ICAS Insolvency Monitoring (ICAS IM) is pleased to issue its annual report covering the work performed in the year ended 31 December 2013.

This report aims to provide the following:
• an overview of the activities of ICAS IM in 2013;
• visit and file review outcomes from ICAS IM in 2013;
• key messages and detailed findings arising from our work; and
• ‘hot topics’.

We hope that you find this publication informative and useful when considering your own compliance procedures.

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 happening in the future. If you have any comments or queries in relation to the report please contact cmorris@icas.org.uk
WHAT DO WE DO?

As a Recognised Professional Body (RPB), ICAS is required to conduct monitoring of the Insolvency Practitioners (IPs) it licences in accordance with the Memorandum of Understanding with The Insolvency Service and the Principles for Monitoring. 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 authorises nearly 100 IPs who operate within a variety of business structures from sole practitioners to international firms.

In 2013 our reviewers carried out routine visits on 25 IPs throughout the UK reviewing on average six appointments per visit.

During the year ICAS IM also carried out a Themed Review in respect of the treatment of funds received following the Paymex Decision. ICAS would like to thank IPs for their cooperation in relation to this Themed Review.

In accordance with the Hampton Principles we take a risk based approach to monitoring. Risk indicators which will be taken into consideration may include the type and 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 RPB activities are subject to oversight by the UK Government’s Department for Business Innovations & Skills (BIS), as delegated to The Insolvency Service.

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

What’s new in Insolvency Monitoring for 2014?
The Insolvency Permit Committee has requested that IM reports from 2014 include a summary and commentary on cases where the appointment date is more than 5 years prior to the insolvency monitoring visit. This is in response to concerns that some cases may not be progressed as quickly as circumstances allow. It is accepted that there are a number of valid reasons as to why a case may remain open beyond 5 years, and due consideration will be given to explanations provided.
RESULTS OF OUR WORK

Insolvency Monitoring visits 2013

ICAS IM visit outcomes

<table>
<thead>
<tr>
<th>Satisfactory report – no follow up action.</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Average over most recent 3 years (2011-13)</th>
<th>Average over previous 3 years (2010-12)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>19</td>
<td>11</td>
<td>7</td>
<td>12</td>
<td>13</td>
</tr>
<tr>
<td>(46%)</td>
<td>(31%)</td>
<td>(28%)</td>
<td>(36%)</td>
<td></td>
<td>(39%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Some recurring system/compliance or other unsatisfactory findings – confirmation of action taken.</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Average over most recent 3 years (2011-13)</th>
<th>Average over previous 3 years (2010-12)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>21</td>
<td>16</td>
<td>14</td>
<td>17</td>
<td>14</td>
</tr>
<tr>
<td>(51%)</td>
<td>(46%)</td>
<td>(56%)</td>
<td>(52%)</td>
<td></td>
<td>(43%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Significant system/compliance or other unsatisfactory findings – confirmation of action taken. In some instances sanctions/follow-up visit and/or referral to Investigations.</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>Average over most recent 3 years (2011-13)</th>
<th>Average over previous 3 years (2010-12)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>8</td>
<td>4</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>(3%)</td>
<td>(23%)</td>
<td>(16%)</td>
<td>(12%)</td>
<td></td>
<td>(18%)</td>
</tr>
</tbody>
</table>

| TOTAL | 41   | 35   | 25   | 33  | 33                                      |

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.

Whilst the outcome table above provides an analysis of visits from 2011 to 2013, we also track progress made by IPs from one visit to the next (in some cases the previous visit will have predated 2011 and will not be included in the outcome table above). Our analysis shows that the majority of IPs visited in 2013 demonstrated either an improvement or maintenance of 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 who fall within the third category in the table above are to receive a follow up visit or will receive an earlier subsequent visit.

Summary Findings and Actions

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 have seen strategies well documented and reassuringly almost all files reviewed were well structured and easy to follow. We would also note the success of our IPs in achieving good outcomes, in challenging markets, for the benefit of creditors.

