



BRIEFING PAPER

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Regulation of Insolvency Practitioners (IPs)

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Contents:

1. What is an IP?
2. Structure of the regulatory regime
3. Features of the complaints system
4. The mechanics of a complaint
5. Review of handling complaints about IPs
6. Complaint statistics



Contents

Summary	3
1. What is an IP?	4
2. Structure of the regulatory regime	5
2.1 Role of the Insolvency Service	5
2.2 Role of the Recognised Professional Bodies (RPBs)	5
3. Features of the complaints system	6
3.1 Who can make a complaint?	6
3.2 What complaints cannot be considered by the Gateway?	6
3.3 Complaints about an IP's remuneration	7
3.4 Sanctions that can be taken against IPs	8
4. The mechanics of a complaint	9
4.1 First stage: assessment/preliminary enquiry	9
4.2 Second stage: formal investigation	9
4.3 Third stage: consideration by a committee, which may impose a sanction	10
4.4 Fourth stage: review or appeal	10
4.5 Compensation	10
5. Review of handling complaints about IPs	11
6. Complaint statistics	12

Summary

Insolvency is a regulated profession under the [Insolvency Act 1986](#) (as amended), the [Insolvency Rules 1986](#) (as amended), and the [Enterprise Act 2002](#) (as amended). Only a licensed insolvency practitioner (IP) may be appointed in relation to formal insolvency procedures for individuals and businesses. This means that only a licenced IP can act as:

- a liquidator,
- an administrative receiver or administrator (in respect of company insolvencies), or
- a trustee in bankruptcy (in respect of personal insolvencies)

In addition, only a licensed IP can advise on formal procedures in respect of all Company Voluntary Arrangements (CVAs) and Individual Voluntary Arrangements (IVAs). In carrying out their duties, IPs must comply with statutory requirements and follow best practice and ethical guidance.

All qualified IPs must be licensed and regulated by a recognised professional body (a 'RPB'). Currently, there are five RPBs. Each is required to have proper procedures in place to ensure that a complaint made against an IP it authorises is properly investigated.

This Commons briefing paper provides an outline of the current regulation of IPs. It also provides information on how a complaint can be made against an authorised IP.

It should be noted that insolvency legislation is devolved in Northern Ireland, although the regulatory regime follows very closely that which applies in England and Wales.

Bankruptcy and insolvency are handled by the [Northern Ireland Insolvency Service](#).

Scotland shares the same corporate insolvency law as England and Wales but a different legal procedure applies to bankruptcy (known as 'sequestration'). Bankruptcy and insolvency are handled by the [Accountant in Bankruptcy](#) in Scotland.

1. What is an IP?

An IP is an individual who is authorised under the [Insolvency Act 1986](#) (IA 1986) to act as office holder in relation to an individual or in relation to a company or partnership.

In relation to an individual, an IP is authorised to act as:

- trustee in bankruptcy
- interim receiver of his/her property
- nominee or supervisor of a voluntary arrangement
- trustee under a deed or arrangement
- permanent or interim trustee in a sequestration
- trustee under a trust deed
- administrator of a deceased insolvent estate

In relation to a company or partnership, an IP is authorised to act as:

- liquidator
- provisional liquidator
- administrator
- administrative receiver
- nominee or supervisor of a voluntary arrangement
- trustee of a partnership

Currently, an IP may be authorised by one of five bodies recognised under the IA 1986 for the purposes of authorising and regulating IPs. In addition, all IPs are required to:

- comply with [Statements of Insolvency Practice](#) (issued by the Insolvency Service);
- take note of “Dear IP” Bulletins issued by the Insolvency Service;
- act in accordance with its RPB’s ethics code;
- take account of guidance issued by its RPB; and
- undertake continuing professional development

It is important to note that acting as an insolvency office holder without being authorised as an IP is an offence.

2. Structure of the regulatory regime

2.1 Role of the Insolvency Service

The Insolvency Service is responsible for oversight regulation of the insolvency profession. It has a distinct role in relation to the regulation of IPs:

- First, it supervises the development of regulatory policy and professional standards, monitors the effectiveness of the relevant legislation and provides guidance to the insolvency profession on law and practice.
- Second, it monitors the regulatory activities of Recognised Professional Bodies (the RPBs). The RPBs are required to have in place a process for dealing with complaints about IPs. It is the role of the Insolvency Service to ensure that this regulation is undertaken in accordance with common standards.

Since 2009-10, the Insolvency Service has put its authorisation function at arm's length from its overarching regulatory function.

