant RPB representing IPs based in Scotland, whilst at the same time seeking to support ICAS licensed IPs practising throughout the UK, Ireland and internationally:
ICAS licensed IPs are predominantly based in Scotland:

Location of IPs

- Scotland: 71 (2017), 58 (2016)
- England: 0 (2017), 0 (2016)
- Ireland: 0 (2017), 0 (2016)
- Overseas: 0 (2017), 0 (2016)
2017 MONITORING RESULTS

Visits

In 2017 we conducted 31 ICAS Insolvency Monitoring visits (2016: 28), covering our full range of IPs. There were 25 routine visits and 6 follow up visits.

Visit outcomes

The results for the 25 routine full scope visits in 2017 were:

- 80% or more of IPs visited in 2017, 2016 and 2015 achieved satisfactory standards of compliance and required no follow up action.

- Most IPs continue to demonstrate good standards of practice. The most frequent issues identified in case reviews, and reported as findings, were:
  - a lack of appropriate risk-based anti-money laundering ("AML") procedures;
  - incidents of late compliance with statutory timescales;
  - inadvertent omissions in the provision of information; and
  - failure to fully complete checklists and procedures.

It is difficult to make comparisons year-on-year as:

- different IPs are visited each year; and
- the regulatory landscape has been changing significantly.

It is encouraging to note that 80% or more of IPs visited in 2017, 2016 and 2015 achieved satisfactory standards of compliance and required no follow up action.
Detailed explanations of the most common findings are included in Key Themes and in Appendix One.

Where there are only a relatively small number of procedural findings, no follow up action is usually necessary. Follow up action arises where the extent of issues is more widespread or more significant in nature.

Most of the IPs with “some” or “systemic” issues requiring follow up, were due to widespread AML issues, as covered in more detail in the Key Themes section of this report.

Visits falling into the “serious issues” category tend to include:

- serious clients’ money issues;
- serious ethical issues; or
- serious issues in the management of insolvency cases, in some cases leading to creditor detriment.

There were no such visit outcomes in 2017.

The Committee can take a range of follow up and regulatory actions. IPs may have conditions or restrictions placed upon their licence; they may be required to submit information to the Committee; or they may require to submit to a follow-up visit. Other, more serious, regulatory interventions include: referral to the Investigation Committee; regulatory penalties or licence withdrawal. The more serious regulatory interventions are exceptional.
Most IPs continue to demonstrate good standards of practice. Nevertheless, there are always learning points on monitoring visits and our detailed 2017 findings can be found in Appendix One to this report.

**General improvement in standards**

As in previous years, many IPs were found to have a strong compliance culture with well-trained staff and procedures operating well. Most IPs demonstrated:

- well-considered realisation strategies;
- well-structured files; and
- achievement of good outcomes in challenging markets for the benefit of creditors.

Positively, the number of insolvency issues have been declining. However, the number of AML issues have been increasing, not least because of the increased regulatory focus on this area and the recent regulatory changes.

**Anti-Money Laundering (AML)**

**Background**

There has been significantly increased interest by HM Treasury and the Insolvency Service in the past few years requiring RPBs to ensure that IPs have robust and risk-based AML procedures. The regulatory landscape has been fast-changing. Consequently, there has been a greater focus on this area in insolvency monitoring visits, which has resulted in an increase in the number of AML findings.

In June 2017, ICAS wrote to all MLROs, alerting them to the introduction of the new regulations, and provided a brochure explaining the key changes. Our AML newsletter (www.icas.com/amlnews) has also been keeping practitioners informed of developments, as they have happened (see “ICAS Support” for more information). All IPs should ensure that they are familiar with these changes.

During 2017, ICAS took an educational approach to our monitoring of AML by providing advice to practitioners on visits, given the lack of lead-in time for the implementation of the legislation. From 2018 onwards, in conjunction with Practice Monitoring, our focus will turn to how practitioners are implementing these changes.