Notwithstanding that the majority of IPs visited in 2013 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 have remained 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
- 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 2013 visits below. The findings are presented in order of those which occurred most frequently.
Findings shown as a percentage of reports in which issue occurred

2013 visit findings

<table>
<thead>
<tr>
<th>Issues noted</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accuracy of IP Form of Record</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Breaches of Client Money Regulations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Underbonding, or failure to document reasons for reduced level of bond</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Late submission of Receipts and Payments Account and reports to creditors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CDDA no evidence of matters considered and/or conclusion reached prior to submission of a return</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Insufficient documentary evidence of consideration of a risk based approach to customer due diligence as required by the Money Laundering Regulations 2007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disclosure of remuneration has not been in accordance with the relevant SIP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remuneration drawn prior to receiving the appropriate authority</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procedures not fully updated to reflect the changes introduced by the Insolvency (Scotland) Amendment Rules 2010</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Late or no submission of Rule 4.10 reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual meetings called late or not held</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
It is pleasing to note that whilst still within the most frequent findings, compliance in relation to IP Forms of Record, bonding, late submission of Receipts and Payments Accounts and Reports to Creditors, compliance with Money Laundering Legislation and statutory filing were found to have improved on the 2012 visit findings.

The accuracy of IP Forms of Record
The accuracy of the Form of Record remains an issue. The errors and omissions are again often attributed to a failure of the software program to correctly pull through the required data and/or straightforward human error.

This issue has been a regular finding over a number of years and a suggested course of action to address the matter was recommended in the ICAS Insolvency Monitoring Report 2012.

Client Money Regulations
The areas in which IPs are more likely to breach the Client Money Regulations are in relation to:

- the requirement to reconcile every client account at least once every five weeks;
- the identification of unidentified funds in the general client account;
- dividend cheques not being presented for payment by creditors and not subsequently being promptly consigned to the Accountant in Bankruptcy, which may result in funds being held when the IP is no longer in office.

IPs should also ensure that if they are in receipt of funds via Merchant Services that these funds should be received via a client account and not a firms account.

In recent years instances have been identified where the IP may not be a signatory on a general client account. IPs are reminded that in the Annual Insolvency Permit Application they are required to confirm that they are in full control of their cases. If an IP is not a signatory on the general client account, through which funds in relation to insolvency appointments held pass, then concerns may arise regarding the control over cases.

Bonds
Issues identified in relation to bonds which have arisen during visits in 2013 include:

- the level of bond being insufficient to cover the level of assets evidenced by valuations on file without any or an adequate explanation as to why a lower level of bond cover has been obtained;
- bonding for the level of known assets only and not bonding for the upper level of the bond band, thereby risking being under bonded should any additional assets/income become known and;
- bonding for assets which were fully secured.

Bonding was also a finding in the visits carried out in 2012; a suggested course of action to address the matter was given in the ICAS Insolvency Monitoring Report 2012.

If an IP considers it appropriate to bond for a sum less than the evidence/valuations state then a robust file note should be prepared detailing the reason for a lessor amount being bonded.

The value of the assets in question should be closely monitored and the bond increased should it become apparent that an increased realisation is anticipated.

IPs are reminded that there is no additional cost incurred by the estate in placing a bond to the upper limit into which the assets fall. Doing so ensures that should additional minimal funds be anticipated, or ingathered, the possibility of under bonding may be reduced.

As IPs are aware 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.

Receipts and Payments and Reports to Creditors
While there has been a significant reduction in the instances of late submissions of Receipts and Payments Accounts in the visits conducted in 2013, occurrences of late submissions of Receipts and Payments and Form 4s to the Accountant in Bankruptcy and reports to creditors were still noted.

Company Directors Disqualification Act
In common with 2012 visit findings the lack of sufficient evidence and documentation of matters considered or conclusions reached prior to submitting a return was evident in a number of visits. The ICAS Insolvency Monitoring Report 2012 suggested a course of action to address the matter.

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 also a dedicated money laundering area of the ICAS website which can be found here.
Disclosure of Remuneration
During 2013 visits there have been a few instances where the disclosure of remuneration has not been in accordance with the relevant SIP.

In accordance with SIP9 para 14 “where 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...” it should be noted that this also applies to remuneration requests in protected trust deeds.

In respect of the costs paid by the company in connection with the preparation of the statement of affairs in advance of a s98 meeting regard should be made to SIP 8 para 10.2(d). The minute of the s98 meeting should record the outcome of any creditors resolution in respect of such costs.

Remuneration drawn without authority
During the year incidences have been identified where remuneration has been drawn prior to receiving the appropriate authority. These incidences have been considered isolated in nature but demonstrate that care should be taken when drawing remuneration in all procedures.

IPs should ensure that when staff members are dealing with a procedure with which they are not familiar that extra care is taken to ensure full compliance with statutory obligations in respect of remuneration.

Insolvency (Scotland) Amendment Rules 2010
A number of instances were identified during the year where procedures had not been fully updated to reflect the changes introduced by the Insolvency (Scotland) Amendment Rules 2010, an example of which are the advertising requirements detailed in R7.21 and 7.21B.
HOT TOPICS

Protected Trust Deed (Scotland) Regulations 2013

As you will be aware the new Regulations came into force on 28 November 2013. It is anticipated that a revised trust deed SIP will be issued in the near future to reflect the recent changes in legislation.