2.2 Role of the Recognised Professional Bodies (RPBs)

Any individual who acts as a liquidator, trustee in bankruptcy, administrative receiver, administrator or supervisor under a voluntary arrangement, must be personally authorised to act as an IP.

From September 2016, authorisation may be made by one of five RPB (see **Box 1** below). Each authorising body is monitored by the [Insolvency Service](#).

Box 1: Recognised Professional Bodies

As from September 2016, five RPBs will remain in force.¹ They are:

- [Association of Chartered Certified Accountants](#) (ACCA)
- [Chartered Accountants Regulatory Board](#) (CARB)
- [Insolvency Practitioners Association](#) (IPA)
- [Institute of Chartered Accountants in England & Wales](#) (ICAEW)
- [Institute of Chartered Accountants of Scotland](#) (ICAS)

All IPs are required to disclose details of their authorising body on their correspondence.

The regulatory objectives introduced by the [Small Business, Enterprise and Employment Act 2015](#) are intended to provide the RPBs with a clearer and enhanced structure within which to carry out their regulatory functions in authorising IPs. In addition, guidance issued by the Insolvency Service outlines that an RPB should have a complaints system that is accessible, fair and transparent. This would include the proper assessment and investigation of complaints, and the provision of timely and appropriate information to all parties and to the Insolvency Service. An RPB's disciplinary procedures should secure fair and consistent outcomes.

¹ The Law Society of England and Wales, and the Law Society of Scotland, have ceased to be RPBs. The Insolvency Service will stop authorising IPs (on behalf of the Secretary of State) at the end of September 2016.

3. Features of the complaints system

The current complaints system includes the following:

- A [Complaints Gateway](#)
- Published [Common Sanctions Guidance](#)
- Dedicated web page for publishing sanctions
- Common decision makers for appeals

A new insolvency [Complaints Gateway](#) came into force in June 2013. It was set up to provide a common, independent method for complainants to access the complaints system. Hosted by the Insolvency Service, the Gateway is expected to receive all complaints against IPs. On receipt of a complaint, a decision will be made by the Insolvency Service as to whether or not further investigation is warranted. If it is, the complaint will be referred to the relevant RPB, which will ultimately determine the complaint in accordance with new Common Sanctions Guidance.

It follows from this that before making a complaint about an IP, it is first necessary to establish to which authorised body (RPB) the IP belongs. Thereafter, the procedures for investigating and responding to any complaint will be those operated by the relevant authorised body.

It is important to note that there is a different complaints [process in Northern Ireland](#), where complaints should be made to the [authorising body](#).

3.1 Who can make a complaint?

Anyone who is dissatisfied with the conduct of an IP with regards to their professional work in Great Britain or with the conduct of others carrying out such work on that person's behalf. It follows from this that people who can complain include (but are not restricted to):

- debtors
- creditors
- employees
- directors or shareholders of a company

3.2 What complaints cannot be considered by the Gateway?

The Gateway is not a system for complaints about insolvency legislation or for matters of public policy. Similarly, the RPBs (i.e. the authorising bodies) cannot intervene in or adjudicate upon disputes of a commercial or legal nature. Ultimately, commercial disputes and disagreements about the application of insolvency law are matters for the court.

3.3 Complaints about an IP's remuneration

A distinction is made between remuneration and expenses authorised before and after **1 October 2015** (see **Boxes 2** and **3** below).

Box 2: Remuneration and expenses authorised before 1 October 2015:

Complaints about the level of an IP's remuneration or expenses, authorised before 1 October 2015, **cannot** be directed to the Gateway.

Complaints about remuneration and expenses authorised before 1 October 2015, can only be assessed by the Gateway if:

- they involve a failure to follow the correct processes for charging or obtaining authorisation of fees; or
- they have taken fees over and above that for which they have obtained authorisation

Box 3: Remuneration and expenses authorised after 1 October 2015

- As a result of changes to legislation, the Gateway is able to consider complaints which allege that fees charged by an IP after 1 October 2015 are "unfair or unreasonable".
- This change only applies to fees issued in connection with insolvency appointments in England and Wales.
- The Gateway is unable to consider complaints which concern the level of fees charged by IPs for appointments in Scotland. Separate legislation applies to Scottish insolvency cases, with debtors and creditors having other means to challenge an IP's remuneration or expenses. Guidance in this respect is available through the [Accountant in Bankruptcy](#).

