CONTENTS

Introduction 1
Our Monitoring Work 2
Visit Outcomes 3
Key Messages & Themes 4
Hot Topics 6
Help and Support 7

Appendix One: Useful Links 8
Welcome to the 2012 Annual Report produced by ICAS Insolvency Monitoring (IM).

This report aims to provide the following:

• an overview of the activities of the ICAS IM team in 2012;

• visit and file review outcomes from ICAS IM work in 2012;

• key messages and detailed findings arising from this work; and

• key ‘hot topics’.

We hope that you find this publication informative and useful when considering your own compliance procedures.
The purpose of monitoring is to enable ICAS 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. Further information on the visit process can be found here.

ICAS currently licences around 100 Insolvency Practitioners (IPs) who operate within a variety of business structures from sole practitioners to international firms.

In 2012, our monitors carried out 35 routine visits to IPs throughout the UK, reviewing 208 appointments in the process.

We take a risk based approach to monitoring. Risk indicators which will be taken into consideration may include the size of 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.

Our Recognised Professional Body (RPB) activities are subject to oversight by the Government’s Department for Business Innovations & Skills (known as BIS), as delegated to The Insolvency Service. We received our last inspection visit in March 2012 and are pleased to confirm that our RPB activities were considered fit for purpose and that, as with previous years, there were no significant findings.

In addition to conducting monitoring of our own licensed IPs, ICAS also conducts all of the Insolvency Monitoring on behalf of the Chartered Accountants Regulatory Board (CARB) of the Institute of Chartered Accountants of Ireland.
Visits outcomes

Insolvency Monitoring visits 2012

<table>
<thead>
<tr>
<th>Insolvency Monitoring visit outcomes</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Satisfactory Report – No follow up action</td>
<td>9 (36%)</td>
<td>19 (46%)</td>
<td>11 (31%)</td>
</tr>
<tr>
<td>Some recurring system/compliance or other unsatisfactory findings – confirmation of action taken.</td>
<td>6 (24%)</td>
<td>21 (51%)</td>
<td>16 (46%)</td>
</tr>
<tr>
<td>Significant system/compliance or other unsatisfactory findings – confirmation of action taken.</td>
<td>10 (40%)</td>
<td>1 (3%)</td>
<td>8 (23%)</td>
</tr>
<tr>
<td>In some instances sanctions/follow-up visit and/or referral to Investigations.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong> (Visit Target 2012: 35)</td>
<td>25</td>
<td>41</td>
<td>35</td>
</tr>
</tbody>
</table>

The visits carried out each year are across a mix of types and sizes of practice in which IPs carry out their business, which makes a direct year on year comparison difficult. However, since 2010 the reduction of instances where there were significant system/compliance or other unsatisfactory findings is mainly attributed to fewer instances of breaches of the Clients’ Money Regulations which is subject to comment later in this report.

Whilst the outcome table above provides an analysis of visits from 2010 to 2012, we also tracked progress made by IPs from one visit to the next (in most cases the previous visit will have predated 2010 and will not be included in the outcome table above). Our analysis shows that the majority of IPs visited in 2012 demonstrated an improvement in quality and compliance from the previous visit.

As mentioned previously we take a risk based approach to monitoring and therefore IPs who have had a greater instance of non-compliance are visited more frequently. All IPs in the third category in the table above are to receive a follow up visit or will receive an earlier subsequent visit.
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.

Notwithstanding that the majority of IPs visited in 2012 demonstrated an improvement in quality and compliance from their previous visit, a number of the findings which occur most frequently have remained unchanged for a number of years.

In order to improve and encourage good practice amongst all ICAS IPs we have summarised the most frequent findings of 2012 below. The findings are presented in order of those which occurred most frequently.

A number of the common themes identified in the helpsheet of May 2012 available [here](#) continue to be repeated in the visits carried out in 2012.

An analysis of the 2012 visit findings has identified that the number of instances of late submission of statutory receipts and payments accounts and reports to creditors, and late filing of other statutory documents has increased significantly from the previous year. It is acknowledged that the Helpsheet was only issued in May 2012 and that many of the findings which form the basis of the summary below will have arisen prior to the issues being highlighted in the Helpsheet.