Insolvency Monitoring continues to focus on the AML processes and procedures as far as they relate to formal insolvency appointments only, rather than the processes and procedures of the firms as a whole. The latter is generally covered by Practice Monitoring, where ICAS is the RPB responsible for overseeing AML compliance.

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**Over the course of the last two years there have been a number of cases where the insolvency function’s AML procedures have been out-of-step with the firm’s AML policies and procedures, resulting in an insolvency-specific AML follow-up visit.**

We would encourage all IPs, in conjunction with the AML team within their firm, to check that their procedures are consistent with the firm’s. This is particularly important now in light of the implementation of the Money Laundering Regulations 2017.

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Since the introduction of the new regulations we now ensure that IPs update the firm’s AML team on any serious issues found on Insolvency Monitoring visits to ensure that the firm’s AML function is kept informed. We would also additionally either inform our Practice Monitoring team (where ICAS is the AML supervisor) or inform the firm’s AML supervisor, if not ICAS.

By the same token, we ensure on Practice Monitoring visits that we discuss the AML policies and procedures in relation to the insolvency function with the firm’s senior AML team to ensure that it is coordinating and controlling the AML effort across the firm consistently.
Findings

Whilst IPs continue to demonstrate that they are carrying out AML checks, and obtaining identification, there is still a lack of risk-based due diligence or evidence that checks had been conducted within the required time.

As with last year’s report, the main 2017 findings were:

AML risk assessment

For a number of cases reviewed, the checklists used did not demonstrate a risk-based approach to customer due diligence as required by the legislation.

A risk assessment should be conducted for each case. These risk assessments should include consideration of the five main risk criteria of:

- the nature of the appointment and entity;
- geography;
- nature of services being provided;
- the transactions of the entity or individual; and
- the means of delivery of the services.

This risk assessment is key and determines the extent and frequency of the evidence needed to conduct due diligence (i.e. the extent and source of identification and third-party verification procedures). The focus of the new regulations is very much on this area.

Timing of checks

In a number of cases reviewed, the checklists were not dated or were dated post-appointment, rather than being evidenced as completed prior to acceptance or within 5 days thereof.

Reliance

When reliance was placed on an appointment by a bank or court, this reliance was not documented on a completed checklist in the file.

Ongoing monitoring

IPs are reminded that CDD is not a one-off exercise and should be kept up to date throughout the duration of the insolvency case. CDD should be reviewed regularly (e.g. at least annually) and when there are changes in risks.

For the first year, this year, we have produced a separate AML Annual Monitoring Report. This provides further information on AML compliance. Search on “AML Annual Monitoring Report” aticas.com.

- IPs must ensure that there is appropriate documentary evidence of consideration of a risk-based approach to customer due diligence for each appointment, including cases where reliance has been placed on the appointment being made by a bank, court or the Accountant in Bankruptcy.
- We recommend, in addition to reviewing standard documentation to ensure that it reflects a fully risk-based approach, that procedures are reviewed to ensure prompt completion of the relevant documentation.
- For more information on anti-money laundering please search “anti-money laundering” onicas.com.
Follow-up checks

As part of the developmental regulation approach, AML issues identified on Insolvency Monitoring visits are followed up as follows:

- **Three-month follow-up checks**: all IPs and firms where AML issues are considered sufficient to warrant a follow up check receive this check in a shorter timeframe, within three months instead of six.
- **Practice Support**: IPs and firms on follow-up are offered free support from our Practice Support team before they receive their follow-up.
- **Regulatory sanctions**: IPs and firms failing to improve quickly may be faced with regulatory penalties or referrals to the Investigation Committee. But this is exceptional and is ‘last resort’ for serious cases. There were no such cases this year.

Whilst most follow-up checks are conducted to the firm, through our Practice Monitoring regime, ICAS reserve the right to conduct follow-up checks to IPs.