New regulatory objectives dealing with IPs' remuneration and expenses, came into force on **1 October 2015**. RPBs are now expected to encourage IPs to charge fees that are "fair and reasonable." In addition, new rules (which apply in bankruptcy, administration and most liquidation cases) require IPs to provide upfront estimates of their fees for creditors' approval. They will not be allowed to take extra fees unless agreed by creditors.

The Gateway will still consider complaints about the procedures for agreeing fees, including in relation to fee estimates. More generally, the RPBs will also be obliged to assess whether the level of fees are generally appropriate in the circumstances of a particular case; for example, in relation to the amount and type of work carried out to administer the insolvency, including the realisation of assets and payments made to creditors.

It is important to note that if a complaint is ultimately upheld by the authorising body, this will not necessarily result in any amendment of the fee, nor will any fine imposed by the authorising body be paid to the complainant.

3.4 Sanctions that can be taken against IPs

Where failures in compliance are identified, the RPBs have a range of regulatory and disciplinary sanctions that they are able to take against their authorised IPs (see **Box 4** below).

Box 4: Sanctions that can be taken by an RPB against an authorised IP

These sanctions include:

- undertakings to amend practices
- restrictions (including limiting the number or type of appointments)
- imposing bans on accepting new appointments
- fines (including circumstances where the member has consented to the fine) with or without orders for payment of costs
- requiring an IP to make improvements to their practice
- withdrawing authorisation (this, of course, is the ultimate sanction since it will prevent the individual from acting as an IP in any capacity)

It is important to note that the Insolvency Service has published [Common Sanctions Guidance](#). The aim of this guidance is to provide transparency and ensure that, if the findings against an IP are consistent, the outcome and sanction across the RPBs are comparable.

4. The mechanics of a complaint

Although each RPB has its own approach to dealing with complaints against one of its authorised IPs, there are typically four main stages:

- assessment/preliminary enquiries
- formal investigation
- consideration by a committee, which may impose a sanction
- review/appeal

4.1 First stage: assessment/preliminary enquiry

If a person thinks that an IP has acted unprofessionally, improperly or unethically, they can use the insolvency [Complaints Gateway](#) to make a formal complaint. On receiving a complaint, the Insolvency Service will carry out an initial assessment. If the complaint falls within the scope of the complaints system, and relates to an activity or behaviour which may result in an IP being liable to disciplinary action, it is passed to the relevant RPB for consideration in accordance with published guidance (see **Box 5** below).

Box 5: First stage: assessment/preliminary enquiry

- A referral by the Gateway means that the Insolvency Service has assessed the complaint as being suitable for further enquiry by the RPB and no detailed investigation has taken place at that stage.
- Once a complaint is referred by the Gateway, each RPB has a procedure for carrying out an assessment or preliminary enquiry. The purpose is to determine whether the complaint merits: a formal investigation or referral to the RPB's investigation committee; and whether further evidence should be requested from the complainant.
- According to the Insolvency Service, the most common reasons for closing a complaint at the assessment stage are: the complainant's failure to respond to further enquiries; or their inability to provide evidence to support their complaint.
- Most of the RPBs offer a **conciliation process**. In some cases, conciliation enables a matter to be resolved by reaching an agreement that is satisfactory to both the complainant and the IP – without the need to use formal disciplinary procedures.

4.2 Second stage: formal investigation

If, on completion of its assessment and preliminary enquiries, the RPB concludes that the IP may be liable to disciplinary action (and sufficient evidence has been provided), the complaint will progress to formal investigation (see **Box 6** below).

Box 6: Second stage: formal investigation

- As part of the investigation process, those RPBs that have not already done so, will contact the IP for their response to the complaint.
- In most cases, the RPB will share the IP's response with the complainant.
- According to guidance for the insolvency Complaints Gateway, RPBs should aim to have substantially completed an investigation within **6 months**.

4.3 Third stage: consideration by a committee, which may impose a sanction

After the investigation is complete, the RPB can refer the complaint to a committee for consideration and a final decision (see **Box 7** below).

Box 7: Third stage: consideration by a committee, which may impose a sanction

- The committee will determine the appropriate sanction if a case of misconduct or incompetence is made out. This sanction is often imposed through a consent order agreed with the IP. In more serious cases of misconduct or incompetence, or if the IP does not accept a consent order offered by the investigation committee, cases are considered by a disciplinary committee or tribunal.
- It should be noted that each of the RPBs' committees consist of a mixture of both IPs and lay members.
- When issuing a sanction, the relevant RPB is expected to take into account [Common Sanctions Guidance](#). The aim of this guidance is to provide transparency and to ensure that sanctions imposed by the RPBs are comparable for similar types of misconduct.
- Where there is deviation from the guidance, the RPBs should explain this with a reference to any aggravating or mitigating factors considered.
- Since **1 November 2014**, details of disciplinary sanctions notified to the Insolvency Service have been published in a common format agreed with the RPBs.

