Welcome to our 2012 edition of the Insolvency Monitoring Helpsheet. In this edition we aim to share with you the areas which appeared most frequently in the monitoring reports prepared in respect of visits carried out in 2011. We have also included information on other areas which may be of interest to you.

INSOLVENCY MONITORING FINDINGS FOR VISITS CARRIED OUT IN 2011

This helpsheet aims to provide a summary of the key and the most common issues identified during those visits.

OUR WORK
ICAS currently licences approximately 100 insolvency practitioners (IPs) who operate within a variety of business structures from sole practitioners to international firms. In 2011, our monitors visited 41 IPs throughout the UK. Our findings have identified that there are a number of practitioners who have a strong compliance structure after investing significant time and effort into standardising procedures and training staff on those procedures. In some instances, however, improvements are required and we hope that this helpsheet is found to be useful in this regard. During each visit we attempt to identify any underlying causes of weaknesses and discuss steps which the practitioner can take to address the issues.

There have been a number of common themes over the last few years as detailed below:

COMMON THEMES
• Accuracy and completeness of IP Forms of Record – In the vast majority of monitoring reports, the accuracy of the IP Form of Record was found to be an issue in several of the cases reviewed. 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 still failed to update the style of form used to present the information to include the details required by the IP Regulations 2005. 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 bonding – During 2011 a number of reports included a finding in respect of the bond level 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. In addition, there were cases identified 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. Practitioners were advised in a monitoring helpsheet issued in April 2009 of the correct basis for calculation in an endeavour to address this issue here. Again the inclusion of a review of the bond level in all periodic reviews of each case should assist in addressing this failing. In addition, the raising of staff awareness that the level of bond must be increased when the value of an anticipated asset or increase in value becomes known, and not just when the funds are received, would also improve compliance in this area.
• Late submission of statutory receipts and payments account and reports to creditors – During 2011 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. In some instances this was due to a failure to adhere to statutory dates, in others it arose as a result of an incorrect date being generated by the software package used, or 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 practitioner’s attention prior to the monitoring visit.

• Late submission of reports due under the Company Directors Disqualification Act and insufficient documentation on file to evidence matters considered prior to submission of a report – In the visits carried out in 2011, there were some instances identified where the returns due under the Act were not submitted within the required statutory timescales. Practitioners are reminded that the timescales should be complied with in order to give the Disqualification Unit time to consider the contents of any report and take the matter forward if appropriate. Strict adherence to an effective diary prompt for such reports would ensure compliance in this matter. If insufficient information is available at the six month deadline, then an interim return should be submitted at that time, and a full report at the earliest opportunity. The Disqualification Unit prefers to receive reports within nine months of the relevant date where it is not possible for them to be submitted within the six month period. In order to support the submission to the Disqualification Unit documentary evidence, preferably by way of a completed checklist or detailed file note, should be placed on file in every instance.

• Breaches of the Clients’ Money Regulations – A number of the breaches identified in the visits carried out in 2011 were outwith the individual practitioner’s control and, in instances where interest was not received on funds held, the value of the interest was not considered to be material. Some of the breaches under Clients’ Money Regulations were technical breaches in respect of funds held in accounts without receiving interest. This situation has arisen due to the current economic conditions. The amount of interest which may have been earned had the funds been in an alternative account was considered to be minimal and the administrative costs of moving to such an account would have incurred disproportionate expense to the cases. The recently revised Clients’ Money Regulations have taken into account the current difficulties in obtaining interest on Clients’ Funds. A requirement has now been placed on the practitioner 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.

Clients’ Money Regulations

Clients’ Money Regulations Helpsheet

MONITORING PROCESS
At ICAS Insolvency Monitoring we constantly review procedures and checklists to ensure they are fit for purpose. In line with the Regulators’ Compliance Code, which is aimed at embedding a risk-based, proportionate and targeted approach to regulatory inspection and enforcement among regulators, we have revised our approach to case selection in monitoring visits. From January 2012, which co-incides with the commencement of the sixth round of insolvency monitoring, a risk based selection process has been adopted; going forward there is no requirement for the automatic selection of one of each type of case administered as a matter of routine.

TOPICAL ISSUES
A brief summary of the current topical issues have been noted below:

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, has been extended by a year to 31 March 2013. The Accountant in Bankruptcy has indicated that the appointment of agents will be put out to tender early next year and that it is unlikely that the number of agents will increase.