Such follow-ups are particularly important where:

- the insolvency issues may be different from those of the general practice, or persistent; or
- where the firm is not AML supervised by ICAS, but nevertheless there are ICAS IPs in the firm.

In 2017, 6 AML follow-up checks were carried out to IPs as the result of issues found on insolvency engagements. In most of these visits inadequate AML procedures were a significant contributory factor.

So far, our new regime is operating well and IPs are showing a good level of improvement by the time of the follow-up check.
We take a developmental approach to regulation, and we have a number of initiatives to assist our IP and firms in complying with Insolvency Regulations.

**Advice & support on monitoring and licences**

Insolvency Monitoring sits within the Professional Standards Division at ICAS. We act in the public interest to promote and maintain the highest standards of practice and professional behaviour. The division is responsible for discharging ICAS’ regulatory duties and responsibilities, many of which are statutory in nature.

In addition to licencing ICAS Members and Non-Members (Affiliates) as IPs, the division is also responsible for the granting of Practicing Certificates, DPB and Audit Licences.

For more information on the Professional Standards Division please search “regulation” on icas.com.

For queries please email insolvencymonitoring@icas.com.

**The General Practice Procedures Manual (GPPM)**

If your firm has a majority of CA principals, it is eligible to use the full GPPM for free. If your firm does not have a majority of CA principals, as an ICAS IP, you are still eligible to access the AML section of GPPM for free. If you have not already registered to use GPPM and you would like to, please go to https://www.icas.com/member-benefits/general-practice-procedures-manual (you require to first log in) or contact Practice Support.

**AML News (www.icas.com/amlnews)**

AML has been fast-changing over the last year and our AML news page informs firms of key developments as they happen.

The AML news page includes the following key publications:

- A link to the new Money Laundering Regulations 2017;
- An explanation booklet on the key changes brought about by the new regulations;
- A link to the new CCAB Anti Money Laundering Guidance for the Accountancy Sector;
- The new ICAS Firm-Wide Risk Assessment, Guidance & Templates;
- A link to the new FCA PEP Guidance; and
- Our consultation responses to various HM Treasury and Financial Conduct Authority consultations on the future of AML regulation.

**Practice Management Course**

Practising Certificate Holders are reminded of the need to attend this course once in the five-year period from 1 April 2014 to 31 March 2019. This course includes an AML update. The dates and locations for 2018 are:

- **Inverness**: Thursday 24 May
- **Edinburgh**: Tuesday 19 June
- **London**: Wednesday 20 June
- **Glasgow**: Monday 10 September
- **Aberdeen**: Wednesday 19 September
- **Bristol**: Tuesday 2 October
- **Dundee**: Tuesday 23 October
- **Birmingham**: Tuesday 6 November

For more details search “Practice Management Course” at icas.com.
Insolvency Technical

David Menzies, ICAS Director of Practice, continues to represent members’ views to legislators, regulators and standard setters. The technical team responds to consultations across a wide range of subject areas and undertakes proactive initiatives to contribute to and influence policy development in all these areas. The development and delivery of products and services, as part of members’ subscriptions and on a commercial basis to members and others, fall within their scope and the team continues to play a key role in member engagement.

For more information on Insolvency Technical matters at ICAS please search “insolvency technical” on icas.com.

David Menzies, Director of Practice
Phone – 0131 347 0242
Email – dmenzies@icas.com

The Insolvency Technical Department are happy to receive any technical queries you may have on any technical insolvency issue. IPs should submit their queries via e-mail to: icasinsolvency@icas.com.

Insolvency specific help and support

A range of information and guidance and helpsheets are available to ICAS IPs on the website by searching on “helpsheets”. If you would like more information in relation to Consumer Credit please search on “consumer credit” at icas.com to access the consumer credit section of our website.