4.4 Fourth stage: review or appeal

If a person is not happy with how their complaint has been handled by an RPB's Investigation Committee, they may have a right to ask for an independent review (see **Box 8** below).

Box 6: Fourth stage: review or appeal

- Although the reviewer has no power to overturn the decision made by the RPB or their committee, he or she can refer the matter back to the investigation committee for further consideration.
- According to the Insolvency Service, most of the RPBs have agreed to introduce a common panel of reviewers for complaints to increase consistency and transparency around the review stage of the complaints process.
- The RPBs are required to provide information to the Insolvency Service on the progress and outcomes of complaints referred to them every 6 months.

4.5 Compensation

There is currently no formal or agreed regulatory mechanism for compensation across the insolvency profession either from IPs directly or through the RPBs. In the past, the Insolvency Service has sought to explain this by suggesting that any such mechanism would not be a substitute for any legal remedies available to individual complainants through the courts.

However, following its recent "[Review of handling complaints about Insolvency Practitioners](#)", the Insolvency Service is now of the view that the ability to offer compensation should be explored (for example, where small errors or mistakes have been made which can be corrected and have been accepted by the IP) (see **Section 4** below).

5. Review of handling complaints about IPs

Between July 2015 and March 2016, the Insolvency Service undertook a review of how complaints about IPs were handled by RPBs.² The review covered the five RPBs that will remain beyond September 2016 (see **Box 1** above). In particular, it considered:

- The progress and outcomes of complaints made since the introduction of the insolvency [Complaints Gateway](#) in June 2013.
- The reasons for any delays in complaint progression or resolution. The level of consistency in disciplinary outcomes under [Common Sanctions Guidance](#).

A report, published in September 2016, summarised the Insolvency Service's key findings and recommendations.³ Whilst acknowledging that each of the RPBs had appropriate procedures in place for dealing with complaints about IPs, the Insolvency Service identified some potential areas for improvement to better ensure fair, consistent and transparent outcomes.⁴ It made the following recommendations:

- RPBs should ensure that information is sought from the IP in respect of complaints received unless there is a justified reason not to do so.
- The RPBs should enter into discussions with the Insolvency Service to consider the feasibility of a mechanism whereby compensation can be paid to the complainant by the IP where they have suffered inconvenience, loss or distress as a result of their actions.
- Those RPBs experiencing particular issues in progressing cases to discuss with the Insolvency Service their plans for ensuring timely progression of complaints.

The Insolvency Service found that whilst the introduction of [Common Sanctions Guidance](#) had improved transparency in decision-making, there was still scope to ensure more consistency in the application of the guidance. Following consultation with the five RPBs, the Insolvency Service stated its intention to issue revised guidance.

In addition, the Insolvency Service stated its intention to consult with the RPBs on the publication of all disciplinary outcomes:

As confidence in the regulatory system is likely to be improved where disciplinary actions are published and suitably explained, this is an area that the Insolvency Service plans to consider further with the RPBs.⁵

² The Insolvency Service, "[Review of Handling of Complaints about Insolvency Practitioners](#)", September 2016, [online] (accessed September 2016)

³ Ibid

⁴ Ibid

⁵ Ibid

6. Complaint statistics

According to the Insolvency Service, in the first two years of introducing the insolvency Complaints Gateway in June 2013, almost 2,000 complaints were made to the Gateway and around two-thirds of these were referred to the RPBs.⁶ Further information is provided in a useful table compiled by the Insolvency Service (see **Figure 1** below).

Fig.1. Complaints statistics

Recognised Professional Body	Number of complaints referred
IPA	584
ICAEW	572
ACCA	120
ICAS	47
CARB	1
Total	1,324

According to the Insolvency Service the most common reasons for the Gateway rejecting around a third of all complaints were:

- insufficient evidence provided and/or no response received from the complainant to a request for further information;
- not a complaint about an IP;
- complainant has already been through the RPB's complaints process; and
- complaints were about the charge-out rates for IP's fees which were not within the scope of the RPB review

⁶ The Insolvency Service, "[Review of Handling of Complaints about Insolvency Practitioners](#)", September 2016, [online] (accessed September 2016)

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