CONTENTS

Introduction 1
What we do 2
2015 News 4
2015 Monitoring Results 5
2016 News 10
Help, Support & Links 11
INTRODUCTION

We are pleased to issue our report on the activities of ICAS Insolvency Monitoring (ICAS IM) for the year ended 31 December 2015.

As in previous years this report aims to provide the following:
• An overview of the activities of ICAS IM during 2015.
• Visit and file review outcomes from ICAS IM during 2015.
• Key messages and detailed findings arising from ICAS IM.
• Additional news and information for 2016.

This report provides an overview of the most common findings from the ICAS IM visits conducted during the year ended 31 December 2015, and is designed to provide transparency of the work of the team. We hope that you find it useful in considering how effectively you are complying with regulatory and compliance requirements.

Regular readers may notice some recurring themes from previous years. We encourage you to circulate and share the report with your colleagues in order to prevent these issues recurring in the future. If you have any comments or queries in relation to the report please contact us at insolvencymonitoring@icas.com
Background
One of the missions of ICAS is to uphold standards in the public interest. The primary focus of ICAS IM is to uphold standards amongst our IP community.

As a Recognised Professional Body (RPB), ICAS is required to conduct monitoring of Insolvency Practitioners (IPs) in order to make an informed and unbiased decision as to whether an IP is, and continues to be, a fit and proper person authorised by ICAS to act as an IP.

The work of the ICAS IM team was overseen by the Insolvency Permit Committee, which reported to the Regulation Board, but there has recently been important changes to the governance within ICAS (see ‘2016 News’).

For more information on our monitoring visit process please search “Insolvency Monitoring Visit Process” on icas.com.

Who we review
ICAS currently authorises nearly 100 IPs who operate within a variety of business structures from sole practitioners to international firms.

During 2015 ICAS strengthened its position as regulator of choice for those in the insolvency profession after granting its first insolvency licences to solicitors. The authorisations under the Insolvency Act 1986 come as both the Solicitors Regulation Authority and the Law Society of Scotland have taken steps to withdraw as Recognised Professional Bodies for insolvency licencing purposes.

All IPs previously licenced by the Law Society of Scotland have joined ICAS and a number of solicitors previously authorised by the SRA have also done so. Solicitors now account for just under 10% of IPs authorised by ICAS.

A number of IPs previously authorised by other RPBs have also recently chosen to move their insolvency authorisations to ICAS.

Overall the number of insolvency authorisations by ICAS increased by nearly 10% during 2015.

In 2015, our reviewers carried out routine visits on 22 IPs throughout the UK, reviewing on average five appointments per visit.
Our approach
ICAS adopts a risk based approach to monitoring. Risk indicators taken into consideration include the type and size of the portfolio, changes within a practice and where there have been higher instances of non-compliance in the previous visit. This risk based approach determines the time which will elapse between visits in accordance with the requirements of the Principles for Monitoring.

In addition to conducting monitoring of our own authorised IPs, in 2015 ICAS IM also conducted all of the insolvency monitoring on behalf of the Chartered Accountants Regulatory Board (CARB) of the Institute of Chartered Accountants of Ireland.
**2015 News**

**Review of SIP 16 (Pre Pack) Statements**

Following recommendations made to the UK Government within the Graham Report on pre-packaged administration sales which were accepted in full, the Insolvency Service ceased its monitoring activities of SIP 16. The monitoring of SIP 16 is now carried out by the RPBs.

For all appointments from 1 November 2015 onwards, IPs are required to send a copy of their disclosure to their own RPB. For joint appointments, only one SIP 16 disclosure needs to be sent to the RPBs. The lead IP should send the statement to their RPB, even if the joint appointees are licensed by different bodies. Joint appointees must ensure that the SIP 16 disclosure has been sent to the lead IPs RPB.

SIP 16 statements being sent to ICAS should be sent to sip16@icas.com

**Monitoring of ICAS**

Our RPB activities are subject to oversight by the UK Government’s Department for Business Innovations & Skills (BIS), as delegated to The Insolvency Service.

In April 2015, the joint Insolvency Service and Department of Enterprise, Trade and Investment (DETI) Inspection Team visited ICAS to carry out a monitoring visit on our Insolvency Regulation process. The resultant report published in July was the first “all-green” report for an insolvency regulatory body which indicated we have robust controls in all areas.
**2015 MONITORING RESULTS**

In 2015 we conducted 22 Insolvency Monitoring visits (2014: 24).