Community Communication

Content relevant to the Insolvency and Restructuring Community is available from the ICAS website via www.icas.com/insolvency and a monthly Insolvency and Restructuring Update is issued by email. The email is sent automatically to all IPs and ICAS members who have indicated an interest in this practice area. The email can also be subscribed to (free of charge) by anyone else through registration. Search for ‘insolvency news’ on icas.com.

More immediate updates are also available through social media by following @DavidMenziesCA on twitter or connecting with David Menzies on LinkedIn (https://www.linkedin.com/in/davidmenziesca).

Insolvency Discussion Groups

There are four Insolvency Discussion Groups at which members of the profession meet regularly to discuss topical issues.

Edinburgh Insolvency Discussion Group
Further information can be obtained from Stephen Janch at Gilson Gray on 0131 516 5361 or email sjanch@gilsongray.co.uk.

Grampian Area Insolvency Practitioners’ Group
Further information can be obtained from Malcolm Gunnyeon at Maclay Murray & Spens on +44 (0)330 222 1774 or email: malcolm.gunnyeon@mms.co.uk.

Fife & Tayside Insolvency Discussion Group
Further information can be obtained from John Clarke at CCW Legal - email: John.Clarke@ccwlegal.co.uk.

West of Scotland Insolvency Forum
Further information can be obtained from Alan McKee at Macdonald Henderson on +44 (0)141 222 5800 or email: alan@macdonaldhenderson.co.uk.
SIP 16 Pre Pack Pool Review

Since November 2015, the Insolvency Service has required each RPB to monitor and review the SIP 16 information provided to creditors for pre pack sales of business or assets from companies entering administration. ICAS is responsible for carrying this out where the lead appointee is an ICAS licensed IP.

All RPBs have been requested to provide the Insolvency Service with details of the SIP 16 reports reviewed during 2016 and 2017. The Insolvency Service, in conjunction with the Pre Pack Pool, are currently analysing the information submitted. ICAS Insolvency Technical will ensure that IPs are notified of the outcome of the review and any action which you may be required to take.

In the meantime, copies of SIP 16 documentation issued, together with a copy of any covering letter confirming the date notice of the prepack sale was given to creditors, should continue to be sent to sip16@icas.com.

Scottish corporate insolvency rules

The Accountant in Bankruptcy and the Insolvency Service have been working towards the introduction of updated and modernised rules for Scottish corporate insolvency procedures. ICAS and other stakeholders have formed part of the working group assisting in this project. It is anticipated that the new rules will be introduced to the Parliaments in Westminster and Holyrood in Autumn 2018 and become effective in Spring 2019.

GDPR

The General Data Protection Regulation (GDPR) (EU Regulation 2016/679) comes into force across the EU on 25 May 2018. This will be enacted into the UK via a new Data Protection Act, which will replace the 1998 Act.

As nearly all firms will process personal data, they will fall into the remit of GDPR. Fortunately, firms that are meeting their obligations under the current law shouldn’t have to do too much to be compliant under the new regime. Nevertheless, your firm should prepare for the forthcoming changes, which include, but are not limited to:

- **Accountability requirements**: with firms being expected to demonstrate to clients how they meet the requirements (e.g. through a privacy notice on the firm’s website).
- **Contract changes**: for data handling having an impact on engagement letters and standard terms.
- **Consent**: the introduction of a higher bar for consent, with pre-ticked consent boxes no longer appropriate.
- **Data processors**: who process data on behalf of a third party (e.g. payroll services) will take on more data protection obligations.
- **Increased data subjects’ rights**: including the right to be “forgotten”, and tighter timescales for responding to ‘subject access requests’.

With the UK’s Information Commissioner having stronger sanctioning powers, firms will want to do everything they can to minimise the risk of non-compliance.

For more information please search on “GDPR” at icas.com.

CA Practice digital magazine

CA Practice digital magazine brings the latest essential information, news and views for those in public practice. Issued on the third Thursday of each month CA Practice has been designed to alert you to important issues and inform you of the ICAS practice team’s activities and important course dates.