The key themes are, as follows:

**Failure to comply with the statutory submission deadlines**

The instances of late filing of Receipts and Payments Accounts and reports to creditors were found to have increased significantly in the visits carried out in 2012. In some instances the issue has arisen as a result of incorrect diary prompts in the software packages relied upon which, once identified, were rectified.

In others it was as a result of an incorrect date of appointment being recorded when the case was set up.

A regular review of the contents of the diary and the set up information would have drawn these matters to the IP’s attention prior to the monitoring visit.

**Insolvency Practitioner Form of Record incomplete and/or inaccurate**

The accuracy of the Form of Record remains an issue, and is still often attributed to a failure of the software program to correctly pull through the required data and/or straightforward human error.

The inclusion of a review of the contents of the IP Form of Record in all periodic reviews of the administration of each case should assist in ensuring that the record is accurately maintained.

**Insufficient bond cover**

In particular the IM team noted a failure to promptly increase the level of bond when additional assets are identified, or an increase in value has occurred.

In addition, a number of instances were identified during 2012 where there has been late intimation to the bond provider that the IP had received his discharge from office.

The IP should regularly review the bond to ensure it is set at an appropriate level. A review of the bond should be included as a requirement of all periodic reviews of the administration of each case.

**Late filing of statutory documents**

During 2012 there was a significant increase in the late filing of statutory documents across all insolvency procedures.

Particular areas which require attention are;

- submissions to the Registrar in administrations in respect of the result of acceptance of the administrator’s proposals following Sch B1 para 52 (1)(b) approval route, Rule 2.25(3A);
- the submission of the Inventory and Valuation, written comments and Form 18 in sequestrations; and
- filing of final documentation in corporate appointments and protected trust deeds.

**Late and/or no submission of R4.10 report**

A common finding has been the late and/or no submission of R4.10 reports. In some instances this has arisen due to omission, in others as a result of using the incorrect commencement date.

A practical solution, to improve efficiency, would be to include the report with the notice calling the annual meeting of creditors and have the alternate six monthly report as a standalone document.
Late submission of reports due under the Company Directors Disqualification Act
The returns on the directors conduct are due within 6 months of the relevant date in accordance with Rule 4, Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 1996.

The inclusion of, and adherence to, an appropriate diary line with a date six weeks in advance of the final submission deadline would assist in ensuring the return is submitted within the statutory timescale. If additional time is required prior to completion of a final report, a D2 interim report should be submitted extending the submission deadline.

Compliance with Money Laundering Regulations 2007
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.

There is further guidance on this area in the helpsheet “Anti-Money Laundering Legislation” which can be found here.

There is also a dedicated money laundering area of the ICAS website which can be found here.

Company Directors Disqualification Act
Another common finding was the lack of sufficient evidence and documentation of matters considered or conclusions reached prior to submitting a return.

This finding tends to arise more frequently where a D2 final return is submitted. An insolvency event brings a number of matters under scrutiny and it is therefore important to document the reason and conclusion, when submitting a D2 final report.

The completion of an appropriate checklist which covers all relevant areas to be considered, or the preparation of a detailed file note stating areas considered, both with an appropriate conclusion, would normally be considered sufficient evidence of matters considered and conclusions reached.

Statutory meetings late/not held.
A number of instances were identified where statutory meetings were not held in accordance with the legislation.

Adherence to appropriate diary lines, and the issuing of the notice of the meeting in conjunction with annual reports to creditors, which were generally issued within statutory timescales, would assist in complying with statutory requirement for meetings without making the process more onerous or time consuming.

Breaches of Clients’ Money Regulations.
The number of breaches of the Clients’ Money Regulations has decreased on the 2011 figures, partly due to the changes in the Clients’ Money Regulations during 2011, but is none the less still a frequent finding in reports.

A requirement has now been placed on the IP to ensure that reasonable skill and care is exercised in assessing whether or not interest would be material, and that a client does not lose material sums of interest because the clients’ money is held on deposit in low or non-interest bearing accounts.

There is further guidance on this area in the helpsheet “Clients’ Money Regulations” which can be found here.

The Regulations can be accessed here.
In a continuingly challenging economic environment insolvency and insolvency related matters have continued to have a high profile in the media. We have noted a few of the more recent hot topics below.

The practical implications of the Paymex decision
ICAS understands that a large proportion of IPs have now received or are in the process of receiving VAT refunds from HMRC in respect of VAT charged on protected trust deeds and voluntary arrangements.