Visit outcomes

<table>
<thead>
<tr>
<th>Visit outcomes</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>Average over most recent 3 years (2013-15)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satisfactory report – no follow up action.</td>
<td>7</td>
<td>12</td>
<td>6</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>(28%)</td>
<td>(50%)</td>
<td>(27%)</td>
<td>(35%)</td>
</tr>
<tr>
<td>Some recurring system/compliance or other findings – confirmation of action taken.</td>
<td>14</td>
<td>8</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>(56%)</td>
<td>(34%)</td>
<td>(55%)</td>
<td>(48%)</td>
</tr>
<tr>
<td>Significant system/compliance or other unsatisfactory findings – confirmation of action taken. In some instances sanctions/follow-up visit instructed</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>(16%)</td>
<td>(16%)</td>
<td>(18%)</td>
<td>(17%)</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>25</td>
<td>24</td>
<td>22</td>
<td>23</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.

As a consequence of the risk based approach to monitoring, IPs who have had a greater instance of non-compliance are visited more frequently. All IPs who fall within the third category in the table above will receive a follow up visit or an earlier subsequent visit.

We also track progress made by IPs from one visit to the next. Our analysis shows that the majority (59%) of IPs visited in 2015, who had received a previous visit, demonstrated either an improvement or maintenance of quality and compliance from the previous visit.

**Summary Findings and Actions**

It is encouraging to note that as in previous years our findings have identified that there continues to be a number of IPs who have a strong compliance culture as a result of investing significant time and effort into standardising procedures and training staff on those procedures. We continue to see strategies well documented and reassuringly almost all files reviewed were well structured and easy to follow. We would also note the continued success of our IPs in achieving good outcomes, in challenging markets, for the benefit of creditors.

Notwithstanding that the majority of IPs visited during 2015 demonstrated an improvement or maintenance of quality and compliance from their previous visit, it is fair to say the type of findings which occur most frequently continue to remain largely unchanged for a number of years. This suggests that there are a number of areas which IPs are finding a challenge to effectively address. During a visit the reviewer will:

• investigate and discuss the reasons for the findings identified, and;

• attempt to provide some useful suggestions as to how the IP may implement an effective plan to address them.

In order to improve and encourage good practice amongst all ICAS IPs we have summarised the most frequent findings of 2015 visits below.
Special Focus: Anti-Money Laundering

This year’s visits have identified an increase in the number of findings in relation to compliance with the Money Laundering Regulations.

HM Treasury

ICAS is an Anti-Money Laundering (AML) Supervisor under the legislation and is required to report annually to HM Treasury on the levels of compliance.

There has been significantly increased interest by HM Treasury in the past few years on what HM Treasury sees as the poor level of compliance in the UK, and Supervisors are being expected to take further action in order to reduce the risk of money laundering, financial and organised crime. The Money Laundering Regulations, as amended by the Money Laundering (Amendment) Regulations 2012 (‘the Regulations’) have been in force since 2007 and HM Treasury has made it clear that continued non-compliance is not acceptable.

A National Risk Assessment was also recently published where the accountancy sector was considered high risk. You may have also noticed significantly increased media attention in this area. As this report is being written, the Government has published a Call for Information for AML supervision in the UK where significant reforms are being proposed.

All this leads to a heightened focus on AML.

For more information on the special focus on anti-money laundering please search “Practice Monitoring Annual Report 2015” on icas.com

The findings in this year’s IM visits were generally in relation to:

- absence of documentation in the file to demonstrate compliance with the Money Laundering Regulations 2007, or
- the checklist used did not demonstrate a risk based approach to customer due diligence as required by the legislation, or
- late completion of the documentation.

In most instances identification of the relevant parties had been obtained, but this does not demonstrate a risk based approach.

IPs should ensure that there is appropriate documentary evidence of consideration of a risk based approach to customer due diligence as required by the Money Laundering Regulations 2007 for each appointment.

In respect of the late completion of the documentation Paragraph 5.58 of the CCAB Anti-Money Laundering Guidance for the Accountancy Sector states, “in insolvency appointments, customer due diligence may not be possible prior to appointment and should be completed as soon as practicable after appointment (if possible, usually within five working days.).”

TIP

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” on icas.com
Evidence of Conflict Checks and consideration of Ethical Matters

This was another area where the number of findings had increased significantly in comparison with previous years.