Previous articles have included:

- AML developments;
- Making Tax Digital updates;
- GDPR;
- Practice development;
- Technical Bulletin roundup.

The current issue can be accessed at capractice.icas.com.

This appendix provides further detail on the level of compliance noted on visits and where the most common findings were identified during our file reviews.

**Five year visit history**

The table below shows the routine monitoring visit outcomes in the last five years.

<table>
<thead>
<tr>
<th>Insolvency Monitoring visit outcomes</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satisfactory reports - IP to submit evidence of action if required</td>
<td>21 (84%)</td>
<td>20 (83%)</td>
<td>18 (82%)</td>
<td>22 (84%)</td>
<td>20 (80%)</td>
</tr>
<tr>
<td>Some issues - IP to submit evidence of action and follow up visits where appropriate</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>4 (16%)</td>
</tr>
<tr>
<td>More systemic issues - IP to submit evidence of action and follow up visits where appropriate</td>
<td>4 (16%)</td>
<td>4 (17%)</td>
<td>4 (18%)</td>
<td>2 (8%)</td>
<td>1 (4%)</td>
</tr>
<tr>
<td>Serious issues - requiring follow up or other regulatory actions</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>0 (0%)</td>
<td>2 (8%)</td>
<td>0 (0%)</td>
</tr>
<tr>
<td>Total routine visits</td>
<td>25</td>
<td>24</td>
<td>22</td>
<td>26</td>
<td>25</td>
</tr>
</tbody>
</table>

A direct year on year comparison is difficult as the visits carried out each year are across a mix of types and sizes of practice in which IPs carry out their business. An additional row has been inserted this year to show the split between isolated and systemic issues. A reclassification of previous years non-satisfactory reports was not considered necessary.

It is pleasing to note that number of visits requiring no follow up continues to sit at 80% or above.

The majority of IPs visited during 2017 demonstrated an improvement or maintenance of quality and compliance from their previous visit. However, the type of findings which occur most frequently continue to remain largely unchanged, albeit with a reduction in the frequency of instances of non-compliance.

In order to improve and encourage good practice amongst all ICAS IPs we have summarised the most frequent findings of 2017 visits below, in addition to the issues identified already in the Key Themes section.
Late Statutory Filing and Statutory Matters

The instances of late filing continue to decline, partly due to the fact there have been relatively few recent changes to legislation and SIPs in recent years. Consequently, checklists, diary prompts and procedures have been refined. Most issues arise where IPs are dealing with unfamiliar procedures or appointments in other jurisdictions.

The new Scottish Rules, which were anticipated to come into force in 2018, are now unlikely to be implemented until early 2019. When they are introduced it will be necessary for all IPs to review and amend their procedures and standard documentation.

- Review checklists and diary prompts regularly to ensure they are compliant with current legislation.
- Be aware of the legislation under which the appointment is administered and adhere to the appropriate statutory timescales.
- If holding meetings of creditors and members on different dates in creditors voluntary liquidations, hold the meetings as close together as possible, otherwise additional filing and notices may be required.

Late Director Conduct Reports

There has been an increase in the number of 2017 visit reports where instances of late submission of directors’ conduct reports were identified as an issue. This can be partly attributed to IPs and their staff becoming familiar with the online filing of directors’ conduct return which came into effect on 6 April 2016. Whilst IPs were generally aware of the reduced time periods for submitting returns, case diaries, internal procedures and task reminders had not always been updated to reflect the changes.

- Ensure that an appropriate directors’ conduct checklist is completed to evidence matters considered and to ensure all the necessary information is available to complete the return by the due date.
- Check diary prompts and reminders have been updated for all procedures requiring submission of a report and sufficient time allowed to complete the investigation checklist and complete the online filing.