As previously intimated in the Insolvency Technical Update of December 2013, the ICAS style Trust Deed has been updated to take account of the changes introduced by the Regulations. This is available under licence to ICAS Insolvency Permit holders for their personal use only as a no cost benefit through holding your insolvency permit with ICAS.

The ICAS style Trust Deed will be available to non-ICAS insolvency permit holders under licence agreement which will be subject to a fee. Requests to enter into a licence agreement must be made to: ICASinsolvency@icas.org.uk.

The ICAS checklist for Trust Deeds has also been updated to reflect the changes introduced by Regulations. The checklist applies to all trust deeds granted on and after 28 November 2013.

Click here to download a copy of the ICAS Trust Deed checklist – December 2013.

Corporate Insolvency Rules

The Insolvency (Scotland) Amendment Rules 2014 were laid before the Scottish Parliament on 1 May 2014 and come into force on 30 May 2014.

Consumer Credit Licensing

The UK Government has recently made important changes to Consumer Credit Regulation that will affect all firms with effect from 1 April 2014.

Our understanding of the current position and advice on what you need to do was contained in the email to ICAS IPs on 27 February 2014. Further communications will be issued as matters develop.

The main issues are;
- The group licence regime ended on 1 April 2014 when the Financial Conduct Authority (FCA) took over from Office of Fair Trading (OFT);
- Any incidental credit related regulated activities will be covered under the ICAS Designated Professional Body (DPB) regime;
- There is an exclusion in relation to pre-appointment work from appointment as an IP as defined under s388 of the Insolvency Act 1986;
- Whilst the exclusion is likely to cover preliminary advice provided by an IP, it does not cover the work conducted from the point at which a Debt Arrangement Scheme or non-statutory debt solution is identified as the solution for the debtor. An FCA licence is likely to be needed for this work, unless this is incidental (if this is the only work for this individual undertaken by your firm then it is unlikely to be incidental).
- Firms involved in non-incidental credit related regulated activities were required to obtain an OFT licence prior to 1 April 2014 and then interim permission from the FCA.

For more information please visit the consumer credit licence regime website here.
The Insolvency Complaints Gateway
The Insolvency Complaints Gateway became operational on 6 June 2013. An update was provided by Nick Howard, The Insolvency Service Head of IP Regulation, at the ICAS Insolvency Practitioner Conference at Gleneagles in November 2013, and it is anticipated that a report will be issued by The Insolvency Service during the year.

Paymex – guidance on succeeding Trustees
HMRC issued guidance on the position relating to succeeding IPs in relation to IVAs here. We have received confirmation from HMRC that this guidance is also applicable to Protected Trust Deeds where appointments are transferred to another IP outwith the practice.

The guidance states:
Applying these principles to the following common situations, the VAT treatment will be:
If the nominee and supervisor are in the same firm then their services to the debtor would comprise a single exempt supply.
The supervisor’s fees will be standard rated:
• Where a supervisor from a different firm is appointed either at the creditors meeting or subsequently as a successor IP or;
• Where a new firm acquires a portfolio of cases and a new supervisor is appointed or;
• Where a new firm acquires a portfolio of cases but the supervisor moves across with the cases so remains in office.
• The only exception would be if an IP can demonstrate that the core part of their service as supervisor is debt negotiation, in which case HMRC would consider exemption. However as this is usually not the prime purpose of the supervisor or the main role that a supervisor undertakes this situation is unlikely to arise in practice.

Consultation
As you are aware the Government has recently issued a Consultation on Strengthening the Regulatory Regime and Fee Structure for Insolvency Practitioners. The consultation closed on Friday 28 March 2014.
WHAT IS ICAS DOING TO HELP IPs?

Regulation Division
Regulation Division acts in the public interest to promote and maintain the highest standards of practice and professional behavior. In essence, the division is responsible for discharging ICAS' regulatory duties and responsibilities, many of which are statutory in nature.

In addition to licencing ICAS Members and Non-Members (Affiliates) as IPs, the granting of practicing certificates, DPB and Audit Licences also sits with the Regulation Division.

Website
icas.org.uk/ca/practice-hub/
icas.org.uk/Insolvency_Monitoring.aspx
icas.org.uk/RegulationandEthics/Complaints_Section/

Caroline Morris, Insolvency Manager, Regulation
Phone +44 (0)131 347 0288 Email cmorris@icas.org.uk

Insolvency specific help and support
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 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 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 at Caroline Morris, Insolvency Manager; Regulation Phone +44 (0)131 347 0288 Email cmorris@icas.org.uk ;

• Money Laundering confidential helpline: if you have any money laundering concerns, 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.