TIP
Conflict checks and consideration of ethical matters must be carried out and documented as such prior to the commencement of each appointment.
Each IP must record his or her considerations and the documentation is not only signed by the case manager.
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.
Standard documentation should be updated to reflect the requirements of the revised SIP1, effective from 1 October 2015.

IP Form of Record

The accuracy of the IP Form of Record (IPR) remained an issue during visits in the earlier part of the year.
However the commencement of the Insolvency Practitioners (Amendment) Regulations 2015 on 1 October 2015 removed the requirement to complete an IPR for cases governed by the IP Regulations 2005. The requirement for an IPR continues to apply for any pre 2005 appointments and post 2005 follow-on cases.

TIP
IPs should ensure that, subject to the above exclusions, from 1 October 2015 records are maintained for each case which contain sufficient information to show and explain:

(a) the administration of that case by the IP and his staff; and
(b) any decisions made by the IP which materially affect that case.

SIP 9 creditors guide to fees not provided with each report

There were a number of instances identified where there had been a failure to provide information to creditors and other interested creditors as to their rights in respect of remuneration. SIP 9, para 7 states “An office holder should inform creditors and other interested parties of their rights under insolvency legislation. 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 in 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.

Whilst the information was regularly provided at the outset of an appointment, the revision to SIP9 in May 2012 requires this information to be provided with each report.

TIP
We recommend that standard documentation is reviewed to ensure that the required information is provided in each instance.
Bond levels

The number of issues identified in relation to bonds decreased during the year in comparison with the previous year. The areas in which findings had arisen during visits in 2015 were similar to those reported in 2014:

- instances of under bonding from the outset of the appointment, based on information known at the time of appointment.
- delays in increasing level of bond when the estimated or known value of additional assets has become determined.

Whilst over bonding is not as much of a concern as under bonding, care should still be taken as to the appropriateness of the level of bond set, 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.

**TIPS**

Use a template document to calculate the appropriate bond level.

Include the values, and estimated values, of all known assets in the bond calculation.

Have procedures in place which ensure bond level is reviewed upon any change in estimated valuation of an asset, when funds are received and as part of periodic file reviews.

S120 Qualifying Pension Scheme

During the year there were a number of instances identified where there was no or incomplete evidence in the files reviewed that the IP had carried out a search in order to confirm that no Qualifying Pension Scheme existed for the insolvent party.

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.

**TIP**

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 with evidence of the date the search was carried out.

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

Disclosure of remuneration not fully compliant with SIP 9

An increased number of findings have been identified during the year in respect of compliance with SIP 9, particularly in respect of disclosure.

In some of the cases reviewed there had been a failure to provide sufficient information to enable the progress of the appointment to be assessed by the parties approving the level of remuneration. SIP 9 para 14 states “An office holder should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed. Where the remuneration is on a time costs basis, an office holder should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable”. This information should be provided in every request for approval of remuneration.

**TIP**

We recommend that standard documentation is reviewed to ensure that the required information is provided in each instance.

Remember also to update your standard documentation for English and Welsh appointments to reflect the changes introduced by the revised SIP 9 England and Wales effective from 1 December 2015.
Registration under the Data Protection Act 1998
A number of instances were identified where the firm was registered as a data controller but not the IP personally. In addition to a firm registration each IP should be registered with the Information Commissioners Office in respect of personal data they hold in their capacity as data controller.
Further information on this matter can be found at the ICO website or the Lexisnexis website.
It should be noted the Annual Insolvency Licence Application Form asks for confirmation of registration and a check is carried out prior to each monitoring visit to confirm registration.

TIP
Check your registration is up to date on the ICO website.

Late Statutory Filing and Statutory Matters
Instances of late filing were identified across the procedures during visits in 2015. In some instances late statutory filing was as a result of confusion in relation to filing dates where the meetings of members and creditors were held on different days in creditors voluntary liquidations.

TIP
Review checklists and diary prompts regularly to ensure they are complaint with current legislation. Be aware of the legislation under which the appointment is administered and adhere to the appropriate statutory timescales.

Receipts and Payments and Reports to Creditors
It is pleasing to note there has been a reduction in the number of instances of late submissions of Receipts and Payments Accounts across all procedures in the visits conducted in 2015 in comparison with the 2014 figures. As in previous years in some instances the late submission was attributed to an error in the diary prompt, which resulted in the use of incorrect accounting dates. As a result of incorrect dates being used the statutory submission deadlines were exceeded. IPs are reminded that the Accountant in Bankruptcy no longer accepts Accounts which are submitted late without a prior application to the Court or Accountant in Bankruptcy which may be at the Practitioner’s own expense.