IPs are reminded of the advice in the ICAS Guidance in respect of closed cases found here. If in any doubt about how the guidance applies to their specific circumstances IPs are advised to seek their own independent legal advice.

VAT on bond premiums in voluntary arrangements and protected trust deeds
Dear IP 54, issued in July 2012 provided an update of the position regarding VAT on bond premiums in respect of voluntary arrangements and protected trust deeds following the ‘Paymex’ decision.

HMRC has confirmed that IPs’ fees in voluntary arrangements and protected trust deeds are exempt from VAT. This exemption also applies to the recharging of bond premiums to the insolvent estate in such cases. Information can be found here.

Accountant in Bankruptcy’s Agency Contract
Following a public procurement exercise three firms have been appointed to provide insolvency services for the Accountant in Bankruptcy for a period of two years from 1 April 2013.

This contract which was signed on 27 March 2013 replaces the previous contract for insolvency services which ended on 31 March 2013. The initial contract award is for a period of two years with a further two optional, one-year extensions if required.
We support the IPs we licence to practice insolvency in the UK in a number of ways.

You may already be familiar with the ICAS website, but if not, we have a full range of information and guidance available to ICAS IPs which can be found via the links below:

- for Insolvency Monitoring Helpsheets and practical and technical guidance to assist practitioners and firms click [here](#).
- for information on how we regulate and monitor our licensed IPs click [here](#).
- for legislation, ICAS Guidance and checklists click [here](#).
- for information about insolvency including where to obtain advice, legislation, current government consultations, and submissions made by ICAS click [here](#).

Further assistance and support is also available:

- IPs with any query in relation to the information held in this report can contact ICAS Insolvency Monitoring by telephone on: +44 (0)131 347 0288;
- 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: Insolvency@icas.org.uk;
- Money Laundering confidential helpline: if you have any potential money laundering issues, please contact our confidential helpline run by our Legal Services Department on +44 (0)131 347 0271; and
- Money Laundering website: there is a dedicated money laundering section on the ICAS website [here](#) which provides technical material, guidance and common scenarios.

In addition there are four Insolvency Discussion Groups at which members of the profession meet regularly to discuss topical issues. Please contact Caroline Morris (cmorris@icas.org.uk) to find details of the group nearest to you.

---

**INSOLVENCY COURSES 2013**

**Early Bird Discounts available**

For further information visit: icas.org.uk/businesscourses or call the team on 0131 347 0232

