Insolvency Monitoring Helpsheet – Issue 5

Topical Issues

Redundancies – Duty to Consult

Recently correspondence was received by ICAS from the British Government expressing its concern that insolvency practitioners were not complying with the Trade Union and Labour Relations (Consolidation) Act 1992. Under this Act, employers have a responsibility to consult with employees or a trade union representative where it is intended to make 20 or more employees redundant at any one establishment within a period of 90 days. Failure to do so is a criminal offence under Section 194.

Practitioners are also reminded of the requirement to notify the Secretary of State of proposed collective redundancies by forwarding a completed HR1 form to the Redundancy Payments office of the Insolvency Service (Dear IP 40 July 2009).

SIP16

You will no doubt be aware that SIP16 is being re-drafted and the three month consultation process commenced on 22 February. The Insolvency Service appears to be very keen to extend the list of disclosures that are required to be made by practitioners in pre-pack administrations. Practitioners are encouraged to take part in this process.

Pre-appointment Costs

Practitioners are reminded that it is essential to be independent and seen to be independent in relation to insolvency appointments as part of the Code of Ethics. It is understood that in some instances, generally administrations, purchasers of the business have been paying the pre-appointment costs direct to the practitioner rather than the practitioner being able to recover these out of the proceeds. Although the financial impact is the same, the practitioner has a direct financial relationship with the purchaser.

Follow-up Visits

From time to time the Insolvency Permit Committee instructs follow-up visits to be carried out due to concerns noted during random monitoring visits. As a result, these follow-up visits concentrate on the specific areas noted in the last report in order to advise the Committee on the action taken to resolve these matters. Practitioners are reminded that these follow-up visits are at the expense of the practitioner and will be charged on the basis of time spent in planning, actual visit time and report writing etc at the rate of £1,000 per day.
Monitoring Issues

**Bordereau/Cover Schedule**
The Insolvency Practitioners Regulations 2005 at paragraph 13, Schedule 2 state “Every insolvency practitioner shall submit to his authorising body not later than 20 days after the end of each month during which he holds office in a case

a. The information submitted to a surety or cautioner in any cover schedule related to that month;

b. Where no cover schedule is submitted in relation to the month, a statement either that there are no relevant particulars to be supplied or, as the case may be, that it is not practicable to supply particulars in relation to any appointments taken in that month; and

c. A statement identifying any case in respect of which he has been granted his release or discharge.”

The 2005 Regulations revoke the two month period allowed to submit bordereau and make reference to “Cover Schedule” rather than Bordereau.

**Client Funds**
There was a higher incidence during 2009 of non compliance with Client Money Regulations. Practitioners need to be aware that insolvency funds held either in a global bank account or in individual estate accounts are considered to be client monies and therefore the Institute’s Client Money Regulations must be adhered to.

For those Practitioners in instances where monies have been remitted by Accountant in Bankruptcy (AiB) it may be worth considering a separate AiB clients money account.

**VAT on Bond Premiums**
A significant percentage of practitioners are not aware of the requirement to charge VAT on all premiums paid in relation to specific penalty bond required for each case especially when the premium is being paid directly out of the case funds. Practitioners need to raise a fee note every time a premium is paid to ensure that VAT is properly charged. This was reported by the Insolvency Service in Dear IP Issue 37 (October 2009) and by ICAS in Impecunias Issue 72 (May 2009).

**SIP3A Disclosure**
Despite the introduction of SIP3A in April 2007, there continue to be instances where full disclosure is not made to creditors or where matters are not fully documented especially in relation to payments to agents for financial information on debtors. Practitioners need to be seen to be fully transparent and able to evidence and justify their decisions in relation to the quantum of any such payment.