GUIDANCE FOR IPs WHEN LEAVING A PRACTICE

Background

The following guidance has been developed to assist ICAS insolvency practitioners in dealing with situations in which they remain in office but their cases are no longer administered under their direct control. This will typically be due to the practitioner having left the firm in which he worked when the appointments were originally accepted, or where the practitioner is a sole practitioner who has retired but remains in office while his cases are administered by another practitioner.

Insolvency appointments are personal to the insolvency practitioner. Responsibility for satisfactory progression and completion of his cases remains with the practitioner. He has an obligation to ensure that cases are properly managed at all times, and that appropriate contingency arrangements are in place to cover any changes in circumstances.

The main aim is to avoid any disputes arising. The over-riding principle is that the interests of creditors and other stakeholders should not be prejudiced and that the cases are completed properly and in a timely manner.

Case funds

1. The practitioner must put in place procedures to ensure that he retains control over case funds. He should provide either that he remains the only one who can authorise intromission with the funds, or that he is the second signatory to the respective accounts.

   Particular care should be taken where a general client account is in operation and the practitioner is not a signatory. It is presumed, in any event, that in most cases, following departure from a practice, a practitioner will be removed as a signatory from such an account.

   Practitioners should ensure the general client account reporting arrangements detailed later are complied with as a priority in these circumstances.

Practitioner’s contractual arrangements

2. The reference point will be any contractual arrangement a practitioner has in a partnership agreement (if he is a partner in a firm) or with his employer (if he is employed)

3. It is the responsibility of the practitioner to ensure that any agreement he enters into includes safeguards so that his cases are properly dealt with in the event of his departure or protracted absence from the firm.

4. It is recommended that such agreements should provide for cases to be transferred within a short timescale from an outgoing practitioner to a replacement one. Where this is not possible the agreement should clearly stipulate the terms under which work will be administered on behalf of the outgoing practitioner.

5. Any contractual arrangements should govern the apportionment and recovery of costs in the event of a dispute arising between the parties.
6. Where a general client account is in operation it is important that any agreement provides for the management of that account after the practitioner leaves the practice to be carried out in compliance with Client Money Regulations and, in particular, references the reporting requirements below.

Cases being progressed with no change in practitioner

7. The practitioner’s obligations to creditors and debtors remain notwithstanding the change of circumstances.

Reporting arrangements

8. A single point of contact within the organisation should be agreed. This individual should coordinate all the practitioner’s requests which should help to avoid confusion with staff and any disagreements.

9. As noted above, where a general client account is in operation and where there is a likelihood that funds relating to the practitioner’s cases will continue to be lodged there, it is important that the practitioner is advised as soon as possible after funds are received to ensure compliance with Client Money Regulations. Where there have been breaches of the regulations the practitioner should report this to ICAS immediately to secure support to remedy any breaches.

10. As a minimum the practitioner should require that he is provided with regular compliance reports and is able to interrogate case progression issues. The following list is not exhaustive but is illustrative of the type of periodic reports/information the practitioner should be provided with regarding his cases:

   - Outstanding compliance tasks
   - Compliance tasks completed late
   - Personal insolvency cases over three years old
   - Corporate insolvency cases over eighteen months old
   - Case progression updates on all cases (incorporating updates on asset realisations and contribution abstracts)
   - Copy of each Bordereaux return since his departure
   - Files available for closure review
   - Specific client/case account reconciliation – exception reporting
   - Complaints log

11. The practitioner should retain a log of any reports and subsequent actions to demonstrate to ICAS his control over his cases. The frequency and content of ongoing reporting will depend on a number of factors, including but not limited to:

   - Volume and complexity of cases: Practitioners’ portfolios range widely from those accepting appointments at large multinational practices to sole practitioners/partners in smaller practices. The practitioner should consider both the number of cases and the complexity of cases when agreeing upon the format for ongoing reporting. A higher volume of cases and/or more complex cases will necessarily require more regular and extensive reporting.
• **Resources available:**
  Any overriding agreement should provide for sufficient resources being made available to both administer the cases and report to the appointee, or to allow the practitioner sufficient access to case records. The practitioner should be prepared to carry out the necessary work himself to ensure that cases are being progressed satisfactorily.

• **Historical reporting:**
  Reference should be made to any ICAS monitoring reports and/or other external reviews carried out. If the ICAS monitoring reports and/or other external reviews show weaknesses in compliance and/or case management then the practitioner should obtain assurances that improvements will be made as would have been necessary had he stayed in situ.

  In the event that the practitioner had a satisfactory compliance record and there is no reason for the office holder to believe that processes and systems will change following his departure it is not unreasonable for reliance to be placed on those procedures and for the same reporting cycle to be followed.

