Dear Insolvency Practitioner

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29) Block Transfer of cases – Insolvency Rules 2016

The Insolvency Rules 2016 have amended the notice period by which insolvency practitioners must inform the Secretary of State of block transfer applications.

The old rule 7.10C required the applicant to “…give notice of the application to the Secretary of State at least 5 business days before the hearing of the application.”

The new rule 12.37 requires the applicant to “deliver a notice of the intended application to the Secretary of State on or before the date the application is made.”

The expectation is that insolvency practitioners will inform the Secretary of State via the IP Regulation Section mailbox (IPRegulation.section@insolvency.gsi.gov.uk) on or before the date that the application for block transfer is made to the Court. The draft order, schedules and any accompanying witness statements should be attached.

It is important that practitioners comply with this rule; referrals to the RPBs will be made if the Secretary of State is not informed of the intended application.

The Secretary of State will no longer be issuing a letter stating that there is no objection to the transfer; instead practitioners will only receive correspondence if there is a regulatory matter which needs to be brought to the attention of the Court.

All sealed orders should continue to be sent to:

CustomerServices.EAS@insolvency.gsi.gov.uk.

Any enquiries regarding this article may be sent to annalisa.volpi@insolvency.gsi.gov.uk

General enquiries may be sent to IPRegulation.Section@insolvency.gsi.gov.uk
14) New guidance: Reporting misconduct by companies, directors and bankrupts to the Insolvency Service

New guidance on GOV.UK ‘Reporting misconduct by companies, directors and bankrupts to the Insolvency Service’ has been published and our former publication ‘The Investigations Hotline, what it is and how to report misconduct’ withdrawn.

The hotline is no longer used as complaints are now primarily received online.

Whilst the name has changed, our complaint routes and the location of the guidance within the Insolvency Service’s content on GOV.UK remain the same.

The main changes to the guidance are

- the hotline is no longer used
- the new guidance provides more information about how we deal with the complaints we receive
- more detail is provided about the re-use of a company name and the exceptions

Where an Official Receiver or insolvency practitioner is in office then the guidance encourages the complainant to contact the office holder.

Practitioners may find the guidance useful either when reporting matters unconnected to their statutory duties, or to provide information to the public about complaint routes in circumstances where the complaint is not connected to their role as office holder.

Any enquiries regarding this article may be sent to:
intelligence.live@insolvency.gsi.gov.uk
55) PPI Guidance Review in light of the decision in Green v Wright

Following the decision in the case of Green v Wright it is now settled that where an IVA has created a trust over assets which is not terminated upon completion of the arrangement, and the supervisor receives the realisation of a trust asset after the completion of an IVA, it is in order for them to distribute these funds in accordance with the terms of the arrangement. This is notwithstanding that a Completion Certificate may have been issued to the debtor. The decision confirms that the mere issuing of the Completion Certificate will not itself, without express provision, terminate any trust over the arrangement assets.

This decision should now enable insolvency practitioners to distribute funds being held pending this decision and they may also now agree assignments with debtors to deal with the PPI post-closure, in appropriate cases. Therefore it is no longer appropriate for this case to be cited as a reason for completion certificates to be withheld, or distributions to creditors further delayed.

It is expected that practitioners will have already investigated the likelihood of PPI claims. Therefore, in most instances, the possibility of there being unknown claims in respect of which express provision had not been made, receipt of which then occurs post-closure (whether by termination or completion), should be infrequent. These factors may therefore limit the impact of the Green v Wright decision on those cases.

Where a PPI refund is encountered following the closure of a case, practitioners should consider and ascertain the following:

- Is the PPI refund an asset of the arrangement?
- What is the effect on any continuing trust of the completion or termination of the arrangement?

Insolvency practitioners should take particular care when negotiating settlements with debtors upon becoming aware of PPI claims and not to make inappropriate or misleading demands about the availability of post-completion PPI refunds. The Ethics Code makes clear that practitioners should act with objectivity and that self-interest may present a threat to that fundamental principle. Practitioners may wish to obtain legal advice if they are in doubt as to the availability of an asset and explain that advice to the debtors affected by it.

In all cases, reference should be made to the terms of the individual proposal (and any approved modifications or variations thereto) to ascertain whether the standard conditions used have been altered in respect of the effect of completion or termination on any trust over the assets of the arrangement. Particular attention should be paid to any agreed modifications to the proposal, as it is not uncommon for modifications to
contain specific provision terminating any trust upon the conclusion of the arrangement (for instance, where HMRC are a creditor).

Where it is concluded that the trust has terminated, then there is no further action that the former supervisor can or is required to take.

What are a former supervisor’s obligations in respect of closed cases?

Supervisors of IVAs do not have a duty to seek out PPI mis-selling claims in closed cases although, depending on the terms of the IVA, he/she may have the power do so. Where he/she becomes aware of such a claim (e.g. a lending institution requests clearance to pay a sum in compensation to the debtor) and it is one that is commercially viable for the office holder to pursue, then the former supervisor should consider whether the terms of the IVA are such that the compensation is a trust asset which should be claimed by him/her acting as trustee for the benefit of the IVA creditors.

Following the decision in Green v Wright, there is no new regulatory expectation as a consequence of that decision that an insolvency practitioner should routinely investigate, review and/or otherwise seek to re-visit closed cases.

Where a supervisor becomes aware of the realistic prospect of realising PPI compensation, they should consider the entitlement to the claim proceeds and the length of time that has elapsed since the conclusion of the arrangement. When pursuing such a course, practitioners should be able to clearly demonstrate and have documented that they have struck a fair balance between the interests of the creditors and those of the debtor, in the circumstances of each case. It is very unlikely that a decision to pursue a post-closure recovery would be appropriate where it would not result in a distribution to the creditors.

Unexpected PPI claims in “full and final settlement” cases

It is imperative that reference is made to the precise terms of any variation, as these may themselves determine whether any existing trust has come to an end. However, in instances where it is concluded that the PPI was not fully compromised by the full and final settlement, the obligations and considerations which the insolvency practitioner should apply are likely to be similar to those that would arise in any closed case, and reference should be made to the PPI Guidance in this regard.

Insolvency practitioners should be mindful that an ordinary interpretation of the words “full and final settlement” may reasonably lead a debtor to the belief that their obligations under the arrangement have been concluded, unless it has been expressly brought to their attention by the practitioner that certain assets remain part of a continuing trust. Creditors are likely to have a similar expectation that the matter has been concluded and that no further funds will be available to them. Where a supervisor concludes that there is a continuing trust over assets which were not included within the terms of the settlement, they should be able to demonstrate this
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with reference to the precise terms of the arrangement and evidence that they have acted fairly and impartially in reaching that conclusion.

In any case where an insolvency practitioner has cause to assess the impact of Green v Wright on an IVA that they are supervising, care should be taken to fully document the strategy deployed, the decision reached and the reasons for both, in accordance with SIP 1.

Enquiries regarding this article may be sent to IPRegulation.Section@insolvency.gsi.gov.uk