TIP
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.
**Authorisation Committee**

The Authorisation Committee was formed on 19 April 2016, following an internal review of governance, which recommended that the previous committee structure be streamlined. The Authorisation Committee has the powers and duties previously held by the Audit Registration Committee; the Public Practice Committee; the Insolvency Permit Committee; and the CPD Regulatory Committee. The new Committee membership includes a number of ICAS licensed Insolvency Practitioners.

The Authorisation Committee is one of two regulatory committees that reports to the Regulation Board.

The Committee is responsible for all aspects of practice licensing and monitoring and the change is to ensure consistency of decision making across the different practice areas and to accommodate a number of new regulatory models which have been introduced.

**Committee structure pre Governance Review**

![Committee structure pre Governance Review diagram]

**Committee structure post Governance Review**

![Committee structure post Governance Review diagram]

**Non appointment taking licences**

ICAS has taken steps during the year to encourage the future of the profession by introducing, for the first time, a non-appointment taking licence.

The licence, currently available for a nominal annual fee, allows members and non-members who have passed the Joint Insolvency Examination Board exam to be recognised as a highly specialist professional and become part of the ICAS insolvency community.

For more information on how to become an ICAS IP please search “how to become an IP” on icas.com

**Consumer Credit Licencing**

The UK Government introduced changes to Consumer Credit Regulation which took effect from 1 April 2014.

For more information on the new consumer credit regime and how the changes affect you and your firm please search “consumer credit” on icas.com

We continue to lobby for the widening of the insolvency exclusion.

**Auto-enrolment**

Practitioners are reminded of their obligations in respect of any pension arrangements an insolvent company may have.

The introduction of Auto Enrolment requires every employer to provide a pension arrangement. As an IP you must identify any pension arrangements of the company over which you are appointed, and who has responsibility for it. It is important that you seek the necessary expert pensions advice when appropriate.
OTHER USEFUL LINKS AND CONTACTS

Professional Standards Division
IM 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. The Division now also incorporates Practice Support and Insolvency Technical both of whom support members in achieving and maintaining standards.

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 queries please phone +44 (0)131 347 0288 or email insolvencymonitoring@icas.com

Insolvency specific help and support
A range of information and guidance is available to ICAS IPs on icas.com

For information on specific guidance please search “insolvency legislation, guidance and checklists” on icas.com.

Money Laundering confidential helpline
If you have any money laundering concerns, please contact our confidential helpline on +44 (0)131 347 0271.

Insolvency Discussion Groups
In addition 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 Laura Borland at Brodies LLP on +44 (0)131 656 0108 or email laura.borland@brodies.com

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 on +44 (0)1383 608203 or 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)141 248 4957 or email: alan@macdonaldhenderson.co.uk

Insolvency Technical
We are pleased that David Menzies joined ICAS as Director of Insolvency on a full time basis during 2015. He 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 Insolvency
Phone - +44 (0)131 347 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

Central Registry
If you have forgotten your login and password for the ICAS website please contact ICAS Professional Services at professionalservices@icas.com

Professional Development (PD)
The Professional Development team works across all ICAS divisions to transform professional development for our members. The delivery of courses is done in partnership with BPP Professional Education Ltd, and has recently extended to England and Wales through a partnership with CIMA.

Key focus areas for 2016 include Ethics (The Power of One), Technology (cyber security, Data), Career Development, and Personal Impact.

For more information on professional development please search “professional development” on icas.com.

For any further information please contact pd@icas.com
To speak to a PD Programme manager call +44 (0)0131 347 0212 / 0179

BPP: +44 (0)330 060 3303 or ldicas@bpp.com
BECOME A JIE STUDENT

When you want to enrol for Joint Insolvency Exam (JIE) training you can now become a registered JIE student with ICAS. You don’t have to be a Chartered Accountant member, or be sponsored by a member, to be a student. Once you are JIE qualified you may also apply to become an ICAS licensed Insolvency Practitioner.

For more information call Caroline Morris +44 (0)131 347 0288 or email cmorris@icas.com

INSOLVENCY CONFERENCES

ICAS are running an essential conference aimed at Insolvency Practitioners and professionals with an interest in insolvency.

The Insolvency Practitioners Conference, 22-23 November 2016
This conference is a mixture of case studies, lively discussions and technical sessions, covering relevant legislative and regulatory changes affecting the insolvency practitioner

For more information and to book search for Insolvency and Restructuring Conference on icas.com