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
All meetings will take place at CA House, 21 Haymarket Yards, Edinburgh EH12 5BH starting at 6pm unless otherwise indicated.

Further information can be obtained from Robert Dobie at Tods Murray LLP on +44 (0)131 656 2000 or email: robert.dobie@todsmurray.com

Grampian Area Insolvency Practitioners’ Group
All meetings will take place at the Palm Court Hotel, Seafield Road, Aberdeen AB15 7YX starting at 6pm unless otherwise stated.

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
Meetings of the Group will take place in the offices of Henderson Loggie, Royal Exchange, Panmure Street, Dundee, DD1 1DZ or Thomson Cooper, Castle Court, Carnegie Campus, Dunfermline, Fife, starting at 5.30pm.

Further information can be obtained from Graeme Smith at Henderson Loggie – email: Graeme.smith@hendersonloggie.co.uk

West Of Scotland Insolvency Forum
All meetings will take place at ICAS, 7 West Nile Street, Glasgow G1 2PR starting at 5.15pm for 5.45pm unless otherwise indicated. Further information can be obtained from Donald McNaught at Johnston Carmichael on +44 (0)141 222 5800 or email: stacey.stewart@jcca.co.uk
Technical Policy and Practice Support Division

Technical Policy and Practice Support is responsible for all ICAS’ technical activity representing members’ views to legislators, regulators and standard setters. It 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. It also covers the development and delivery of products and services, as part of members’ subscriptions and on a commercial basis to members and others, and plays a key role in member engagement, especially with practising firms.

Website

icas.org.uk/Technical_Research_and_Guidance/Insolvency.aspx

Setutsi van Lare, Insolvency Technical Support
Phone +44 (0)131 347 0244 Email svanlare@icas.org.uk

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.org.uk;

Communications and Member Engagement Division

The Communications and Member Engagement Division takes a lead to better engage our members. This includes arranging ICAS member events which are held in Scotland, the rest of the UK and around the world. This division also takes a lead in communicating with members through the website, e-newsletters, the CA Magazine, publications, and emails.

Fiona Mackay, Director, Member engagement
Phone +44 (0)131 347 0213 Email fmackay@icas.org.uk

Commercial Division

The Commercial Division comprises two main functions: Learning and Business Services.

The ICAS Learning and Development Partnership with BPP, effective from 1 October 2013, involves BPP supporting ICAS in delivering the ICAS learning and development offering. As part of the partnership, ICAS business courses will be organised and run by BPP and will deliver a more comprehensive professional development programme to our members and customers in the wider business community. ICAS will continue to develop its conference portfolio and strengthen its offering of professional development for members.

A FAQ has been prepared and is available on the ICAS website. Anyone with any other questions is asked to contact the ICAS Learning & Development team on +44 (0)131 347 0232. See more at: icas.org.uk/ICAS_BPP_FAQs/

ldicas@bpp.com

Further details of insolvency courses and conferences is available here.
APPENDIX ONE: USEFUL LINKS

Links to websites referred to in this report are listed below, a number of these may require you to login to the website. If you cannot remember your password please follow the ‘Forgotten your password’ link on the login panel of the ICAS website. A new password will be generated and sent to the email address we hold for you. If your email address has changed from that we hold for you please contact cmorris@icas.org.uk

- previous Insolvency Monitoring Helpsheets here and Annual Reviews can be accessed here
- the Anti-Money Laundering Legislation help sheet and the Clients’ Money Regulations help sheet can be found, along with all other practice helpsheets here
- the Insolvency Monitoring visit booklet which explains the visit process can be accessed here
- the Money Laundering section of the ICAS website can be accessed here
- The Anti Bribery section of the ICAS website can be accessed here
- the Clients’ Money Regulations can be accessed here
- the ICAS Paymex guidance can be accessed (using a member login) here
- Insolvency legislation, ICAS Guidance and checklists can be accessed here
- Insolvency technical information can be accessed here
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 +44 (0)330 0 603 303 or email LDicas@bpp.com

INSOLVENCY CONFERENCES

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

Discussion Group for Personal Insolvency Specialists, 10 September 2014
This conference aims to generate an informed discussion and debate on topical issues and challenges facing the profession.

The Insolvency Practitioners Conference, 12-13 November 2014
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 visit icas.org.uk/conferences