Incorrect Move from Administration to Creditors Voluntary Liquidation

There were instances identified where appointments had moved from administration to creditors voluntary liquidation but the requirements of the Insolvency Act 1986 Sch B1 para 83(2) had not been fulfilled as there was no anticipated distribution to unsecured creditors. Consequently, the liquidator’s appointment may not have been valid, thus requiring action to be taken to cure the defect in the procedure.

Whilst such instances have been relatively infrequent over the years, a common theme has been circumstances partly outwith the control of IPs delaying the closure of the administration. As a result, insufficient time had been provided for to extend the administration, resulting in the decision to move to a creditors voluntary liquidation, when it was not clear that there would be a distribution to unsecured creditors.

- Ensure that all outstanding matters are identified and subject to regular periodic review as the administration proceeds to closure.
- If there is any prospect that all outstanding matters cannot be finalised, then ensure that steps are taken to make an application for extension of the administration.
Remuneration and Compliance with SIP 9

There continues to be very few issues relating to the approval and disclosure of remuneration, however several reports noted that the basis of Category 2 disbursement had not been fully disclosed.

There were a significant number of findings in reports where creditors had not been provided with a copy of an appropriate creditors guide to remuneration or advised how to obtain a copy in all relevant communications, as required.

There is, generally, a lack of consistency in providing the information, rather than not providing the information. In most cases, a suitable explanatory note, setting out the rights of creditors, was given in the first communication with creditors, following appointment, in accordance with the previous version of SIP 9, but it was not always provided with each subsequent report to creditors as required by the revision of SIP 9 in May 2012.

- Information on how to find a suitable explanatory note, setting out the rights of creditors, should be given in the first communication with creditors following appointment, and with each subsequent report to creditors.
- This information may be provided by way of hard copy, or by provision of an appropriate electronic link, with an offer that a hard copy will be provided free of charge upon receipt of a written request.
- We recommend that standard documentation is reviewed to ensure that the required information is provided in each instance.
- Remember to ensure your standard documentation for English and Welsh appointments reflects the changes introduced by the revised SIP 9 England and Wales, effective from 1 December 2015, and the changes in the legislation which includes a requirement to provide a fees estimate.

Bonding

We are pleased to report the reduction in issues identified in relation to bonds in the visits carried out during 2017.

Due to the nature and importance of bonding even a one-off instance of late or under-bonding will be a report finding. The most common instances of under-bonding continue to arise from delays in increasing the level of the bond after determining the estimated or known value of additional assets. There were also some delays in releasing bonds following case closure.

Whilst over-bonding is not as much of a concern, care should still be taken, as a substantial over-bonding may result in an increased charge to the insolvent estate.

- The purpose of the specific bond is to safeguard creditors. It is therefore the total amount of the anticipated funds in a case, which requires to be bonded at the outset. Floating and fixed charges should be deducted from the value of the assets for the purposes of the bond calculation, to calculate the net assets. The amount of the specific penalty shall be at least equal to the net value of the assets, or the amount due to preferential creditors and any sum due to unsecured creditors, including under the prescribed part, if this amount is greater.
- Ensure the bond level is reviewed as part of periodic file reviews.
- Have procedures in place which ensure the bond level is reviewed upon any change in estimated valuation of an asset and when funds are received.
- If a decision is taken not to increase the bonding level due to any uncertainty over the amount to be realised for any assets, insert an appropriate file note detailing considerations in the bonding section and periodic reviews.
- Case closure checklists and diaries should ensure that the bond is released on completion of the case.

Our 2016 report noted a number of failures to bond upon appointment, identified during reviews of the monthly bordereaux submissions. Whilst this appears to have been an unusual blip in that year, it is important to regularly check procedures to ensure all new appointments are captured.
Evidence of Conflict Checks, Consideration of Ethical Matters and SIP 1 Intimation

During 2017, it was pleasing to note that there were fewer instances where IPs had not adequately documented ethical considerations, compared to the previous two years. However, in a large number of visits IPs have not updated all their standard documentation to reflect the requirements of the revised SIP1, effective from 1 October 2015, which requires intimation to be given to creditors that IPs are bound by the code of ethics in the first correspondence issued.