The practical implications of the Paymex decision
The decision in the case of Paymex Limited v The Commissioners for Her Majesty’s Revenue and Customs found that Nominees’ and Supervisors’ fees in a consumer IVA were exempt supplies. This definition was further determined by HMRC to extend to Nominees and Supervisors fees in all types of IVAs, CVAs and PVAs. ICAS subsequently received legal opinion that Trust Deeds were also covered by this decision and HMRC confirmed they too are exempt. The practical implications of the decision will result in the need for practitioners to cease charging VAT on the relevant case types and review their portfolio of live and closed cases, to establish how, and if it is appropriate, to reclaim the VAT already charged to the case, and make an appropriate adjustment in respect of partial exemption. Further guidance can be found here.
Implications of the Governments proposals for the changes to the Regulation of Insolvency Practitioners

In December 2011, the Government published a document summarising the responses it received following the consultation paper issued in February 2011 regarding the future of Regulation of Insolvency Practitioners. ICAS is fully engaged in this process and awaits further communication from the Government on this issue. There is no immediate intention by the Government to adopt a single regulator approach for insolvency but the existing Recognised Professional Bodies are in consultation with BIS over proposed changes to the existing complaints regimes which are intended to increase consistency of approach across the various regulators and enhance the perception of independence.

Realisation of equity in heritage in a difficult market
Due to the current economic climate, practitioners are encountering difficulties in realising equity in heritage, particularly in respect of personal insolvency appointments. The reluctance of financial institutions to provide finance to enable the debtor or a third party to raise sufficient funding to purchase the equity from the practitioner has often resulted in a delay in the realisation of the equity and therefore the conclusion of the administration of the case. Where practitioners are required to accept a lesser amount in respect of equity, than that anticipated at the outset of the case, then they need to be seen to be fully transparent, advise creditors as appropriate and document the rationale behind their decision.

SIP16 Prepacks
The Government has recently announced that it does not intend to introduce new legislation in respect of Prepack administrations at this time.

REMINDErs
There are a number of new helpsheets and Guidance notes available on the re-launched ICAS website which can be accessed via the link below. New additions to the site include: Guidance on Advertising by Insolvency Practitioners and Guidance for IPs when leaving a Practice.

Practitioners are reminded that they should comply with the Provision of Services Regulations 2009. ICAS Quality Review have prepared a useful helpsheet on the Regulations which can be found at ICAS INSOLVENCY PERMITS
As ICAS is a small professional body, we are close to you as a practitioner and value our relationship with you. The input you provide helps keep us abreast of the practical issues you encounter, which enables us to represent your views to the relevant authorities such as the Insolvency Service, the Accountant in Bankruptcy and government.

As an ICAS licensed Insolvency Practitioner, you are entitled to a number of benefits which include:

- Regular updates on technical, procedural and ethical issues
- Access to our “Insolvency Helpline” (Contact: ICASInsolvency@icas.org.uk)
- The opportunity to participate in the work of ICAS Committees
- Our free quarterly publication – “Impecunias”
- Access to our “Money laundering helpline” (Contact: Legalservices@icas.org.uk) and money laundering guidance.
- Access to our website for technical and regulatory information and helpsheets
- Whilst our monitoring visits are required by regulation they are conducted in a professional manner, and we are happy to provide help, advice and support on visits.
- Insolvency Monitoring helpsheets.

We licence ICAS members and non-members. If you have a colleague who would like to apply to ICAS to become an Insolvency Practitioner, or would like further information, advice or support, please contact Caroline Morris, Insolvency Manager, by email: cmorris@icas.org.uk or tel.: 0131 347 0288.

INSOLVENCY COURSES

Introduction to Personal Insolvency
31 May – 0930-1700 hrs, Edinburgh £285+VAT

TUPER: Where are we now?
7 June – 0930-1230, Edinburgh £145+VAT

Industry Update: Licensed Trade
7 June – 1330-1630, Edinburgh £145+VAT

JIEB Referral Programme
28 to 30 August – 0930-1700, Edinburgh £350 +VAT per day

The Insolvency Practitioners’ Conference
14/15 November 2012, Gleneagles £665+VAT

For more information log onto:icas.org.uk/businesscourses or call the business courses team on 0131 347 0232