<table>
<thead>
<tr>
<th>Course</th>
<th>Date</th>
<th>Time</th>
<th>Location</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPI Module 9</td>
<td>8-May</td>
<td>10.00-17.00</td>
<td>Edinburgh</td>
<td>£270+VAT</td>
</tr>
<tr>
<td>CPI/CPPI Module 10</td>
<td>9-May</td>
<td>10.00-13.00</td>
<td>Edinburgh</td>
<td>£270+VAT</td>
</tr>
<tr>
<td>CPI/CPPI Mock Exam</td>
<td>9-May</td>
<td>14.00-17.00</td>
<td>Edinburgh</td>
<td></td>
</tr>
<tr>
<td>JIEB Module 2</td>
<td>14-16 May</td>
<td>10.00-18.00</td>
<td></td>
<td>£1,305+VAT Residential or £355+VAT non-res</td>
</tr>
<tr>
<td>JIEB Module 3</td>
<td>11-13 Jun</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CPI Module 11</td>
<td>22-May</td>
<td>10.00-17.00</td>
<td>Edinburgh</td>
<td>£270+VAT</td>
</tr>
<tr>
<td>CPPI Module 12</td>
<td>23-May</td>
<td>10.00-17.00</td>
<td>Edinburgh</td>
<td>£270+VAT</td>
</tr>
<tr>
<td>Introduction to Personal Insolvency</td>
<td>30-May</td>
<td>09.30-17.00</td>
<td>Edinburgh</td>
<td>£290+VAT</td>
</tr>
<tr>
<td>JIEB Module 4</td>
<td>19-Jun</td>
<td>09.30-13.00</td>
<td>Edinburgh</td>
<td>£150+VAT</td>
</tr>
<tr>
<td>JIEB Module 4</td>
<td>25&amp;26 Jun</td>
<td>09.30-17.00</td>
<td>Edinburgh</td>
<td>£355+VAT per day</td>
</tr>
<tr>
<td>JIEB Referral Programme - Day 1</td>
<td>27-29 Aug</td>
<td>09.30-17.00</td>
<td>Edinburgh</td>
<td>£355+VAT per day</td>
</tr>
<tr>
<td>JIEB Module 5</td>
<td>3-5 Sep</td>
<td></td>
<td></td>
<td>£1,305+VAT Residential or £355+VAT non-res</td>
</tr>
<tr>
<td>Securities Refresher <em>New Course</em></td>
<td>11-Sep</td>
<td>09.30-13.00</td>
<td>Edinburgh</td>
<td>£150+VAT</td>
</tr>
<tr>
<td>Diligence Refresher <em>New Course</em></td>
<td>11-Sep</td>
<td>14.00-17.00</td>
<td>Edinburgh</td>
<td>£150+VAT</td>
</tr>
<tr>
<td>Introduction to Personal Insolvency</td>
<td>25-Sep</td>
<td>09.30-17.00</td>
<td>Edinburgh</td>
<td>£290+VAT</td>
</tr>
<tr>
<td>Restructuring in an Unstable World</td>
<td>24 Sep</td>
<td>09.30-17.00</td>
<td>Glasgow</td>
<td>£290+VAT</td>
</tr>
<tr>
<td>Introduction to Corporate Insolvency</td>
<td>26-Sep</td>
<td>09.30-17.00</td>
<td>Edinburgh</td>
<td>£290+VAT</td>
</tr>
<tr>
<td>Death, Divorce &amp; the Debtor</td>
<td>1-Oct-13</td>
<td>09.30-13.00</td>
<td>Edinburgh</td>
<td>£150+VAT</td>
</tr>
<tr>
<td>JIEB Study Session</td>
<td>10-Oct-13</td>
<td>09.30-17.00</td>
<td>Edinburgh</td>
<td>£355+VAT</td>
</tr>
<tr>
<td>The Insolvency Practitioners’ Conference</td>
<td>13&amp;14 Nov</td>
<td>09.30-17.00</td>
<td>Gleneagles</td>
<td>£670+VAT</td>
</tr>
<tr>
<td>Landlords &amp; Leases <em>New Course</em></td>
<td>11-Dec</td>
<td>09.30-13.00</td>
<td>Edinburgh</td>
<td>£150 + VAT</td>
</tr>
<tr>
<td>Solvent Solutions for Companies <em>New Course</em></td>
<td>11-Dec</td>
<td>14.00-17.00</td>
<td>Edinburgh</td>
<td>£150 + VAT</td>
</tr>
</tbody>
</table>
APPENDIX ONE: USEFUL LINKS

Links to websites referred to in this report are listed below:

- the May 2012 Insolvency Monitoring helpsheet can be accessed at: icas.org.uk/InsolvencyMonitoring/HelpsheetsandGuidance/

- the Anti-Money Laundering Legislation helpsheet and the Clients’ Money Regulations helpsheet can be found, along with all other practice helpsheets at: icas.org.uk/regulation/news/helpsheets/

- the Insolvency Monitoring visit booklet which explains the visit process can be accessed at: icas.org.uk/home/regulation-and-ethics/insolvency-monitoring/monitoring-visit-process/

- the Money Laundering section of the ICAS website can be accessed at: icas.org.uk/home/regulation-and-ethics/anti-money-laundering/overview-of-money-laundering/

- the Clients’ Money Regulations can be accessed at: icas.org.uk/CharterRulesRegulations-after10July/

- the ICAS Paymex guidance can be accessed at: icas.org.uk/Insolvency/LegislationICAS_Guidance_and_Checklists.aspx

- the Dear IP guidance on the VAT on bond premiums following the Paymex decision can be accessed at: insolvencydirect.bis.gov.uk/insolvencyprofessionandlegislation/dearip/dearipmill/hardcopy.htm

- information on the government review of insolvency fees and the single complaints gateway can be accessed at: insolvency.presscentre.com/Press-Releases/Jo-Swinson-announces-insolvency-fees-review-and-single-complaints-gateway-6853e.aspx

- Insolvency legislation, ICAS Guidance and checklists can be accessed at: icas.org.uk/Insolvency/LegislationICAS_Guidance_and_Checklists.aspx

- Insolvency technical information can be accessed at: icas.org.uk/Technical_Research_and_Guidance/Insolvency.aspx