• **Technology:**
  The use of technology will have a significant bearing on the format of ongoing reporting. If it is possible for the practitioner to have restricted real time access to a case management system this should allow both case progression and compliance to be monitored as and when necessary. For those firms that do not have a technology platform that would allow this then the practitioner must rely on the manual reports suggested above.

  Where there is a mix of technology/software for different case types then the practitioner must make a judgement as to what is required to satisfy himself as to the satisfactory progression of his cases. The practitioner is required to demonstrate his review so reliance on technology will require some form of electronic signature evidencing review on individual cases or on portfolio reports. Alternatively the practitioner should retain a log of when reviews have been carried out, of issues identified and how they have been addressed.

• **Other controls:**
  As well as ongoing case progression the practitioner should give consideration to other internal controls previously relied upon to ensure satisfactory administration of his cases. This will typically include case bank account reconciliations, client account reconciliations, bonding, exception reporting and timesheet approvals. Fee approvals should also be processed by a nominated individual with the practitioner being provided with sufficient information to allow him to check that fees have been properly authorised and that they properly reflect the time spent on the case.

• **Where a replacement Trustee has been appointed notification of the transfer of cases should be made to the Accountant in Bankruptcy within 7 days of the transfer. The practitioner should also notify his insurers.**
**Signing rights**

12. The practitioner should seek to sign all statutory documents, such as receipts and payments, statutory forms, lodgements at Court etc. Only in limited circumstances should signing rights be delegated and if they are they must form part of the contractual arrangements. The practitioner should secure terms which provide for another qualified insolvency practitioner signing on his behalf. He should be careful to avoid more junior members of staff signing important documents.

13. Particular care should also be taken in respect of contentious letters and reports. Where possible the office holder should seek to approve these prior to distribution however if this is not practical he should arrange to have another insolvency practitioner review and sign on his behalf. For documents where another practitioner cannot sign on the practitioner’s behalf a Power of Attorney could be granted for certain restricted circumstances. Legal advice should be obtained prior to granting a Power of Attorney.

14. Signing rights in operation before the practitioner’s departure can remain in place subject to the above comments about ongoing reporting. However if historically the delegation of signing rights has resulted in complaints and/or compliance breaches then it is not necessarily the case that existing policies should be relied upon.

**Remedies available to the practitioner**

15. Any contractual arrangements should detail the remedies that are available to the respective parties if obligations have not been fulfilled.

16. If problems arise the practitioner should notify ICAS of the situation as soon as possible, both for guidance and to afford ICAS an opportunity to intervene if appropriate. It will also serve to demonstrate the practitioner’s efforts to resolve the issue should the problem result in a complaint or compliance breaches.

17. Where there are no contractual arrangements, or where a dispute arises, both parties should consider their professional obligations, and the standard of conduct required by ICAS. The practitioner must have regard to his statutory obligations.

18. In circumstances where an alternative practitioner is available to adopt the appointment then the practitioner should consider a transfer of the cases. Where no alternative practitioner is willing or able to take the appointments the practitioner is in an untenable position if he remains in office with the incumbent responsibilities but without the ability to monitor or control the individual cases. Of particular concern would be the ongoing control over case funds where a suitable contractual agreement has not been put in place. Independent legal advice on this issue should be obtained as soon as possible, particularly where the practitioner is an employee, so as to identify any potential conflicts with their obligations as an employee.

**Costs**

19. The costs arising from any dispute or additional reporting cannot be charged to the relevant case estate.

20. In the absence of any formal agreement the practitioner should ensure that terms are agreed as quickly as possible to avoid any negative impact on the administration of his cases.
**Time limits**

19. Given the additional cost and exposure to non compliance which can arise in such circumstances it will be in the interests of both the office holder and his former firm to progress cases to closure as quickly as possible.

20. At the initial stages, deadlines should be imposed and the performance against these targets should be monitored closely. This is of particular concern where the health of the office holder is deteriorating or where circumstances make it difficult for his involvement in a case to continue beyond a certain time. Where cases cannot be closed within a reasonable timescale, the practitioner should make every effort to have another practitioner appointed.

21. It is recommended that all cases could be closed or transferred to another practitioner within a period of two years.

**Implications for a Practitioner's Insolvency Permit**

22. As stated at the outset of this note, responsibility for satisfactory progression and completion of cases remains with the appointee.

23. This responsibility encompasses the practitioner’s obligations to creditors and debtors which remain with the individual notwithstanding any change of circumstance. It will therefore be the position that if a practitioner breaches his statutory obligations he shall face the same implications that would have prevailed had he remained in situ i.e. the commencement of disciplinary investigation and the prospect of restrictions on his permit, or possibly the ultimate sanction of his permit being rescinded.

24. To mitigate this, practitioners should follow the guidance in this note. In particular, the practitioner should document his ongoing monitoring and immediately notify ICAS if a dispute arises.

If practitioners are in doubt about any aspect of the above guidance they should contact ICAS.

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