Topical Issues

Accountant in Bankruptcy’s Agency Contract
The three year contract under which the Accountant in Bankruptcy allocates sequestration cases to be administered on her behalf by practitioners is due to expire in March 2012. However, it is not known if the Accountant in Bankruptcy intends to renew the existing contracts or seek new tenders.

New Protected Trust Deeds
The Accountant in Bankruptcy now has a responsibility to oversee Protected Trust Deeds under the Bankruptcy & Diligence (Scotland) Act 2007. This process is on-going and the Institute receives statistics from the Accountant in Bankruptcy which are extracted from Forms 3 and 4 filed by practitioners. It has yet to be seen what corrective action the Accountant may take where she considers there has been unsatisfactory performance.

Client Money Regulations
Due to the current financial climate and in particular the minimal level of interest rates being offered by financial institutions, the Institute has updated and amended its Client Money Regulations


The revised Regulations became effective on 1 April 2011 and clarify the responsibilities for insolvency practitioners in relation to funds held by them. The Regulations were also specifically amended for the guidance given in relation to interest. It is hoped that this will reduce the level of technical breaches found during monitoring visits.

SIP16 Prepacks
Prepack administrations continue to be a very sensitive area with politicians and the media. During the visits carried out in 2010, it was noted that practitioners were very aware of this issue and where relevant, practitioners were complying with the disclosure requirements required under SIP16.

On 31 March 2011 the Minister for Employment Relations, Consumers and Postal Affairs, Department for Business, Innovation and Skills, Mr Edward Davey MP announced proposed changes to improve transparency and confidence in pre-pack sales in administration which include:

- the requirement for administrators to give advance notice to creditors (suggested 3 days) where they propose to sell a significant proportion of the assets of a company or its business to a connected party, in circumstances where there has been no open marketing of the assets.
- SIP 16-style information to be included in administration proposals and filed at Companies House

These proposals will be given due consideration by the authorising bodies as part of the review of SIP16.

Pension Protection Fund
The requirement to report qualifying pension schemes is often only relevant in the larger insolvency cases which are normally administered by practitioners in large insolvency practices. However, due to the publicity of this requirement, it was noted that practitioners had introduced procedures to identify pension funds and to report where relevant.
Case Closure
Case closure continues to be an issue during monitoring visits and the Insolvency Permit Committee continue to monitor this area closely. Where appropriate the Committee request regular reports from practitioners on progress of their older cases in order to focus their attention on these cases and encourage them to close them as soon as possible.

EU Services Directive
Practitioners are reminded that the EU Services Directive enacted under the Provision of Services Regulations became effective from 28 December 2009.

Part 2 – "Duties of Service Providers" includes significant changes which apply to disclosures on professional indemnity insurance and a firm’s complaints process. Additionally there are further regulations which apply to insolvency practitioners.

The Institute has produced a Helpsheet on the requirements for accountancy firms which can be accessed at:
http://www.icas.org.uk/site/cms/download/repository/MS_1006_FACTSHEETS-ProvisionOfServicesRegulations.pdf

Issues arising from Monitoring Visits

IP Form of Record
In the vast majority of reports, the accuracy of the IP Form of Record was an issue in several of the cases reviewed during the visit. In some instances the inaccuracy of the content of the record was due to the failure of the computer program used to populate the document correctly and/or straightforward human error. A number of practitioners had failed to update the style of form used to present the information to include the details required by the IP Regulations 2005.

Bonding
During 2010 a number of reports included a finding in respect of the level of bond in the cases reviewed. There were no instances identified where bonding was not in place, however a number of instances were identified where the bond level had been insufficient to cover the value of the assets initially anticipated. Also there were cases where the practitioner became aware of an additional asset, or there was an increase in value of a known asset and the practitioner failed to increase the bond at the earliest opportunity. The issue regarding the quantification of the level of the initial bond has been a finding in previous years and practitioners were advised in a monitoring helpsheet issued in April 2009 of the correct basis for calculation in an endeavour to address this issue
http://www.icas.org.uk/site/cms/contentview/article.asp?article=7199

VAT on Bond Premiums
A number of practitioners visited in 2010 were found not to be complying with the requirements of Dear IP 37, issued by the Insolvency Service in October 2008, which stated that insolvency practitioners should apply VAT when re-charging bond premiums to insolvent estates. Some practitioners appear to have been unaware of the requirement to do so, despite having received a copy of Dear IP from the Insolvency Service and the publication of an article in the May 2009 edition of Impecunias, whilst others have sought their own professional advice and have concluded that it was not appropriate to charge VAT on the bond premium.

Receipts & Payments
During 2010 there were a number of instances identified where there was non-compliance with statutory time limits in relation to filing receipts and payments accounts in corporate cases and accounts in sequestrations etc.
Intromitting with funds post discharge
Once a practitioner has received his discharge from his insolvency appointment, he no longer has the authority to intromit with the funds of the case as the appointment is a personal one and he no longer has a locus to act. During 2010, several practitioners were found to have intromitted with funds after they had received their formal discharge from office. The quantum of funds dealt with were often of a minimal value however there was an occasion where the sum was a considerable amount. The issue of intromitting of funds post discharge is a practical issue and could be addressed by practitioners completing the administration issues of the appointment in advance of the final meeting.

Client Money Regulations
As in previous years, there have been a number of reports where one of the findings in the report is a failure to comply with the Client Money Regulations. The findings in connection with client money issues is the same as in previous years, namely the Accountant in Bankruptcy’s practice of lodging funds in practitioners’ bank accounts without proper notice and documentation to identify the exact makeup of the amounts lodged. These could include the practitioners’ agency fees, disbursements for cases etc. This situation is, of course, out with the practitioners’ control however these are classified as technical breaches. The occurrences of this issue are decreasing as practitioners complete their caseloads under the previous Agency contract and an increased awareness by the practitioners’ resulting in an improvement of their monitoring of the situation. In addition the matter was raised with the Accountant in Bankruptcy by the Institute’s Insolvency Technical Department resulting in a work around solution in which AiB now provides practitioners with notification that payment is about to be made.

SIP3A Disclosure
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.