- Ensure that an appropriate conflict and ethics checklist is completed to record and document considerations and it is completed prior to the commencement of each appointment.
- Ensure ethical matters are considered and signed by the IP as well as the case manager. In the case of a joint appointment, the checklist should be signed by all appointees or appropriate evidence be place on the file of the joint appointee’s consideration of conflict and ethical matters.
- We recommend, in addition to reviewing standard documentation to ensure that it reflects full consideration of ethical matters, that procedures are reviewed to ensure prompt completion of the relevant documentation.
- Ensure that standard documentation is updated to reflect the requirements of the revised SIP1, effective from 1 October 2015, and that required intimation is given to creditors in the first correspondence.

S120 Qualifying Pension Schemes

There continued to be instances where there was no or incomplete evidence that the IP had carried out a search to confirm that there was no Qualifying Pension Scheme. This area was highlighted in the previous two year’s reports. Whilst a number of IPs had taken steps to confirm this, they had not retained a copy of the search, or recorded the work done.

S120 Protection Fund (Entry Rules) Regulations 2005 requires notification of an insolvent event within 14 days of the occurrence of the insolvency event or the IP becoming aware of the pension scheme.

- In order to confirm that no such scheme exists, it is considered prudent to carry out a search under both the company name and the company number and retain the search results to provide evidence of the date the search was carried out.
- Better late than never. At the next periodic review confirm that a copy of the searches outlined above are in the file, and if not carry out the searches and insert an appropriate file note.
- Ensure that the need to carry out s120 searches is included in dairy prompts.

Further guidance on this matter can be found on the Pension Protection Fund website.

Receipts and Payments and Reports to Creditors

The 2015 report noted that there had been a reduction in the instances of late submissions of receipts and payments accounts across all procedures. During 2016 and 2017, the number of instances remained relatively low.

- The content and accuracy of diaries utilised and the standing data for each appointment should be reviewed and updated on a regular basis where required, particularly after any software updates which may affect customised diary lines.
- Ensure that the diary prompts give sufficient time to complete the returns, allowing for short term absences from the office due to work commitments, holidays and illness.
- IPs are reminded that the Accountant in Bankruptcy no longer accepts accounts which are submitted late without a prior application to the Court which is at the IP’s own expense.
Evidence of Investigations

An increased number of findings have been identified in 2015, 2016 and again in 2017 where:

- There were instances identified where there was no apparent investigation carried out in respect of certain aspects of cases.
- There were also several instances noted where there was insufficient documentation in the file to evidence areas investigated and to support any conclusions reached that no further action was required.

- Matters requiring investigation should be identified and recorded in a manner appropriate to the appointment.
- Record and document investigations into any matter including pre-appointment transactions and any potential assets in contemporaneously completed file notes.
- Ensure investigations not fully completed or concluded are highlighted in periodic reviews and carried forward as outstanding matters.
- Record and document any conclusions reached, and the date of conclusion.

Depending on the circumstances identified during the visit, this may result in further action being taken as part of the monitoring process and/or a follow up visit may be instructed.
APPENDIX TWO: OTHER USEFUL LINKS AND CONTACTS

We hope you find this report useful. If you have any comments or questions please contact us at insolvencymonitoring@icas.com.

Within ICAS there are a number of contacts which may be useful:

- Technical queries: any accounting, law or ethics queries will be answered promptly by Technical staff. Members should contact them using icasinsolvency@icas.com.

- Money Laundering confidential helpline: if you have any potential money laundering issues, please contact our confidential helpline run by our Legal Services division on 0131 347 0271.

- The ICAS Practice Support Service provides support to all ICAS registered firms. It offers a variety of services on all aspects of regulation, which can be tailored to meet the needs of your firm. For more information on any of these services, contact 0131 347 0249 or email practicesupport@icas.com.